



1275/2019 - 21/11/2019 - 21/11/2019
विकास कौशल एवं - Skill Education Trust
पंजी - 2019/2019 - 21/11/2019

1275/2019 - 21/11/2019 - 21/11/2019 - 21/11/2019

शंख संकेतक क्र. 101/2019

क्र	शंख संकेतक क्र. 101/2019 Serial No.	कुल अंश सं. 2 Total Nos.	दिनांक Date
101/2019	529516 & 529518 B-2017	411 AND 1018 B-1017 116	11/11/2017

411/2019-21/11/2019 - 21/11/2019

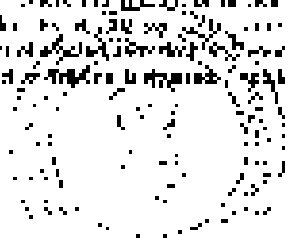
BHV-EXCISE-000-APP-038-FCI (179-2019)

अज्ञापन दिनांक : 14.02.2019
Date of Order : 14.02.2019

जारी करने की तारीख : 15.02.2019
Date of Issue : 15.02.2019

हुमायूँ शाही, एच.डी.आई. (आई.आई.) एच.डी.आई. बंगला, रायपुर
Issued by Shri K. V. S. Prasad, Principal Commissioner (Appeals), Rajkot

- (a) न. नं. 1275/2019 - 21/11/2019 - 21/11/2019 - 21/11/2019 - 21/11/2019
आयकर सं. 1275/2019 - 21/11/2019 - 21/11/2019 - 21/11/2019 - 21/11/2019
- (b) श्री. एच.डी.आई. (आई.आई.) एच.डी.आई. बंगला, रायपुर
1. M/S Bhagyaaram Steel Industries, Survey No. 174, Plot No. 27 to 30, Mansa, Village- Palyaria, Taluka- Dahanu, Dist- Bhavnagar
2. Shri Rajendra Prasad Agrawal, Partner of M/S Bhagyaaram Steel Industries, Survey No. 174, Plot No. 27 to 30, Mansa, Village- Palyaria, Taluka- Dahanu, Dist- Bhavnagar
- (c) श्री. एच.डी.आई. (आई.आई.) एच.डी.आई. बंगला, रायपुर
The Principal Commissioner (Appeals) & Senior Tax Officers at Rajkot, Gujarat has advised that the appellant has to pay the duty of Rs. 1,00,00,000/- on the goods imported from the foreign country.
- (d) श्री. एच.डी.आई. (आई.आई.) एच.डी.आई. बंगला, रायपुर
The appellant has to pay the duty of Rs. 1,00,00,000/- on the goods imported from the foreign country.
- (e) श्री. एच.डी.आई. (आई.आई.) एच.डी.आई. बंगला, रायपुर
The appellant has to pay the duty of Rs. 1,00,00,000/- on the goods imported from the foreign country.
- (f) श्री. एच.डी.आई. (आई.आई.) एच.डी.आई. बंगला, रायपुर
The appellant has to pay the duty of Rs. 1,00,00,000/- on the goods imported from the foreign country.
- (g) श्री. एच.डी.आई. (आई.आई.) एच.डी.आई. बंगला, रायपुर
The appellant has to pay the duty of Rs. 1,00,00,000/- on the goods imported from the foreign country.



ORDER IN APPEAL

The below mentioned appeals have been filed by the Appellants (herein after referred to as Appellant No.1 & Appellant No.2) as detailed in the Table against Order-In-Original No. 44/Excise/Demand/7-18 dated 21.2.2017 (hereinafter referred to as the Impugned order) passed by the Assistant Commissioner, Central Goods & Service Tax Division, Bhavnagar-7, Bhavnagar (hereinafter referred to as the lower adjudicating authority):-

