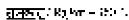


्र एयान अध्युक्त (प्रामीतन्स) का नामीकर, कातु एवं गीन नार और केन्द्रीय उत्पाद सूनकः 0% THE PRINCIPAL CUSSINS ANN REQUIRES (SS &CENTRAL EXCISE

द्रश्यमं अस्तर्भ, जी एस द्री संस्था (120 स्ट्राज्य GN 1997) प्राप्त रेश प्रार्थ विकासिक अस्तर्भ (Charlet Bing Kale)





र्गाजेस्टर्स सक्त ए. <u>. हो. <u>प्</u>या<u>स्</u> अ</u>

ज्ञाः अभिन्नः सङ्ग्रहेन संस्थातः । १८५७ - १८०७

VANAGABAAABVR/2015-19

मृत्रभाषाच्य

álo No

[Inde

HHV-KNU038-100-35-46-2017-18

1.555011 •

& Ending St. St. 47 (Cover in Appeal No.).

BHV-EXCUS-000-APP-062-TO-M5-2019

भ्राहेश का दिलांक :

16.03.2019

_{कार}ी क्षारके की ज़ारीस्त्र । Date of items

12 63,7019

Date of Order:

कुमार संतीन, प्रधार आयुवत (अपोस्स), सनकोट वृद्धार नारित 🕹

ീaesed dy **Shri Kumar Santosh**, Hendipol Commissioner (Appe≥s), Rajk⊻t

मा । । भूगत् मञ्जातः त्रदुवत् भएकतः । तत्रद्वत् । सहस्यतः शावकतः वैद्यक्षितः अभादशक्ष्यः (१०००) । १००० । । कर्षार्थः त सन्दर्भः । विभिन्नः १०००, १०० विभिन्नः क्षित्रं सुनि अस्थितं सुनिर्दे । ।

prigagi and interpretable component C.C. **(game)** by **Add Parcel Constitue** of Albert Albert Constituence (Albert Albert Constituence) and Albert Alb

- ध् । अनोजनहाँ के प्रतिकारीका जाम एवं गूल के शाम के श्रे били (1) में Appellants & Rescondors : े
 - 5. Mis I amb ship Haryrang for, I in J. Swain Kwya Ji-Wang Third I kere. Sear is kaharwati i Huari sparež 5492.
 - She Mach Brief She are (Cheirene and Managing Director), MA Lode Slip Roycling Pt I. 15th Leaf, Europh,8-What; Print More, More Absorread Rhavinggre-W-980.
 - 3. Shi i Yumii Patel, But Nu. 102, Issan Maya City. Opp Vocoria Park, Brasmagar.
 - Sim kishter Jami, Proprietor of Mis Slave Krishen, Enterprise, 204, Stoupers Point, Paristal Chases, Wignersoft Read Storymagner.

्डा आर्था (१८) या में अधिक की अधिक जन्मीको ऐसे अधिक उपायका हिन्दा है जा महाराज्य कार मात्र कर राज्या है। १८ १ जन्मण अ_{र्थ} मान्य के प्रित्र Cutte ने अस्ति का महाराज्य के जा महाराज्य के उपायकार (१८) अधिक है। १ व विकेत हैं। १८९८

- 14) সানা ।[বা বিষ্ট্রের সাংগ্রাক আইন্ডান ক্রীন্ত্র লাক্ষিত্যে ই এই র ছে, ইক্ষাণ্ডেরছে এইক টেকবিলা এইক যা গরে। 208 ও এইবিলেই বিক্ মান্তিবার, ১৯৯৮ বিশেষ চাই নাইনিক নিক্রিটির জার বিভারত করি । কেইকো জে 7, ১৯০০ - 500 কে ও Section That Administration and section (১৯৫৮ চনত ১৮৮৮ চনত ১৮৮৮
- ें। अर्थकान क्षेत्रकार सरमानी के उसी समर्थ होना शहर किहींसे फास्त्रकार है के को है करने हैं के न्यू व विश्वयाल जिल्हें। सेह, कार्य रहेक में के कि के कि पुरस्त कर किन्से, के का पाने चितिहा।

The special better of Coskins, Excelled Service to Appelline Theorem in West Plack No. 2, P.K. P., $\pm p$. New Tolk in all matter relating to classification and measures.

- ্ত সুবালা সাক্ষ্য () শালাৰ নাম্প্ৰীয় বিপ্ৰকৃত গা নুষ্ঠী নামি নীম ৪৯০ শ্ৰিটাৰ হ্ৰান্ত কৰে এইটাৰ চাইৰ ভাৰান্তিত টোটোটা পালিক ইন্ধান মিজিল, চাইটাৰ বাস চৰুদাৰ্য নকে একল এইসকলত একটা ইন্ধান কৰি আন্ত্ৰী সাক্ষ্য (Castina) ও কি পালি What regional borth of Castans, Excise & Bendue Tae Appellat Tributal (Castina) on 27 Page , bles man Blessey, Autom Abmediated-2000) in case of property discussion on mentioned in case (Lyb) discus
- अमेरिक स्वापित कर विशेष सम्बद्धा को है है है कि प्राप्त कर नहीं है है है है के स्वर्ध के स्वर्ध के स्वर्ध के से हैं के कि से हैं कि कि

The mean is the Appellance in a label and conduction of the Color of Appellance in the Self Color. For the Appellance in the Color of the Color of Appellance in the Color of Appellanc

viag at the manufactory profession of the forms of 1900, to take the construction of the construction of 1900 (1900 (1900)) (1900) (1

चिन भिक्तियम, १४७ को कर हर के कार्य दक्षी (१) का रूपमा राज्यात दक्षी को नहीं उनके, बेरुका विकासको, १८४५ के विकास विकास १९५ कार) १९ भागता विकास कार्य अरूप में दी कार्यानी का उनके मार पास्ता, कार्यून कार्य कुला आहा आह्या 1 ्रानीक, विकास जानक क्षार क्षार नारक ताक्ष्य मा क्षार्थ असा कर क्षानी में कि वेशी वार्तिक होते वीहर, और अस्तिक ्र प्राप्त के कि का का का क्षेत्र कर का नामका है के नाहर्ष की विदेश का का का का का ब हमात्र सामक प्राप्तक क्षेत्र सामक केल्क्षिय (१९९८) हमी १०१४ को १९ १९८मीट कामिक्सिया का क्षेत्रिय के का का निर्देश की बार्च भारत मिल्ली की साथ से सामक काला भीति है। सामका का का का का का का का का

The appear of control sector (2 med 2 med 2 med 2 med 2 med 2 med be (2 med 5 for \$7.2 at prevalent under 3) and 10 kg (3 med 5 for \$7.2 at prevalent under 3) and 10 kg (3 med 5 for \$7.2 at prevalent under 3) and 10 kg (3 med 5 for \$7.2 at prevalent 10 for 5 for 5

भीना पुरस्त केन्द्रीय इत्थान पूर्ण का राष्ट्रात राष्ट्राता हाराज्याओं होगोंद्रा, के तीम अनैदेत के मानते में कराईय इत्यार पूर्ण अधिनयम १८५५ के एक १६०० व में इंदिय के कि कि एक १६०० के पार्ट के कि एक १६०० के प्रतास के कि एक १६०० के प्रतास के भी के प्रतास के भी के प्रतास के १६०० के प्रतास के १६०० के १६० के १६०० के १६०० के १६०० के १६०० के १६०० के १६० क 11,

स्थापन कार्याच्या के साथ प्रकार के किसीन के किस का मुक्ता है जिस्से मुस्ति है। इसमें के प्रकार कुट्ट की मिलाई के किसीन किस किस का मुक्ता है जिस्से मुस्ति है। Guy Hill के मुस्तिन एक्स के बेट बार की भी पुरुष करते हैं।

. .