Sr No	Appeal No.	Appellant No.	Name of the Appellant
1	27/22/308/2017	Appellant No.1	M/s. Bhagnazari Steel Industries, Survey No. 173, Plot No. 17 in EC, Manasa, Village-Kankri, Taluka-Talaja, District-Bhavnagar
2	27/22/308/2017	Appellant No.2	Shri Kojendra Prasad Agrawal, Partner of M/s. Bhagnazari Steel Industries, Survey No. 173, Plot No. 17 in EC, Manasa, Village-Kankri, Taluka-Talaja, District-Bhavnagar

2. The brief facts of the case are that Show Cause Notice - No. 4015-45/Deny/HQ/2015-16 dated 05.06.2015 was issued to the Appellant No.1 and Appellant No. 2 for clearances of M.S. Round/TMT Bars clandestinely to various customers, alleging as under:-

- (i) Appellant No.1 had clandestinely manufactured and cleared their finished excisable goods, namely, M.S. Round/TMT Bars attracting Central Excise duty of Rs. 20,35,913/- to various customers without issuing the invoices and without payment of Central Excise duty;
- (ii) Appellant No. 2 Partner of Appellant No. 1, concerned himself in selling, storing, keeping and removing of the excisable goods which he knew and had reason to believe that the same were liable to confiscation, which has made him liable to penalty under Rule 26 of the Central Excise Rules, 2002 (hereinafter referred to as 'the Rules');

2.1. The above SCN was adjudicated by the lower adjudicating authority vide the impugned order confirming demand of Central Excise duty of Rs. 20,35,913/- against Appellant No.1 under Section 11A(1)(i) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') along with interest on the confirmed demand under 11A(1) of the Act, imposed penalty of Rs. 20,35,913/- upon Appellant No.1 under Section 11A(1)(ii) of the Act with benefit of reduced penalty and also imposed penalty of Rs. 2,00,000/- upon Appellant No. 2 under Rule 26(2) of the Rules.

3. Being aggrieved with the impugned order, Appellant No. 1 & Appellant No.

Assistant Commissioner
 Central Goods & Service Tax Division
 Bhavnagar-7, Bhavnagar

2 have maintained present appeals, after law, on the following grounds: -

Ground No. 1:

(i) that the Impugned order has been passed on the basis of 1st Third-party evidence only and therefore, not sustainable in law;

(ii) that the duty of Rs. 70,36,913/- has been ascertained from three pocket diaries seized under Panchnama dated 08.02.2013; that the determination of so-called evasion of central excise duty is not genuine on the basis of three pocket diaries seized; that the so-called demand for removal of the excisable goods has been determined solely of all the entries found/written in the said seized pocket diaries but the facts stated by the partner of the firm in his statement dated 13.03.2013 has not been considered as sometimes though the deed is finalized with the books, the same may not be physically materialised due to the reasons as stated by the partner of the firm in his statement dated 13.03.2013;

(iii) that the seized three pocket diaries were nothing but "Order Book" and these order books are not genuine evidences for tracing charge of clandestine removal and thus, duty determined on the basis of the above mentioned three pocket diaries is not proper and legal without any tangible corroborative evidence and thus, the show cause notice issued on assumption presumption basis;

(iv) that the entries written in the seized three pocket diaries i.e. order books may not be related with the entries mentioned in the sales register; therefore, to prove the charge of evasion of central excise duty is cast upon the department; that the department alleged the clandestine removal of the excisable goods only on the basis of seized three order books without placing the material evidences such as recording statement of the party of the end users, viz. the money flow track has been taken place etc.;

(v) that they said the goods at ex-factory gate only; that it is proved beyond doubt that the means of transportation of the so-called clandestine removals have not been produced on record, since the investigation is not extended upon the part of the vehicles owned by the drivers of the trucks, the so-called clandestine removal cannot be proved; that the lower adjudicating authority wrongly and without authority of law has interfered the duty;

(vi) that the department failed to establish the money flow track and disclose the names of the buyer of the end users; that the department failed to establish



the clandestine receipt of the raw materials for manufacturing of the so called clandestine removal of the finished goods; that the charge of clandestine removal framed only on assumption presumption basis and only on third parties' evidences which have not been corroborated with the statutory central excise records; that the impugned order is not proper and legal; that the appellant not liable for penal action; that the partner of the appellant is also not liable for penalty; that they relied upon case law 2014 ELT 351 (Tri. Ahm.) & case of Cir. Allahabad, Ex. Ind. Inv. Order No. A/11933/1334/2015 dated 17.07.2015 passed by the Single Tribunal, Ahmedabad in case of Brijrang Casting Pvt. Ltd.