ক্ষিত্ৰ আৰু বিভাগৰাই বা নিয়ন ২ বি সামান্ত তে তথক

The Control of Control

ıEI

17

ित्र कराव के पुरस्कार के पुरस्कार के प्रतिकार के अपने का प्रतिकार कराव के प्रतिकार के अपने का प्रतिकार के अपने का प्रतिकार का प्रतिकार के अपने का प्रतिकार का प्रतिकार के प्र

िही कार के विस्ति बक्तार के सम्बद्ध में एके स्थानन दिनों कार को किये। नदशकों में देश , बहु का 420 19 का दौरार का किया आप कारवारों के कि कियों का शक्त पुत्र के दिनवें कथा। एक कारकार के किया का कि हैं। की दूर का शब्द में हैं। को क कारकार के दौरात, किये कारवारी का कियों क्षा कि से साते के उत्तर की कारते हैं। अपने के 1771का, में 500% स्वीद में किये का कारवार के उत्तर की कार्य के स्वतास्थित के कार्य का दिस्ता के किया क कार्य के 1771 11

्रित हुन के पार कर के किस हरते कि प्रक्रिक कारण कि जाहर, संगान का अवस्था का स्टार विकास विकास का है। अ n mass coperation appropriate course from section, so Widel or Michael क Viction (Appropriate or My : 1

पुर्वितिक प्रवास के उपराद्ध (पूर्ण के द्वार के किश्त का (किश्त) किश्त के प्रतिक्रिक का पूर्ण विक्रिक प्रविद्ध के द्वार के लिश्त का (किश्त) के प्रतिक्रिक का प्रवास विक्रिक प्रविद्ध के किश्त 1.4

140

দৰ্শকাৰ নোটকোৰী সাম শিলাকিনিক নিৰ্দাৰ্থন কৃষ্ণ কা একাৰ্যই কী জাৰী পঢ়িছে। উচ্চ উপজ্ঞান স্থান সংগ্ৰাহ দাবী আইকেই জাৰাকী কীজাৰ উত্তৰ্গত জুলিকাৰী বিভাগতি এই বৃদ্ধি কৰি চালেই জাৰ সংগ্ৰাহণ ই জাৰে নিৰ্দাৰ বিভাগত কৰি নিৰ্দাৰ সংগ্ৰাহণ কৰি জাৰ ইংলাকে কি see the factor is the second residence of the SUN second respectively and the production of the second second second residence of the second ı- I

बहित्य के देश में उने जन भेड़ेकों ने इस्तरिक हैं हैं। सारिक एक आहेश के किए धरण का इत्यान उपकृष्ण कर ही किया जात सहित्य का ताम के बीति हुए में की जिला नहीं कार्य है किए क्यानिकी में किए में प्रतिकार के किए के कि कार्य के कि रहका भी राम अक्टर किया ने को में किए कर के एक प्रतिकार के उन्हों के स्वतिकार के किए के किए के किए के किए के कि कि कार के किए में किए के किए के समामितिक के किए के स्वतिकार के किए क को प्रतिकार के 10% किए के किए के किए के अने किए के स्वतिकार के किए के किए के किए किए के 10% किए के

रुपार होते. अवस्थात पुरस्क अधिकार, 1975 के नवस्ती के सेन्द्रमा कर ने देश एक स्टेशन सरीत कि विशेषित विशेषित हैं अपने के समयोग्य कर किया विशेष करा होता पहिंचा। Conservation of the Control :::

81

কুৰা, সুৰ্বাধ্য কৰিছে ই জা কুণ্ডাৰ কুটিল কেন্দ্ৰ ই জিটিল জালা। জিন্তু উৰি ক্ৰিয়াৰ সাহত বাঁ কি জিয়া গৰীলাই কিয়াক উল্লিখ্য কেন্দ্ৰ কৰা কুন্তাৰ বাই কৰা নামৰ্থ ট্ৰাই : Contraposition (Association) — province (Association) কৰিছে কিছে সকলে সংক্ৰমণ আৰু ইন্দ্ৰ সংক্ৰমণ ক্ৰিয়াৰ সংক্ৰমণ কৰিছে Collection (Association) — province (Association))CT

t: ORDER-IN-APPEAL ti

The below mentioned appeals have been filled by the Appellants (Increive/Contretened to les "Appellant No.5 to Appellant No.5", as detailed in Table below, against Order-In-Original No. 8HV-EXCUS-000-UC-46 2017 18 dated 23.1.2018 (Increive/Contretened to as hippinghed order) passed by the Joint Commissioner, Central GST and Central Excise, Bhavnagar (Increine)for referred to as higher adjudicating authority):

St. No.	Appesi No.	Appellants	Name & Address of the Appellant
ր.	V2/4/BVR/2018-19	Appellant No.1	M/s Leela Ship Recycling Pvt Ltd. Plot No. 2. Alang Ship
		:	yord, Alang. Dist Bhavnagar.
2.	V2/3/6VR/2048-19	Appellant No.2	Shri Komalkant Sharma, Chairman and Managing Director.
			M/s Leela Srip Recycling Pvt Ltd. Plot No. 2,
<u> </u>		!	Alang Ship yard, Alang. Dist Bhavnogar. Shri Vinos Patel.
] : :	V2/43/BVR/2018-19	Appellant No.3	Plot No. 102, Iscan Maga City,
:	i		Opp. Victoria Park, Bhavnagar.
4.	VZ/44/BVR/2018-19	Appellant No.4	Shri Kishor Pater Proprietor of M/s Shree Krishoa Enterprise,
			364, Shoppers Point, Parishal Chewk,
			Waghavadi Ruski, Bhavnagan

2. The facts of the case are that Appellant No. 1 (holding Central Excise Registration No. AAACL8753GXMOC1) was engaged in breaking of ships imported for breaking purpose at their plot at the Ship Breaking Yard, Alang, intelligence gathered by the Directorate General of Central Excise Intelligence indicated that most of the Shipbreaking units of Alang/Sosiyo of Bhavnagar District were evading playment of Central Excise duty by reporting to claudesline removal and procential valuation of their limished goods viz. MS plates and scrap as well as issuing fake Convat Involces without physical supply of goods. Investigation carried out by the officers of DGCEI revealed that Appellant No. 1 evaded payment of Central

 $\frac{\sqrt{2}}{\sqrt{2}} / \frac{(F/A)^2}{(A+B)^2} = 1 + (F/A)^2 \cdot 3 \text{ of } 23$

in device and a second field of the first trans-

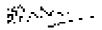
Excise cuty by repairing or districtions. An involve of the final goods, with active suppose of Assistants Mr. La. We find Zustal Sheth, all brokers. The involved state of the state of the oppellant Mr. I innoted in under valuation of their spirit and value of payment of Central Excise duty. The Applation Mr. Mr. Library in substant Central trickly or goods in believed with a library of goods in believed with a library Mr. S.A and She Bharat Shoth, all brokers.

- 2.1 Show Cause Notice (Not explain, No. /26-22/2013-14 detect 27,4.2013) was issued to Appetite (No. 1 habits) she'n to show cause as 10 why Centra. Excise easy of St. (21,3.1,3.1.2) slightly less the demander. And reconvered from them under previous of Section 19.4(1014) the Centra. Excise Actings (America (Constitution of Section 19.8) read viits Section 19.4 of the Acting with Interest under Section 19.8 read viits Section 19.4 of the Actinead with Rule 25 of the Centra. Excise (Buke), 1900 (America Central Reference to as 'Rules') and behalfy excise to convert east? Of Rs 32, 19,5547- under Scie 64(2)(t) of the Rules. The Show Cause Mindow also provided imposition of penalty, interestia, upon Actes Sont Sec. (2,2 & 4 under Scie 26(1) and Rule 26(2) of the Rules.
- The above said ShAP Cross (1919) was adjusticated wide the impugned order watch confirmed Castor. Cause duty of Rs. 62,34.9437 under Section (1949) rating with intensel under Section (1944 of the Act and Imposed panelty of Call (2.74,3875) and require v140(1974) of the Act upon Acceleration 90. 3 with option of escured panelty as envisaged under provisions of Section 1940 or the Robert of Section 99. 37,47,6847 under Rule 16(250) of the Robert for Gauchi of basing of Gauchi, required by issuing only (avoices without analysis). The Imposed provision of Rs. 3.50,0007 and 3.0007 and 3.0007 of the Rules and Rs. 32,47,6847 under Rule 36(2) of the Rules and Rs. 32,47,6847 under Rule 36(2) of the Rules of Rs. 3.247,6847 under Rule 36(2) of the Rules of Rs. 3.247,6847 under Rule 36(2) of the Rules of Rs. 3.247,6847 under Rule 36(2)0 upon Appellant No. 2 and penalty of Rs. 3.49,8847 used under Rule 3.600 and Rs. 3.14,2777 dactured Rule 3.6000 upon Appellant Rs. 3.14,2777 dactured Rule 3.60100 upon Appellant Rs. 3.14,2777 dactured Rule 3.60100 upon Appellant Rs. 3.14,2777 dactured Rule 3.602000 upon Appellant Rs.
- 3. Doing segricated with the improved order, appellants No. 2 to 3 have preferred appears on white afrecosts, beforeasing as below .-

 $\int_{0}^{\infty} dx = \int_{0}^{\infty} dx = 1$

Appellant No. 1 :-

- It The impugned order is passed in gross violation of principles of natural justice. The Appellant was provided copy of Statement called 18.3.2013 of Shri Naveen Kumar Jaid. Works in charge of the Appellant and statements cated 11.3.2013 and 48.3-2013 of Appellant No. 7 out 1949 have not been provided certified copies of other relied upon cocuments of Show Cause Notice despite specifically asking several times. It is settled position of law that order passed without furnishing relied woon documents is caused severe projudice to the rights of the party and he relied upon following case laws:
- (1) Parmarth Iron Pvt Ltd 2010 (255) E. 7 496;
- (7) Rajam Industries Pvt Ltd- 20:0 (255) ΕυΓ 161;
- (3) Videocon International Ltd 2010 (250) ELT 553;
- If the adjudicating authority has failed to follow provisions of Section 9D of the Act while passing impogned order; that he was required to follow the procedure envisaged under Section 9D of the Act when so called incriminating documents were not seized from their possession and its authenticity was disputed by the Appellant; that not a single buyer of the Appellant was examined during investigation; that the statements of prokers, transporters, dealers relied upon against the Appellant are general in nature and not specific. Since makers of these statements were not examined during adjudication and were not offered for cross examination by the Appellant, such statements are not acmissible as evidence in the impugned case and hence, the impugned order deserves to be set aside as per following case laws:
- (1) Andaman Timber Incs-7015-TIOL-755-Supreme Court
- (2) Jayshree Vyapar Utd- 2015 (327) ELT 380
- (3) Nico Extrusions Pvt Ltd- 2009 (248) ELT 497
- (4) Auni Aluminium Pvt Ltd- 2005(190) FLT 393.
- (5) Sanket Food Products Pvt Ltc- 2005(488) ELT 107.
- (III) In cases involving diandestine removal of goods without payment of duty, under valuation and issuing phony invoices Without delivery of goods, the investigation has to bring on record adequate combonative evidence with such private records, however, BGCEI has not removed statement of a single rolling mill or induction furnary unit in support of bald and imagined allegation against the Appellant about evasion of duty on pass scale. The impugned order, therefore, deserves to be set aside.



- (iv) Allegation of undervalue (iv) and on poice lists consisted by private agencies on their respects well additionaled, type and far from truth. The Appellant lists not application from the price considered by investigating authority to be authoritin. There is no oral evidence in the form of recipients involved to see allegations of peliberate undervaluation to evade payment of duty, this for the toyassigation to prove such charges with sufficient degree of syndamos, which it and been done.
- (v) Allegation of clandesche name of goods is based upon privace documents maintained by the brokers, which are not reliable and admissible as independent evidences. The Appellant's official in his statement has disputed the authenticity of such documents and declined to believe it to be true. No investigation was carried out at the buyer's end by the OGCEL The adjudicating outhority confirmed demand based open trip registers maintained at test by Gujarat Maritime Board, without considering that transportation was not arranged by the Appellant and goods were sold by them on 'as 's where is basis' and it cannot be established that the goods were actually loaded from the premises of the Appellant.
- (vi) The impogned order has erroreosov confirmed demand on the allegation that the Appellant had frauctiently passed Cenval credit without physical supply of genris. The Department has not credible evidences except statements of brokers and diaries recovered from prokers which are not statutory records but unsuthentic one. The DGCD has not recorded statements of any single buyer who received only invoice without grown in support of their allegation. No proceedings were initiated against recipent of such phony invoices for recovery of alleged Cenvat credit fraudulently availed by them.
- (vi:) The adjudicating authority has erred in imposing penalty under Section 11AC(1)(a) of the Act without considering that (a) the Appellant's official did not agree to the epiries made in the private records of third parties (b) the investigation did not record statements of buyers who received goods without payment of duty or who received only involves without the goods (c) No Incriminating documents were recovered from the possession of the Appeliant (a) Entire order is passed on the basis of

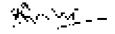
ger Şaristrasğı _ _ Pege Siri 38. unauthentic and rough diaries recovered from third packies without togeth. evidence without of physical removal of goods or about so called cash transactions (e) Whether the received of phoney involves availed Cenval credit or not its not established.

Appellant No. 2 (-

- (i) The adjudicating authority has erred in imposing penalty upon him arcset Rule 26(1) and Rule 26(7)(i) of the Rulest that for imposing penalty under Rule 26(1), the Department has to first establish that certain goods were held liable to confiscation under Rule 25 and that it must be proved that said person know or had reason to believe that the excisable goods were liable for confiscation. However, there was no proposal in SCN for confiscation of goods, further, the Appellant in his statement had deposed that self was not dealing with day to day matters of manufacturing activities. Hence penalty under Rule 26(1) deserves to be set aside.
- (ii) There is no evidence in the impugned order to sustain the allegation that the Appellant or his company had issued any invoices without physical supply of goods not be had albefoed his company in oping so. Further, the Department has not verified at recipient end to prove that only invoices were issued without delivery of goods and hence, penalty imposed under Rule 76(7)(1) of the Rules deserves to be set aside.

Appellant No. 3 :-

Appellant No. 3 has stated that penalty under Rule 26(1) of the Rules is not impossible apon him; that the order was issued in violation of principles of natural justice frasmoch as adjudicating authority oid not grant opportunity of cross excursivation of Son Mahendra Rana, Partner of MAS Maruli Metal Industries; that diary recovered during search carried out by the officers of DGCDI contained estimates written after making inquiry with concerned shipbreakers; that the Department has not produced any evidence of alleged illicit transactions; that onus to prove clandostine removal of guods is on the Department, however, this burden was not discharged by the Department. No correborative evidences were produced by the Department that they had not cealt with excisable grows in any marrier as well as not acted with meda red.