Appellant No. 2:-

(i) Appellant No. 2 conceded imposition of penalty of Rs. 2,20,000/- on him on the grounds as mentioned in respect of Appellant No. 1; that the Department has not produced any positive evidence to prove that Appellant No. 2 actively involved himself in so called clandestine removal of the excisable goods and therefore, penalty imposed on him is not - law.

4. Personal hearing was granted to the appellant as well as department on 01.11.2018, 13.12.2018 & 26.12.2018 vide PH notices dated 10.10.2018, 30.11.2018 & 19.12.2018 respectively, however, no one appeared on the given dates and hence, I proceed to decide these appeals on the basis of available records in these two appeals.

Findings:-

5. I have carefully gone through the facts of the case, the impugned order and appeal memoranda filed by the Appellants.

6. The issues to be decided in these appeals are whether in facts and circumstances of the case:-

(i) Confirmation of demand of Central Excise duty of Rs. 20,95,913/- under Section 11A of the Act along with interest, as applicable rates, under Section 11AA of the Act against Appellant No. 1 is correct or not;

(ii) Imposition of penalty equal to duty under Section 14C(1) of the Act on Appellant No. 1 is correct or not;

(iii) Whether penalty imposed on Appellant No. 2 under Rule 2b of the Rules is correct or not.

7. I find that the officers of Central Excise, Bhavnagar conducted search operations at the premises of Appellant No. 1 and incriminating documents like

excise duties etc. were recovered & seized. The statements of Manager of Appellant No. 1 and statements of Appellant No. 2 (Partner of Appellant No. 1) were recorded by confronting them with the recovered/seized records and the entries recorded in the notebook/diaries revealed clandestine manufacture and clandestine clearances of M. S. Round/TMT Bars to various buyers against cash transactions without CE invoices and without payment of CE duty as detailed in the findings at Para 17 to 19 and Para 37 of the impugned order. Para 37(b) of the impugned order clearly gives details and confirms that the investigation was conducted at the five brokers and the said brokers also admitted that the goods mentioned in the seized diaries were procured by them as a broker on behalf of their customers and the payment were made in cash.

5. In the grounds of appeal, it is stated that the lower adjudicating authority while passing the impugned order has ignored the submissions made by the appellants, however, I find that the lower adjudicating authority has recorded the defense submissions in detail and has also discussed submissions giving his findings. Thus, this argument is devoid of merits.

6. I find that demand of Rs. 20,30,900/- has been computed as per Annexure - C to the Show Cause Notice and before recording statement of Appellant No. 2, all documentary evidences recovered from the premises of Appellant No. 1 were placed before him and shown to him. Appellant No. 2 (Partner of Appellant No. 1) in his statement dated 13.01.2013 and dated 27.04.2015 recorded under section 14 of the Act had gone through Panchnama drawn at the above said premises and the statements rendered by the Manager of the Appellant No. 1 and their brokers, etc. Appellant No. 2 was given full opportunity to peruse incriminating documents, statements and sales data as per Annexure - D before giving his statement about the truth and correctness thereof. He was also shown sales data as per Annexure-D prepared on the basis of investigation showing transactions carried out in the seized pocket diaries through brokers of Appellant No. 1. I find that the documentary evidences and statements of the brokers and Appellant No. 2 have been discussed and deliberated upon in a very elaborate manner in the impugned order and all transactions recorded in the seized private records were not found in sales register/entry book maintained by the Appellant No. 1 during the period under question which proves that the goods as mentioned in the said seized pocket diaries have been cleared for final issuance of proper invoice and payment

of central excise duty viz. details contained in incriminating relied upon documents and relevance of these for duty liability on Appellant No. 1.