Appellant No. 4 :-

- in Appellant No. 4 has steece hard the trapagned order is non-speaking and non-reasoned one traserable as the tower adjudicating authority has not dealt with the pleas mails to the pleas mails to the pleas mails of the pleas of the pleas recovered from their reddency were not relating to clandest he clearance but were either estimates of scrap of the inquiry with concern 5hip breakers or relating to business or his edder brother Shri Viboo Patel; ; that onus to prove clandestine stringed of goods is on the Department, however the burden was not discharged. The Appellant was in no way concerned in physically dealing with escisable gagds with the the knowledge or belief that the goods are liable for confinction and that the Appellant had not acted with them sed. Hence the Appellant is not liable to cenalty under Rule 26(1) of the Rules.
- (ii) The adjudicating authority has not discussed any evidence relevant for imposing penalty once: Role 26(2) of the Rules. There is no confirmation evidences which suggest that they had fraudulently passed on Cenval chalfful There is no significant or record regarding non-transport of goods cleared by the shipbreakor to the appositant's premises.
- 4. Personal Hearing in the matter was attended by Shri P.D. Rachthh, Advocate on behalf of Appallants No. 1 pprox 2, who reiterated grounds of appeals and submitted that they have not been supplied copies of relied upon documents recluding statements of 3rd parties; that their request of cross examination of witnesses has also been rejected by the adjudicating authority without giving proper and togal reasons: that Shri Naveen Kuman Jain. Works in-charge of the Appellant No.1 has alcarly stated in his statement cated 18.3:2013(Page 214 to 216 of Appeal Memo) included in Para 3.10.1 of SCN that he did not agree to the noting of Shri Bharat Shelk. and also Table/worksheets prepared by DRCEI officers; that be also denied. cash transactions with 5hill Vinut Pates and 5hri Kishor Patel (Page 258 of Appeal Memor Para 4.13.1 of SCNi; that Para 4.14.1 of SCN also states that statements of Shift Vinco Patel were 50, correct, then how domand can be fastened on the appellant on the basis of statements of Shri Vincos Pagels. that the demand on account of undervaluation has no legito stand on as it. is without any evidence and statement of any one but only on rate. wordlied by M/s Major f a Misor; that $f z^{cd}$ Parity ducuments cannot be basis:

Page 8 of 23

of demand as held by CESTAT in 2 cases sited in the compilation submitted by them; that statement of co-accused is admissible only when pointly tried; that MAS Major & Minor have not been show caused; that their appeal may be allowed in view of above (acts and pase taws cited by them.

- 4.5 Shri Madhav Vadodariya, Advocate appeared on cosalf of the Appellant No. 3 ascureiterated grounds of appeal and submitted that there is no evidence against Shri Vinodbhai in this case but even then penalty has been imposed on him, which needs to be set aside.
- 4.2 Smill Machavi Macodariya, Advocate appeared on behalf of the Appellant No. 4 and reiterated the grounds of his appeals.

Discussion & Findings;

- 5. I find that Appellants No. 1 to 4 have deposited amount \$7.5% of alty or behalty in dispute and hence, have complied with the provisions of Section 35F of the Act. I find that Appellants No. 3 & 4 have filed the miscellaneous applications. To condonation of delay of 28 days in filing appeals which state that they had received the impugated order on 29.1.2018 but could file appeal on 27.4.2018. They requested to condone delay of 28 days in filing appeals on the grounds that their consultant was may write work related to adjucticating proceedings of Various authorities and work related in GST. Considering that delay is within fulfiner period of 30 days as provided under proviso to Section 35(1) of the Act, I condone delay of 28 days in filing of these two appeals and take up these two appeals also for decision on merit.
- 5.1 I have carefully gone through the facts of the case, the impugned order, the appeal memoranda and written as well as char submissions made by the Appellants. The issue to be decided is whether the impugned order, to the facts of this case, confirming demand on Appellant No. 1 and imposing penalty on Appellants No. 1 to 4 is correct, legal and proper or not.
- 6. I find that the Officers of the DGCEI carried out investigation and covered ship breakers, including Appellant No.1, brokers including Appellants No.3, 4 and 5hm Bharat Sheih, Transportors lead to unearth

 $\frac{\langle g_{ij}^{(0)} \rangle \wedge \langle (g_{i+1}^{(0)}) \rangle}{\langle g_{i+1}^{(0)} \rangle} = - \text{Pege 9 of } 2^{n}$

alleged evasion of Cestral Budth down in the professional sectors of gopcis. Searcheis carried with all linur memistry of various Transporters. regulted in recovery for september discurrents showing details of Transportation of goods from the provides of Appellant No. 1, viz. date, Truck No., Plot No., brown range etc. The transporters deposed to their statements that as and when stip incoker or broker contact them for trucks, they used to send trucks at the ship breaker's plot after making. entry regarding ckot obs_{i} without the trock was sent to and name of ship. breaker/broken etc. The energies approximg in trip registers of the transporters tallied with the invoices issued by the Appellant during the years 2008-59 to 2010-11 and it was lound that one of 234 entities. appearing in trip registers, fravologs were issued in 182 cases and no invoices were issued by Appa,lant No. 1 in respect of remaining 52 entries. I find that investigation was extended at the check post maintained by Gujarat Maritime Board (0x/3) which revealed that CMB maintained records: of movement of vehicles at the Stip breaking yard and had details like. date, vehicle details, purpose, in $oldsymbol{\epsilon}$ out time. On comparing the details: recovered from Fransporters with the records maintained by GMR, thiwas: revealed that most of the entries were found tailying.

6.1 On being confronted with the aforesaid evidences, Simi Naveen Kumar Jain, Works in-charge of the Appellant No. 1 in his statement recorded under Section 14 of the Action 18.3.2013, *Inter alls*, deposed as reproduced in Para 9.1 of the SON, as wriden

"Question-33" from stollness and walk Annexture-TX 1, proper at on the besis of the above solid Geral's for macks independ for lossling of serap from the Plantong as: 2 which represents your company. Pieue we the worksheer and confirm.

Alsower33. If there is also Automotic-TRC. After spoing through the entries members therein, fixtate that <u>it contact confirm</u> in at these particles to our poor No. 2 as we have no connection with the transporter.

Question-34, the defails of above and Annicate-TR-1, were compared with the invoices issued by yethermorary. Annicative-TR-1 showing the comparison of demi's of micks subgified to you as itsentioned in the trip registers of obose thresholds with concession of the despective onto an institute, its inspectal. Please as any other your comments.

Answer54. It have been Analysis $(3.3^{\circ})^{\circ}$ for the zero such same of these ordinal are made by the subscript value $(3.3^{\circ})^{\circ}$ for the $(3.3^{\circ})^{\circ}$ and $(3.3^{\circ})^{\circ}$ contains are made by the subscript $(3.3^{\circ})^{\circ}$ and $(3.3^{\circ})^{\circ}$ consists $(3.3^{\circ})^{\circ}$ and $(3.3^{\circ})^{\circ}$ are made by the subscript $(3.3^{\circ})^{\circ}$ and $(3.3^{\circ})^{\circ}$ are s

 $\langle \frac{\partial N}{\partial \mathbf{m}} / \sqrt{N} \langle \hat{\mathbf{p}}_{ij} \rangle \rangle = 0$

Page 10 of 'U.

Question-38. You have seen the Americas TRU. Do you agree that 294 onlines appearing the minimum period include our trucks made by you to some of the cases and is truck, of the cases brakers have independ the procks?

Answer-38 : I have once again seen Armeoure TR-1. However, <u>I compation</u> wordhor these hases under were reached and plot No. 2 and got lambed on the day.

Ignortion 59. You may see Annexure-TR-1.1 which show mat ship breaking material was cleared from your yard on the date and through truck miniber is mentioned in the mark waters region s. Do you agree test ect of 254 eathers appearing therein permitting to fadents for trucks to load so up from your unit. In 1.57 of 868 htt-6668 were issued by your unit.

Answer 39. In three sees Amostope PR-1, 1, However, $\frac{1}{1}$ is some over $\frac{1}{1}$ to whether these tracks in that were reached example. No. 2 and get baded on that day."

(Emphasis supplied).

6.2 If find that during search carried out at the residence and business premises of Appellants No. 3.4 and 5hr Bharac Shock, incriminating documents were recovered showing purchase of Plates/scrap from Appellant No.1 on behalf of their clients for which no unresponding invoices were found issued by Appellant No. 1. On being confronted with the evidences gathered during investigation, Shri Naveen Kemar Jala, Works in charge of Appellant No. 1 in his statement recorded under Section 14 of the Act on 18.3.2013, Inter also, deposed as under:

"Question 6. Dist Et Office and souver donces lined Sero Bhast South, Brober of Ship Breaking Materials on 30.09.2010 wherein decails of proclass and sole of ship tomorory, souted at accorded. Subsected by statements dated 50.03.2010, 12.04.2030, 27.07.2010, & 04.08.2011 of Shri Bhartt Shelb and statements. Case 12.04.2010, 27.07.2010, 12.08.2010, 11.08.2010, have semantics). 38.08.7010 and 04.08.2011 of Ship Material Part , Accombinate of Ship Entert Shelb and Shri Manish Part , Accombinate of Ship Entert Shelb and Shri Manish Part is a statements. Statements of Ship Bharat Shelb and Shri Manish Parts these statements. Statements of Ship Bharat Shelb and Shri Manish Parts were recorded where in they have placed and off writing in their district. They shall distribute the district. Named a linear of writing using of pair breaking company in the district. Accordingly, whereout T27 is written the some is to be read as M/s, Lock Ship Recycles, Pel 1 rd 116 year (2004).

Answer 5: I gagnet involving command by the meting derivate the private distress of Shri Bharet Shoth. $\frac{\sqrt{2}}{\sqrt{2}} \left(\frac{1}{\sqrt{2}} \right)^{-1} = 1.$

Question 7: On the basis of the matter set seeds of Stories No. 370, and Africa and Stories No. 370, and Africa and Stories and Stories are seed in Form. Annual of the will be maded on the seed of the matter and offer matter of the seed of the seed of the seed and offer your Constitute.

Answer in fishers that it is the interesting the police of continued herein above in materials through Shri Bhasit Sucra Auring the police of corioned herein above. I have pure said Anagerra 195 I. I. I something to private noting and the Bharit Bharat Shadh in his otenes."

(Emphasis supplied)

- I find that there are substitutial exhaptoes available on record in the form of documentary avidences recovered from the premises of the Transporters, brokers and office of the GMB as well as Statements of brokers and transportors, however, when confronted with those evidences, Works ich harge of appallant No.1 answered "I caunot ${\it configuration}$ or all ${\it cap}{\it conservat}^*$ but ${\it old}$ not ${\it deny}$ the ${\it allegations}$. I find that some of the entries godearing in this registers of Transporters and djartes/ortvate records recovered from the premises of Appeliants No. 3.4. and Shrt Bharat Sheth were found tallying with the statutory. records/transactions of Appellant No.1, which prove authenticity of transactions and details contained in the said trip registers of transporters as well as diaries/orivate records of AppAliants No. 3,4 and 5hri Bharat Shoth. I also find that these substantial evidences in the form of Statements of transporters and Appollants No. 3.4 and Shri Bharat Shethi have not been retracted withdate and as any stage and therefore, as per- $\mathsf{settlec'}$ legal cosition, $\mathsf{synch}(\psi)/\mathsf{validity}$ of the $\mathsf{Statements}$ cannot be undermined. : also note 0 $ext{init}$ district i private records recovered from the premises of Appellants No. 3.4 and Shri Bharat Sheth contained records of many other ship breakers and varietly of the solid diaries/private records has been proved.
- 6.4 After analyzing the evidences available in form of (i) registers recovered from the Transportors showing transportation of goods from the premises of Appellant No.1 which corroborated with records maintained by Gujarat Maridme Board (1) incriminating documents recovered from the residence/business preprises of Appellants No. 3, 4 and 5hm Bharat Shoth showing goods purchased from Appellant No. 1 on Delialf of their

12 of 23

clients (fii) Statements of Transporters who transported the finished goods from the premises of Appellant No. 1, 1 am of the considered view that Appellant No. 1 was included in evasion of Central Excise duty.

- 6.6 Appellant No. 1 has contended that the lower adjudicating authority has not allowed cross-examination of the Witnesses and therefore, principles of natural justice have been violated. In this regard, a find that the lower adjudicating authority at para 3.16 has held as under the
 - in the Central Baciss Law for social social Baciss Law for social, cross-earny article Profile Madres (Ligh Cells). In the case of K. Balan was Good of India reported in 1987 EU (1976) 986 but held that right to cross examination to not independently a part of teasonable opportunity and determinations of from said efformationes of each case. If largely depends upon the adjudicating authority, was in not go ded by the rules of evidence as such who may after such conjuntarity to the party concerned as well assure him mager apportunity to defend housely. The case of N. Balan Wis Cavil of India reported to 1987 EU (1996) 386 was distraguished by Baniffs, Itab. as J. Abordabad in Anya Primes Pyt. Ltd. Versus Commissioner of C. Ex., Ab nortalize-17 reported at 2019 (311) p. Ltd. Versus Commissioner of C. Ex., Ab nortalize-17 reported
 - 1999. In A. Roberts case (supra), the Hamiltie Wadras Right Court status that the accessity of cross examination expends upon the facts and circumstances of contrasts. The Adjudicating Authority has to give an apportunity to display contented as would assure and appear apportunity to defend inimiself. Opportunity of cross commination is given wherever it is relevant justified and genuine and is not for protracting the protections. The decision in *CTC bedian has* cross (supra) is again to the effect that cross examination cannot be granted as a matter of require and is a depend upon the lasts of each case. The follows a testing its decisions of testing the rate for 0-2006 are also to similar allowant that cross examination is not always a mandatory procedure to be adopted in Albacton in the facts of each case. The Adjudicating Accidently analytical cross examination for notificate rase. The Adjudicating Accidently analytical cross examination for notificate rase.
 - 3. 1.2 Similarly, in the case of Shavers Pty-N-Wood Pvr Tati Vs. Commit of Cue. & C.Ex. Alcangated (coorded at 2004) '77) TET 1150 (Tri. Munical). Hor ble Tribund, in their order, in part 6, lost hold as 2003).
 - "e to be recommended to passons, whose statements are relical options to be weighted in the light, or the facts that all the statements are relical options whose placed before them. They had all the opportunity to denotical these

 $\widehat{\mathbb{Q}}_{n,n}^{(n)}(x,y,y)_{n+1}$. Page 13 of 23

statements of the professional Cooks as a substance of the line of the solution of the solutio

- 5-11, a Purher, the TouThle Tourist. In the Secret Mrs. Recuty Oyen: Vs. DCD. Chemist repaired as 200 ((197), 51,71,705. Fri.Chemist) has observed that non-availability or switnesses for process confinences not a lists. Bow when the findings are based on decreased above and above as a no coefficient confinition and nothing on respect to \$2 on open mosts and collineary or effectively outrained within close recognition for itself to be a large well as a large of the say retrained.
- A. 4 in view of above [Strut I (bid Library) as iter cross-conduction by the Netpage connection where some depote connection by speeded to."
- ! find that documents recovered from the premises of the transporters contained getails of transportation of consignments into the premises of shipbreakers, sociating Appellant No. 1, like date. Irock no. shipbreaken's plot not, deschation, name of broker clo and these details: were also complicitated with the records maintained by Gujarat Maritime. Board in the form of perceit registers. Thus, evidences gathered from transporter's end were facebescently corrobarated with the evidences. gathered from GMB. I also find that none of the statements of transporters. has been retracted. They transporters' role was limited to the transportation of the excisable goods and they had no reason to depose in their statements something which was contrary to the facts. Thus, nongranting of opportunity of cross examination, by the lower adjudication, authority would not vitiate the proceedings and would not prove to be detrimental to the interests of Appellant No. 1, 1, therefore, discard this contention being devoid of merits and aphold confirmation of demand of Rs. 34,71,713/-,
- Regarding confirmation of demand of duty of Rs. 27,63.231/- on the ground of under-valuation, Appollant No. 1 submitted that allegation of undervaluation based on prior likes circulated by private agencies on their websites are unfounded, false and for from truth; that there is no oral evidence in the loop of recipients involved in such illicit (ransactions) that when Department is making allegations of deliberate undervaluation to evade payment of dusy, it is for the investigation to prove such charges with sufficient degree of evidence, which has not been done.