5.2 Before proceedings, I would like to reproduce some relevant para or paragraphs of the impugned order, which are important to decide these Appeals as under:

(i) Para 37.3 and 37.8 of the impugned order - Appellant No. 2 (Partner of the Appellant No. 1) accepted demand for removal of the finished goods by Appellant No. 1 as under:-

Para 37.3:-

"I find that a statement of Notice No. 7 viz. Shri Rajendra Agrawal partner of Notice No. 1 was recorded on 13.03.2017, wherein, he accepted that the entries of Annexure was prepared from the order book and as stated earlier sometimes the finalized bills does not materialized. I specifically found that:

Q. No. 1 How the excisable goods are sold?

Ans. Every day we contact brokers or dealers via/through us on telephone and deal is finalized after negotiations for rates. After the deal is finalized, I inform our manager Shri Rakesh Vasani on telephone about the rate, quantity and the name of the broker through whom the goods are to be sold and accordingly he arranges for dispatch of the goods.

Q. No. 2 Who arranges the vehicle for transportation of the goods sold?

Ans. The broker or the buyers of the goods arranges for the transportation of the goods as we sell our goods at factory gate only.

Q. No. 4 Do you pay any brokerage to the broker for sale of finished goods?

Ans. No.

Q. No. 9 Do you agree that all the goods mentioned in the said annexure have been received from your factory?

Ans. The said annexure has been prepared from the order book and as stated earlier sometimes the finalized bills does not get materialized i.e. the goods are not dispatched due to the reasons mentioned earlier.

Q. No. 10 Please state in which cases the deal was not finalized and the goods were not dispatched out of the orders listed in annexure prepared for the circumstances seized under the Prochnama dated 08.03.2017?

Ans. As we have not kept any such record I am not in a position to exactly state in which cases the goods were not dispatched."

Para 37.8:-

"I observed that a further statement of Notice No. 2 was recorded under Section 14 of the Act on 27.04.2015, wherein, he accepted that all

the goods mentioned in the duty were removed clandestinely and the date of which was not reflected in Sales Register. He also agrees with the declarations made by the brokers in their respective statements. I specifically found that:

Q. No. 12 Please peruse the Annexure - D prepared from the details mentioned in the documents seized under Panchanama dated 08.03.2013 at the office/factory premises of M/s. Shagvaikona Steel Industries, Marol and offer your comments.

Ans. I peruse the Annexure - D which was prepared from the details mentioned in the documents seized under Panchanama dated 08.03.2013 from the office premises of our firm. Further, I state that entry mentioned in the said Annexure - D is related to clearance and order issued for finished goods from our factory & same are maintained by our authorized person and Manager Shri Rajeshbhai Vasani as per my instructions.

Q. No. 14 Please peruse the details of dates of clearance mentioned in the Annexure - D which is prepared on the basis of details maintained in stock diaries by an authorized person of your firm, as well as also Sales Register, which is also maintained in the computer available in your firm by authorized persons, and confirm whether the entries mentioned in the diaries is being tallied with the sales register or otherwise?

Ans. I peruse the both documents, and I state that the entries of goods removed from our factory, mentioned in the Annexure - D is not tallied with the said registers, as entries mentioned in this packet diaries are in respect of clearance of goods as well as tracking of orders and all the goods not been dispatched.

Q. No. 16 Please peruse your sales report for the period from 01.07.2013 to 05.03.2013, along with your earlier statement dated 17.03.2013 and also other statements of Manager-Shri Rajeshbhai Vasantlal Vasani, as well as statements of the brokers which you have already prepared. It is requested that the entries of goods issued from the factory as mentioned in the packet diaries is not tallied with the 'sales register', means the goods mentioned in the said entries of packet diaries/Annexure-D have been removed by your firm without payment of duty and without issuance of Central Excise Invoice. Is it true?

Ans. I perused and my reply is as per Answer to Q. No. 14.

() Para 57 & Para 43 of the impugned order - The manager and the brokers explained details and confirmed removal of the finished goods without payment of central excise duty.

Para 17.6 -

It is noted that the investigation was conducted at the five brokers of M.S. Rajyarthi Bham and known to respondents were conducted under Section 14 of the Act, wherein the brokers have accepted that they were doing business of load-unloading, that they were purchasing goods on behalf of their customer/owner of Shri. Anil J. Marwa, Sr. Manager, that most of their customers are either from the regional region and purchasing goods

from Appellee No. 1 regularly. They also admitted that the goods mentioned in the seized diary were procured by them as a broker on behalf of their customers and the payment was made in respect of these goods were made in cash by the customers. I further find that they were shown and verified detailed Annexure which was prepared on the basis of seized diary entries, they also confirmed that whenever their names was mentioned in the Annexure/seized diary they procured the goods as a broker for their various customers and the concerned deals were done by them."

Para 43:-

"I find that authorized person of Notice No. 2 Shri Rajeshwar Vasantlal Kherai admitted that the name of the persons mentioned in the diary is the name of various brokers, as regards the three figures mentioned in the diary, first figure is price, which is mentioned in the word 'per mt' means ton (i.e. 30.5 means price is Rs. 30,500/- per mt), second figure is size of TMT bars (i.e. 6R means 6 MM Round Bar) and third figure is total weight of goods in MT (i.e. 5 means five metric ton)."

(iii) Para 39 of the impugned order discussed important evidence:

"These are the crucial and important evidence in form of statements which are incontrovertible and admitted by them on their own. Hence, these evidences are sufficient itself and needs no further corroboration in the said background. The said statements have never been refuted by the Appellee No. 1 & 2 during the statement or in defence or by the SCN or during the course of personal hearing, as such, it becomes final and to be regarded as incontrovertible evidence. However, the other evidences have also been collected and corroborated as discussed herein above."

5.3 I also find that on being confronted with the incriminating documents seized during the searches, Appellant No. 2 (partner of Appellant No. 1) in his respective statements recorded during investigation has categorically admitted that Appellant No. 1 had cleared goods without CE Invoices and without payment of Central Excise duty. The statements of various brokers also corroborated the clearances of goods, in clandestine manner, by Appellant No. 1.

5.4 I further find that these are substantial evidences duly corroborated which have not been retracted at any stage and therefore, as per the aforesaid legal position, sanctity of these statements cannot be undermined by bald arguments only. Appellant No. 2 in his statements dated 15.04.2013 and dated 27.04.2015, as referred to at Para 37.2 and 37.8 of the Impugned order has clearly admitted Annexures computing sales without invoices and without payment of central excise duty.

5.5 Appellant's No. 1 has argued that demand of duty cannot be confirmed on the basis of third party documents and as well as assumptions and presumptions and hence, demand made on the basis of third party documents is not

sustenance. In this regard, I find that the diaries maintained by the manager of Appellant No. 1 recorded illicit, as well as licit transactions of Appellant No. 1. I also find that none of transactions recorded in private records tallied with Sales Register was actually being maintained by Appellant No. 1. Thus, truthfulness of diaries/notebooks and other private records recovered from them during search is established, also because broker and Appellant No. 2 have admitted to have dealt with the goods belonging to Appellant No. 1 without Central Excise Invoices and also sold such goods without paying central excise duty. I also find that the demand has been computed on the basis of duty computation Annexure-6, prepared on the basis of private records recovered from them. I also find that all lines involved in the case, i.e. broker, Appellant No. 1, Appellant No. 2, etc. have corroborated evidences and therefore, demand cannot be said to be based upon third party evidences only. This case is not based only on third party documents but duty is corroborated by host of other evidences also. I also find that multiplicity of party itself negates the concept of third party. In the instant case, the evidences of clandestine removal have been gathered by the investigating officer successfully from various ends and therefore, it cannot be said that third party evidences have corroborative and supporting evidences against Appellant No. 1.