Markey Committee 14 1525

- 7.1 I find that the lower adjudicating authority has confirmed the charge of under valuation, *inter side*, giving findings as under :-
 - "O. 4. The Show Cause Notice alloced eversion of cound Excise duty by way of inder-value top of the proofs obmined out of breaking up of ships. It is not to depote that various Research Agencies circulate the order of significal file factors of demand and supply six thoratis is of render that prices circulated by such agencies are inherentiate one. It is in this backgrounds over Shop Breakers/Buyers also subscribe to start morker research agencies to maximum rate. It is also not in depote that the re-rollable places tanging from size 8 minutes. It is also not in depote that the re-rollable places tanging from size 8 minutes to substanting that a falloce places amongs of breaking of ships are of 12 minutes majority of re-rollable places amongs of breaking of ships are of 12 minuses. In order to substanting that allocation, the DCCTI conducted inquiry with springs marketing research agencies including M/s Marco & Marco with reterence to pricing date which revolved markety to day price of 12 minuses of Places is almost equivalent to the average price of all size within the usage of Some to 35 minus 2 35 min.
 - 3.15 On comparison of the price mentions, in the lawe up, of M/s Locla vis-2.15 of the prices considered by M/s. Major & M/mer, it was also revealed that in many case, the immission value declared by the M/s Locla wave lar case than the seriest value organising to the market during the respective heriod. The ship breakers have, by not declaring the actual size : thickness of MS Plates elected by them, interevalued MS RosroLable Plates so as to easily a fixer in declare an'y part of the value of such goods in the involves and collect the differential value, over such phase the decisied involve value, by way of a recommed cash amounts.
 - 3.19 To view of the phove. I agree with the contention of the DGCTI that minor variation in price as obvious some know, various factors like original minor, Quantity & Quality of the goods, relation with buyers, demand and supply situation, therefore, the difficulties in test to considerable one. As staron phove, Brokers / Ship Breakers / Buyers take the reference of the price quoter by merical research agencies like Mis Major and Minor. I, therefore, find and hold that there is no reason to doubt that price quoted by Mis, Major and Minor is actual one variation of (14-200) to a rates of Poarca one Scrop Per lesser than the one of Mis. Major and Minor is considerable, i therefore fully appear with the view at opted by DARTHI that duty short paid an account of variation of peace more. Itsus 234 is not account of undervaluation of the people of a logicity recoverable from Mis Leela, Further, I also find that a large neglect of ship

breaking on \mathbb{N}_{0} duties from riggs and \mathbb{N}_{0} , it were more buneful of Min Scentrates and were recliving day to the, uplied on your drifty write recenciable breaking materials through \$74% also also and calculation in also amost a lost with Sheel tales acre and using the most winter the main opening case a velocity of the data gathered by them, $T_{\rm coll}$ Saig is wakers with Mely x - xy . Figure 1986 with early equation Breat slup laws sing and into the buy or to whole fight goods with is to if in evade pryment of Central Escretting. Forther faculty was come, and with Lord Plant Communication, Springerth and Pierral Cartin Labor, Tries Plant Construction as the energy a grimming satisfy its empowered by the infinitery of Block the thirdness of formulating g_k stellines for arg factors, all arg and arg distribution of and A seed materials in the remay of well as so function as the about California of the indicates, 1961 was exceptible? In 1964 by the Government of no a nincer the powers conducted by observing of The Invariate Start Control Option, 1946. 1811 consist of members and expresentatives from the Modell prof. Steel, steel Authority of Jacob Conjugate Steel 1 to., Postriya (spot Migam Bull). one. With its orthodity and was experience, abla 2 bus maintained a completion we Anabase which is considered to be for most a them along to tello terrorizon χ_{Δ} for χ_{Δ} stabilizations. This dynamics includes concerny, production and stock of all the major speci producers of the country, demostic country of iron 85. such FOB and GIF provided Redail 60% of Four patential contemporal catal entifron år steel groducts garbändliga and refless reverves for kelledt materialis for \$100 (Cakeing) state was and category-was contacte on cospatches in from as kiest. . Appril from the regular like by respectively, $\pi_{ ext{calculus}}$ $\mathsf{math}\mathsf{clmpt}\mathsf{k}$ sinces attatagies of entrepressure, financial analysis by the F,S and hanks, some of the key uses of the Pf materials from the duty function on customs, expise, export, countration of GDM Industrial Production Index, anderstanding of price Genés, defend attrict cases, for all $\operatorname{mig}_{\mathcal{O}}$ of Free Year If the economic surveys that , but, but page Sunswice flow of marerises are louislates etc. In abort, the domestic price data on 1950 & Sect Products maintaileen by aPC is patient and as the cross sutherate data of the type that the stop index by . Thus emphysic of the rates provided by $\partial PC_{p} \otimes_{C(S,S)} a_{point}$ other evidence collected from value is appeared and persons involved in the historia. of 4 to breaking treatorials as discussed above prove that [M/a Lapla has undervalued their exclisible goods with unout to sense payment of Central Excess duty and thus based on calculation done by (SGCE) in A_{BBCS} in (V, 1, 1)filer that Maximoda Bewoods adod Cozumi Excise dury of Rs. 27.00,041547

7.2 If find that the prices of MS Flate/ Scrap circulated by marker research agentics like M/s Steel Rates ofo and M/s Major and Minor Exims Pvt. Ltd. were considered to ascertain whether the transaction value

| \$\display \text{\frac{1}{2}} \sqrt{\text{\frac{1}{2}}} \sqrt{\text

declared by the Appellant was reasonable or not. Tind that said Market Research Agencies determined the price of MS Ptate? Scrap after taking into account various factors like demand and supply, prices prevailing it different parts of country etc and then circulate the price. The fact that large number of Ship preakers, brokers and dealers from Alang and Bhavnagar have subscribed to their services itself give sanctity to circ services rendered by the said agencies and there is no reason to distance the price as careasonable or unrealistic. I, therefore, hold that the lower adjudicating authority has rightly confirmed demand of Rs. 27,63,2317- on the goods cleared at value which was lower than the prevailing market price.

Appellant No. 1 Nas argued that allegation of clandestine removal. ₫. of goods is based upon private documents maintained by the brokers. which are not reliable and admissible as independent evidences. In this regard, I find that the diaries maintained by Appellants No. 3,4 and 5mill Bharat Sheth recorded light las well as illight transactions of ship breakers. including Appellant No. 1 and only those entries for which corresponding sale invoices were not issued by Appellant No. 1 were taken into account. for the purpose of demanding duty. It also find that transactions reflected: In the said private records were further correspondted by Statements of the fransporters, who accopsed to have transported the goods from the premises of Appellant No. 1. The registers maintained by the Transporters. contained details of transportation of goods from the premises of Appollant No. 1 which were further corroborated with the property. maintained at GMB thock post. Therefore, demand cannot be sale to be based only on private records of third party, but duly complexated by nose of evidences recovered during investigation. I find that the very fact of many persons involved negative the concept of third party. In the instanticase, the evidences of clandestine removal have been gathered by the investigating officers successfully from many places and therefore, these documents cannot be called third party documents but comoborative and supporting evidences. Thely upon the Order of the Hon'ble CESTAT is the case of Om Prakast Agarwal reported as [2017 (346) ELT 125 (Tri Del), wherein it has been held that :-

 $\sqrt[3]{\mathbb{Z}}_{n-1} \leq \int_{\mathbb{R}^{n-1}} \operatorname{Prac.} \mathbf{17} \operatorname{ch} \, 24$

[&]quot;5. I note that in body the printensings almost identical we up force were transitied.
The allegation was that haved on evidences collected from the suppliers' with anaccountry revolutions are further imaginative of dustable turns by the opening was

saught to be experiently jugitaritly the law <u>or one wile begin</u>h in the meterial evaluate the collected from the supplies b=c, and since an entrepended by the evaluatible persons of the synthesis. The reaction and use of the stable areascenarious manager is shall, for the other cases actions from expressionally from activities. by the apprehens and this day their part was also been discharged auring the andres of consequences in 19. The 14-politics by 15th engineers on non-maintaility of the further complete the investigated decountry because in make accept, the <u>ប្រទេស ស្រាម, និងការសំណើ</u>ម សាស្រ្តាប់ នៅ ស្រែក <u>ស្រួនក្រុមប្រើសេខ ស្រួន</u> និង ស្រាន់ប្រែការប្រែការប្រាស់ <u> contago ha simporad. The princip requisir of the copyritors have been conve<u>torated</u> and administ for the corrections of differentials. By the persons who <u>ears in-</u></u> akanga at tag paggilians majag in lant saak anal asan wax barngist bejara dan parasan of the appendicular unit, he estigaried to ode hind numbered in their suce of distinble smins. However, he glist and my his the linears of viluous such previous were sold. In each <u>concline, it is sense to the</u> the appelled to be there a tree that the decreases now was established the classife of bus was one transport of the few had goods to such hupers. It is given that the contract of an instance of the suppliers, which care affirmed the tipe personne invalidance cannot be britishing specific it is not the come of the approliment ស្ថិត្តក្រុង សម្រាស់នេះ។ មានដែរក<u>ៅប្រទួល សម្រេច សម្រាស់ក្រុង សៀប ថា ស្រែកែ</u>យ៉ូ <u>វិយុស្សីស្តេ</u>នខ្ពស់នៃ ឧត្តប្រសិន្ត្រាន $I_{B}\left(g_{1B}
ight)$ the comply of mass manifold raw measureds has been corresponded by the parente of the appellant's firm. In much situation, it is not beautiful the the appellant. so, more in the appear stops, rules one point $k_{\mathcal{F}}$ exquirement of consecutablesism. ners <u>Admitted Dy mone of the</u> previous records on the statements given have been <u>enteration fame, contegged for their authoritieity, in the appeal defere the Tribunus.</u> the appellant is making a helpical assentian that the statement by the corner of the <u>apprellantation to may regulation.</u> It increases once have realized upon by the apprellanta rate. and of any support B the present case. In the cases supplied $oldsymbol{u}$ wakafiranne the addimen of ourse one he to be approximad for conclusion. As noted incontr. The direction is recorded to the proprier's side on affiched by the person my-dange and finither completered to the concliner comment to discount it <u>មាស្តែ ស្ត្រ ប៉ុន្តែ រូវបទរាជ មន្ត្រីដែរ ខេត្ត រួមដែលសង្គ ដែល ដែលក្មេលដែលខេត្ត ជានៅ សេចប្រព្រំ ស្ត្រី គេសមាម</u> <u>kon mer termi irroveni. In a citaratentire musaria nare and algorjance, cach stage</u> of operation remote by extablished with provision. On constate consideration of the greaterisk of approach attail the finalisms in the increasined order, if final no exercise to ratingless with the finding, resembed by the lovest authority. Accordingly, the សូទ្ធមន្ទនាំ។ សមានវាការអាមេរិ

[Buitkiasis supolied]

8.3 Appellant No. 1 has contended that the investigation has failed to bring on record adequate complorative evidences and that DCCFI has not recorded statement of a single rolling mill or induction furnace unit in support of allegation of clandestine remural of goods. In this regard, I have already discussed in Paras supra that the Department has adduced sufficient evidences in the form of incriminating documents recovered from the premises of Appeliants No. 1,4 and Shri Bharat Sheth, all brokers, which contained cetails of goods purchased by them on behalf of their clients from Appellant No. 1 without cover of Contral Excise Invoices and without payment of Central Excise duty. These evidences were further correlated in the form of statements of transporters who deposed that they had transported the goods from the premises of Appellant No.1.1 also find that none of the Standownts have been intracted so fan. Considering

 $\sum_{i=1}^{N} (a_i h_i) \sum_{i=1}^{N} (a_i h_i$

substantial evidences in the form of documentary and oral evidences on record. I am of the consideral opinion that the Department has discharged its burden of proof for clandestine removal of goods by Appellant No.1. In cases of clandestine removal, Department is not required to prove the case with mathematical precision. My views are supported by the order passed by the dun'ble Tribunal in the case of IA.N. Guha & CO. reported to 1996 (86) E.L.T. 333(Tri.), wherein "that been held that.

The self much cases of claudewise removal, it is not provided for the Expansion to prove the same with mathematical previous. The Department is deemed to be a disclaringed shots builded if short place so much of a ideas which private fools shows that there was a childrenius removal (fourth minimum to prove that there was no regardation or the short.)

8.2 The Hon'ble CESTAT in the case of Ramachandth Rexim Pvt Ltd. reported as 2013 (295) E.E.T. 116 (Tri. - Bang.) has held as unders-

17.2 In a case of clandestine action, mornishes engages out of conduction and clandestine transaction according to a set expected that such constant has so be established by the Department of a madementical precursion in himsdessnow the evidence. The elimination activity takes sufficient precursion to himsdessnow the evidence. The evidence and label has been left to splits of the loss man taken by the personal mornish in such claudestive activity. In such a structure, the entre of facts and circumstances of the case have to be backed into and a dictions has to be arrived at on the normalist of "preparaterance of probability" and not on the parateral light have also have a factorist of the case funds.

- **6.3** The Hon'ble Supreme Court as reported in 2014(307) [IT A61(SC)] has upheld the above order of the CESTAT.
- 8.4 I also rely on the order passed by the Hoalble CESTAT, Ahmedabad in the case of Apurva Aluminium Corporation reported at 1956 (261) E.L. 7. 515(Tri. Ahmd.), wherein at Para 5.1 of the order, the Tribunal field that.

"Once again the area of proving that they have accounted for all the goods produced alight to the appellants and then have finled to discharge the border. They want the department to also challengine details of goods transported or not transported. There are several decisions of Hardbin Supreme Court and High Courts where he has been held that it such claudestine actuation only the person who indules a match according below he had been all the relation and it would not be possible for any investigating officer to uncover all the relations removed and prove with numbers of precision, the eventure of the other diagonal actuation".

8.5 The Healble CESTAT in the case of M/s. N R Sponge P Ltd reported as 2015 (328) ELT 453 (Tri-Del) has also held that when preponderance of probability was against the Appellant, pleadings of no statements renorded from buyers, no excess electricity consumption (aund, no raw meterial purchase loung unacrounted for and on input-output raylo prescribed by law etc. are of no use. The Hopble High Court in the case

- (Судому) _ — Рији 1917 23

of International Cytinders For the Impact of at 2010(255) 50766(U.P.) held that once the department proves that it willing idegat had been done by the manufacturer winter solute factor forces that it legal activities were being carried, the burden could shift to the manufacturer. It is a basic common sense that polyeros will main to a sufficient accords of the illegal activities on mentifacture having down by it. Therefore, the Appellant's religing on vertous case latin one not repulsible in light of the positive evidences available in 100 case as discussion above and in the impagred order.