6.6 Further, Appellant No. 2 (Partner of Appellant No. 1) has in his statements dated 13.03.2013 and dated 27.04.2015 recorded during investigation, on being confronted with vital evidences, admitted that they cleared excisable goods without payment of duty and no CE Invoices were raised for such transactions. These statements of Appellant No. 2 have really not been introduced in date and hence, the statements have sufficient evidentiary value, which cannot be rebutted solely by legal arguments and vague affidavit.

6.7 Therefore, in view of the facts and circumstances of the case and the cumulative effect of all concrete and corroborative evidences available on records in this case CE duty evasion has indeed taken place and Appellant No. 1 has indulged in it. Therefore, find that all these are required to be considered as vital and hard evidences and are sufficient to prove the case against the appellants. I also rely upon the decision of the Hon'ble CESTAT in the case of Om Prakash Agarwal reported as 2017 (315) ELY 125 (TTD-De) wherein it has been held as under:

"5. I note that in both cases, the facts are almost identical set of facts were involved. The allegation was not proved on evidences collected from the

suppliers' side, unaccounted receipt and further manufacture of dutiable items by the appellants was sought to be sustained. Admittedly, the case is not only based on the material evidence collected from the suppliers' end and also as corroborated by the responsible persons of the suppliers' end. The receipt and use of the such unaccounted raw materials for further manufacture has apparently been admitted by the appellants and the duty short paid has also been discharged during the course of investigation itself. The appellants' great emphasis on non-availability of the further corroboration by way of details of transport, money receipts, etc. In the present case, the evidences collected from the suppliers' site is categorical and cannot be disputed. The private records of the suppliers have been corroborated and admitted for the correctness of their contents by the persons who were in-charge of the supplier's units. When such evidence was brought before the partner of the appellants' unit, he categorically admitted unaccounted clearance of dutiable items. However, he did not name the buyers to whom such goods were sold. In such situation, it is strange that the appellant has taken a plea that the department has not established the details of buyers and transport of the finished goods to such buyers. It is seen that the records maintained by the suppliers, which were affirmed by the persons in charge cannot be brushed aside. It is not the case of the appellant that the suppliers maintained such records only to falsely implicate the appellant. In fact, the supply of unaccounted raw materials has been corroborated by the partner of the appellants' firm. In such situation, it is not feasible for the appellant to, now in the appeal stage, raise the point by requirement of cross-examination, etc. Admittedly, none of the private records or the statements given have been retracted or later contested for their authenticity. In the appeal before the Tribunal, the appellant is making a belated assertion that the statement by the partner of the appellants' firm is not voluntary. Various case laws relied upon by the appellants are not of any support in the present case. In the cases involving unaccounted manufacture, the evidence of each case are to be appreciated by conclusion. As noted already, the third party's records of the suppliers' side as affirmed by the person in charge and further corroborated by the appellant cannot be discounted only on the ground of further evidences like transportation and receipt of money has not been proved. In a clandestine manufacture and otherwise, each stage of operation cannot be established with precision. On careful consideration of the grounds of appeal and the findings in the impugned order, I find no reason to interfere with the findings recorded by the lower authority. Accordingly, the appeals are dismissed."

(emphasis supplied)

6.8 It is settled law that in cases of clandestine removal, the Department is not required to prove the case with mathematical precision. My this view is fully supported by judgments of the Hon'ble Supreme Court in the cases of *State of Gujarat vs. M/s. J. K. Mehta & Co.* (1983) 13 ELT 1631 (SC) & *Adfcon Textiles (U) P. Ltd.* (2009) 235 ELT 387 (SC).

6.9 The statements, if not retracted, are legal and valid evidences in the eyes of law and have to be considered as corroborative evidences as held in the

cases of (i) Navesh J. Sukhewani [1996 (153) EIT 258 (50) (I) Rakesh Kumar Garg [2018 (331) TIT 321 (I)-Delhi]. I find that Statements of Partner / authorized persons of assessee admitting clearances of goods without payment of Central Excise duty and without issuing invoices were inculpatory and specific and have not been retraced and therefore, are admissible as held in the case of H. Ashi Associates Ltd. reported as 2017 (316) ELT 606 (Tri. Del.)

14. On careful consideration of the facts and circumstances as outlined above, I find that the statement of Director is the basis for the demand. The statement is inculpatory and is specific. The Director clearly admitted that the documents/private records recovered by the officers contained details of procurement of raw materials as well as clearance of finished goods with and without payment of duty. This fact is further strengthened by the observation that many entries in the private documents are covered by the invoices issued by the assessee on which duty stands paid. The Director has clearly admitted the truth of the charts as well as detailed clearance of goods covered by the entries in the private notebooks which are not covered by the invoices. Such statement is admissible as evidence as has been held by the Apex Court in the case of Systems & Components Pvt. Ltd. (supra). The activities of clandestine nature is required to be proved by sufficient positive evidence. However, the facts presented in each individual case are required to be scrutinized and examined independently. The department in this case has relied upon the confessional statement of the Director which is also supported by the mentioned entries in the private records. There is no averment that the statement has been taken under duress. The assessee also does not appear to have asked for cross-examination during the process of adjudication.

15. In view of the foregoing, I find that the Commissioner (Appeals) has erred in taking the view that there is not enough evidence of clandestine removal of goods. Even though the statement of Sri Sanjay Katarwal, who is said to be the author of the private records recovered has not been recorded, it stands admitted by Sri Katarwal, Director about the truth of the contents of the private notebooks. Consequently, I find no reason to disbelieve this piece of evidence.

16. The evidence of clandestine clearance has been brought on record only as a result of investigation undertaken by the department. The evidences unearthed by the department are not statutory documents and would have gone undetected but for the investigation. Therefore, this is a clear case of suppression of facts from the department and certainly the extended period of limitation is applicable in this case and hence the demand cannot be held to be time-barred.

(Emphasis supplied)

17. I also rely on the order in the case of M/s. Harvana Steel & Alloys Ltd. reported as 2017 (355) ELT 481 (Tri.-Del.) which held that notebooks (diaries) seized from the possession of appellant's employee at the time of search showing entries for accounts as well as unaccounted goods which have been recorded in bills and vouchers by ITO of the factory tally with invoices/pats

10

persons is trustworthy; that statement of employees running into several pages and containing detailed knowledge to be considered reliable. I also rely on my decision in the case of Kamchanara Rex vs Pw. Ltd. reported as 2014 (302) E.L.T. 461 (S.C.) wherein similar view has been taken by the Hon'ble Apex Court.

8.11 I am of the considered view that the admitted facts need not be proved as has been held by the Hon'ble CESTAT in the cases of Aax Industries reported as 2008 (230) E.L.T. 80/03 (Tri-Mumbai) and Divine Solutions reported as 2006 (205) E.L.T. 1005 (Tri-Chennai). Hon'ble CESTAT in the case of Karur Trigg. Works reported as 2004 (166) E.L.T. 3/3 (Tri-Del.) has also held that Admission/Confession is a substantial piece of evidence, which can be used against the maker. Therefore, the Appellant's reliance on various case laws are not applicable in light of the positive evidence available in this case as discussed above and in the impugned order. Hon'ble CESTAT in the case of NIK Sponge P. Ltd reported as 2015 (425) E.L.T. 453 (Tri-Del.) has also held that when preponderance of probability was against the Appellant, pleading of no statements recorded from buyers, no excess electricity consumption found, no raw material purchase found unaccounted and no input/output rate prescribed by law is of no use.