- are of no netp to their since the Department has adduced sufficient oral and documentary corroborative expectages to demonstrate that Appellant No.1 has evaced payment of Central Excise cuty by resurting to classostine removal or the hidshed goods and undervaluation of goods. It therefore, hold may confirme for of demand of Central excise duty of its. 62,34,9437- by the lower adjudicating appropria.
- 8.7 Since demand is commomed, it is natural consequence that the confirmed demand is required to be paid along with interest at applicable rate under Section 11AB read with Section 11AA of the Act. I, therefore, upbodd order to pay interest or confirmed demand.
- 8.9 This is a case of clandestine removal of the finished goods and substantial undervaluation of the excisable goods for payment of Central Excise only as held in above Paras and therefore, the impugned order has correctly imposed equal and mandatory penalty of Rs. 62,34,9437 on Appellant No. 1 under Section 11AC(1)(a) of the Act. The impagned order has correctly given option of reduced penalty of 25% to Appellant No.1 as per Section 11AC of the Act, necke, I conduct with his decision on penalty on Appellant No.1 under Section 11AC of the Act, necke, I conduct with his decision on penalty
- Regarding penalty imposed upon Appellants No. 1 to 4 under Rule 26(2)(i) of the Rules for ifraudulently passing of Cenwar credit. I find that Appellant No. 1 was involved in sale of phony invoices without delivery of corresponding goods through Appellants No. 3.4 and Shri Bharat Sheih. The DGCEI uncerthed the modus operand; adopted by Appellant No. 1 by

deciphering the entries recorded in diarles and pen drive recovered during search from the residence promises of Appellant No. 4 and Shri Bharat Sheth, as elaborated in detail at Para 3.9 and Para 4.12 of Show Cause Notice, respectively. Thus, it is beyond doubt that Appellant No. 1, in collusion with Appellants No. 3,4 and Shri Bharat Sheth, issued invoiced without physical delivery of the excisable goods and fraudulently passed on Cenval credit. I find that Appellant No. 2, is involved and is responsible for risk act of fraudulent passing of Cenval credit. Appellants No. 3 and 4 facilitated Appellant No.1 by finding buyers who want to avail only fraudulent Cenval credit, without receipt of goods as well as buyers who want to purchase goods without invoice and also managed cash involved in such transactions. Hence, penalty imposed upon Appellants No. 1 to 4 unger Rule 26(2)(1) of the Rules is correct and Luphola the same.

- Regarding penalty imposed under Rule 26(1) of the Rules, Appel and No. 2 has contended that for imposing penalty under Rule 76411, the Department has to first establish that certain goods were need Cacle to confiscation and that fliggust also be proved that said person knew or hadreason to believe that the excisable goods were liable for confiscation. however, there was no proposal in SCN for confiscation of the goods; that he was not dealing with day to day matters of manufacturing activities. and herica ponalty under Rule 26(1) deserves to be set aside. I find from records that Appellant No. 2 was Chairman and Managing Director of Appellant No. 1 and had concerned nimself in manufacturing, removing and solving excisable goods on which excise duly was not paid and hence the had reason to believe that goods removed rightlystingly or goods undervalued by them were liable for confiscation. I am also unable to agree that ponalty under Rule 26(1) can be imposed only if goods and ordered for coefficiation. I rely on the order passed by the CESTAT, New-Delhi in the case of Ashwahi Deewan reported as 2011 (272) E.L. (1. 99 (17)). - Det.)
 - 18. Evidently, therefore, whether (is made Rule 26 of the said Rules or under 500 on 113 of the said Add, a person for having dealt with any goods in any manner can be made liable to pay the penalty as presented provided the goods are when excisative growth of the contravence people and such person shows or has coronal to believe that such goods are liable to confishation under the statutory provisions comprised under the Encise Act or the Castoms Act

 $Q_{p,p}^{(n)} = \sum_{k=0}^{n} \frac{1}{n} \sum_{k=0}^{n} (1-p)^{2k}$ Page 21 of T.

respectively. The frenic requires cult in the province device; with the goods who has able to be included as from the mean of the life of the such process of the goods are cable to compliant on pader edited of the Adda () to compliance it is not that the goods should be regional to be explained to be explained. The requirement metable cools who the house and the reason to be down able to require ment metable cools who the house entertaint in policies in the for the time the continuous with anyth continuous. By the second of indication of the good the good, as in the continuous the penalties upon the penalties of the continuous many that the penalties of the continuous many the penalties of the continuous many the penalties of the continuous many that the penalties of the continuous many the penalties of the continuous many that the continuous ma

- 9.2 I, therefore, hold that penalty of its, 8,50,000/ imposed under Rule 26(1) upon Appellant No. 1 in the impregnad order is correct and proper and Luphold the same.
- Regarding imposition of penalty-under Rule 26(1) of the Rules, Appellants No. 3 & 4 have contended that diaries recovered during search. carried out by the officers of DECEI or tained estimates written after. making inguity with the concerned strip breakers; that the Department casand produced any evidence of alleged flucit transactions; that onus to prove clandestime removal of anods is on the Department, which was not discharged by the Department. I find that Appellants No. 3 & 4 have acted. as brokers who purchased goods on behalf of Cheir clieats from Appellant. No. 1. Search carried out by OGCEI at the residence/business premises of Appellants No. 3 \pm 4 resulted in recovery of incriminating documents in the form of booket claries and pen drive, which contained getails of transactions entered with ship breakers, including Appellant No. 1 girclrecipient buyers. I find that the DGCDI deciphered the codes and abbreviated name used in the said dominients which revealed that Appellants No. 3 & 4 had purchased gours from Appollant No.1 for which no corresponding invoices were issued by Appellant No. 1. I also find that the said documents contained details of cash transaction between Appellants No. 1 8 4 and Appellant No.1 for sale proceeds of goods removed by Appellant No. 1 willbook Central Excise invoices. I find that Appellants No. 3 & 4 played important roles in the whole episode of clandestrie removal of goods by Appellant No. 1, and hence, imposition of penalty of Rs. 9,49,8847- leads upon Appellants No. 3 6 4 lander Roje. 26(1) of the Butes by the tower adjurdicating authority is correct and I uphold the same. Company of the Compan

- 10. In view of above, Laphaia the impugned order and reject all four appeals of Appellants No. 1 to 4.
- 11. $\pm e^{\alpha}$ अकर्माओं ट्रांग दर्ज की गई अपोक्त का लिएलए उपरोक्त तरीके से किया a 6 है 1
- 11. The appeals filled by the Appellants are disposed off as above.



्कुलार सरा पा आयुक्त (अभील्फा)

<u>By R. P. A. D.</u>

To,

 M/s Leela Ship Rocycling Pvt Ltd. Plot No. 2, Alang Ship yard, Alang, Dist Bhavnagar

2. Shri Komatkant Scarma. Chairman and Managing Director, M/s Leela Ship Recycling Pvt 1td, Plot No. 2, Alang Ship yard, Atana. Dist Bhavaagan.

T3. Shiri Vinod Pate... Plot No. 102, Iscon Mega City. Opp Motoria Park. Bhavnagar.

Shirt Kishor Patet
 Proprietor of MAs Shires Artshira
 Enterprise,
 304. Shoppers Point,
 Padmat Chows,
 Waghsyadf Resol,
 Shavnagar.

में कीलों शिप दिलाइफिलंश प्राप्त किये न्लॉट वर- 2, अलंग शिप याहे, अलंग

की भौशतकाता हिन्दी, चेरलेल एवं मेंनिजिंग इस्टेक्टर : से. लोखा शिप दिशाइकितंग प्रा. ति. ! प्रतीद से. 2 अलंग शिप बाई, अलग,

जिल्ला अस्यतगर।

जिल्लाः आवलः ()

भी विकोश महेल. गर्लीट स. १६२. इस्कॉन लेग: हिस्से, विकासेरिया पार्क के सामने, मावरणस्।

क्षी किशीर महेल, मालिक, बी कृष्ण रंटरपाइज, -304, शॉपर्स मॉइंट, शरेनल वॉक, याणवाडी तड, अजनगर।

पृति<u>तिर्विधः</u>

- धाँनाम भूक्य अभ्युक्त, धल्तु पदा श्रेमा कर दर्म नेक्टील ज्ञानद शुक्क, गुजारात क्षेत्र,अङ्गदायात को आजनारी हेग्।
- 2) आधुक्ती, वस्तु १वं लेक का एक केन्द्रीय अन्यद्य शुक्क आवनगर आयुक्तानगर आवलगर को अद्यक्षक आर्थकार्द्ध हेन्
- % सनुकत आधुकर, वस्तु एवं सेथा कर पर्य वैकक्षण अस्मार शुक्क, आवतार आनुकतासय, अन्यसम्बद्ध को आवत्रकत अस्थिति हेतु।
- .41 हाड (बाइस)