8.12 In view of above, I find that the objections raised by the appellants are of no help to them and the Department has adduced sufficient oral and documentary corroborative evidence to demonstrate that the Appellants were engaged in clandestine removal of the goods. I, therefore, find that the confirmation of demand of Central Excise duty of Rs. 20,36,913/- by the lower adjudicating authority is correct, legal and proper.

8.13 Since demand of duty is confirmed, it is required to be paid along with interest at applicable rate under Section 11AA of the Act, therefore, uphold the impugned order for payment of interest on applicable taxes.

9. I find that this is a case of clandestine clearances of the goods without Central Excise Invoices and without payment of CF duty and hence, the impugned order has correctly imposed penalty equal to duty i.e. Rs. 20,36,913/- on Appellant No. 1 under Section 11A(1) of the Act and has correctly given option to pay reduced penalty @ 25% of duty confirmed as per provisions of Section 11A(2) of the Act and as per judgements passed by Hon'ble Supreme Court in the case of Rajasthan Spinning and Weaving Mills reported as 2006

(226) E.L.T. 3 (S.C.) and CBEC Circular No. 898/16/2009 CX, dated 15-9-2009 dated and No. 819/09/2509-CX, dated 21-5-2009.

5.1 Appellant No. 2 (Partner of Appellant No. 1) has contended that the lower adjudicating authority has failed to establish as to how he has abetted the un-aided evasion of Central Excise duty and thus penalty on him has been wrongly imposed under Rule 26(1) of the Rules. I find that the facts of this case very clearly establish that Appellant No. 2 was the key person of Appellant No. 1 and was responsible for clandestine removal of the goods manufactured by Appellant No. 1. He, as partner, was looking after day-to-day affairs of Appellant No. 1 and had concerned himself in various irregular activities, committed by Appellant No. 1, related to excisable goods including manufacture, storage, removal, etc. of such goods, which he knew and had reason to believe that they were liable to removal under the Act and the rules made thereunder. I, thus, find that imposition of penalty upon him as partner under Rule 26(1) of the Rules in addition to imposition of penalty on his partnership firm is correct, legal and proper. Simultaneous imposition of penalty upon partnership firm and partner is lawful and proper in light of the judgment of the Hon'ble Supreme Court in the case of Amrtekanni Machine Works reported as 2016 (3)35 ELT 225 (Ben).

10. In view of above, I uphold the impugned order and reject both appeals filed by Appellant No. 1 and Appellant No. 2.

10.1. अतिरिक्त दुसऱ्या दोषी असूनही काय निष्पत्ती सुचवता तरीकडे ते केल्या जात हे

10.1 The appeals filed by the Appellants are disposed off in above terms.

दस्तावेज

15/09/2016

कुमार साहू

आयुक्त

आयुक्त, कोलकाता

3. 6. 2016

M/s. Shree's Steel Industries
Survey No. 147, Plot No. 27 to 30, Village
Chitraghata, Dist. Murshidabad, West Bengal.

श्री श्री इस्टील इंडस्ट्रीज,
सर्वे नं. 147, प्लॉट नं. 27 ते 30, ग्राम चित्राघाटा,
जिल्हा मुर्शिदाबाद, पश्चिम बंगाल.

M/s. Shree's Steel Industries, Survey No. 147,
Plot No. 27 to 30, Village, Chitraghata,
Murshidabad, West Bengal.

श्री श्री इस्टील इंडस्ट्रीज,
सर्वे नं. 147, प्लॉट नं. 27 ते 30, ग्राम चित्राघाटा,
जिल्हा मुर्शिदाबाद, पश्चिम बंगाल.

संकेत

- 1) The Principal Officer, Section 10, CBEC, Central Excise, Murshidabad Zone, Amrtekanni Machine Works, Amrtekanni.
- 2) The Officer-in-charge, C. E. S. District Excise, Murshidabad, Murshidabad, West Bengal.
- 3) The Officer-in-charge, Section 10, Central Excise, District 10, Bhadrabad for future reference.
- 4) C. E. S.

