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		Part /Piot No, 20, Sectorsh Park Society, Subhashagar, Dhaonagar. 4. – Sha Kishme Amarsingh Patel, Proprietor of M/s Shree Krishna Foterprise, 399, Shoppers							
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			hendre Ambola Kana, Jadi Road, Bitavnagar	. Partner W/s Maruti Metal Iodu . 254004	strikis, <b>A-20</b> 9, Leepa	ı Flee,			
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# :: ORDERS IN APPEAL ::

The belowment and appeals have been filed by the Appellants (*hereinarter referred to as* "Appellant No.1 to Appellant No.5) as detailed in the Table against Order-In-Original No. BHV-EXCUS-000-XC-41-20:7-18 dated 21.12.2017 (*hereinafter referred to as* "the Impogned order); payled by Ioinf Commissioner, CSST and Centra Excise, Bhavnagar (*hereinafter referred to as* chickness adjudicating optimity") of

ar. No.	Appeel No.	A⊐p≘llant No.	Name of the Appellant
1	v2/546/ <i>8</i> VR/2017	Appolant No. 1	M/s. Kirtin Ship Breaking Co., Plot No. 82, Ship Breaking Yard, Alang, Post-Munar. Dist. Bhavnagar.
2	V2/540/BVR/2017	Appeliant No. 2	Shri Rom Krishna Jain, Partner of M/s. Kiran Ship Breaking Co., Plot No. 82. Ship Breaking Yaro, Alang, Post-Munar, Dist. Bhavnagai.
3	V2/31/BVR/2018 19	Appellant No. 3	Shri Vinedono Amershiphoi Popel, Plot No. 102, escon Mega City, Opposite Victoria Park. 7 Plot: No. 20. Santosh Park Sodety. 5
4	<u>v2/13/</u> SVR/2018-19	Appellant No. 4	Subhashnagar, Bhavnagar, Shri Kishory Amoraingh Bales, Proprietor of M/s. Shroe Krishna Enterprise, 304, Encopers Point, Parimal Chowk, Woghewwei Road, Shevnagar – 364 301.
	V7/70/GVR/2018-19	Appellant No. 5	San Mahardra Ambalai Raua, Pailner M/s. Matub Metal Industrics, A-209, Leela Dicee, Waghawadi <u>Road, Bhavnagar – 364 0</u> 01.

7. The biller table of the case are that Disktorate General of Central Excise Intelligency issued. Show Cause Notice SINS, DOCEJ(A20/36-326/12-13 dated 6.2.2013 to Appellont No. 1 to Appellant. No. 5 alleging clearances of 245 ScrapyPlates etc. (hereinafter rollerworkullas, "The Kaid goods") lobtained from threaking of ships without CE Invoices, without payment of CE only and also under valuing the goods as under the

- (a) Central Excise duty of Rs.20.25 134/- for riandoving menufacture and rinarances of Enisted excisable goods and Central Excise duty of Rs.59 97,447/- on account endervaluation of goods, should not be demanded from Appellant No.5 under Section 11A(1) of the Central Excise Act.1944 (hereinafter referred to as "the Act.
- $\langle b 
  angle$  = frequencies should not be recovered under Section 11AA of the Adt,
- (c) Expansion of the imposed upon Appellant No. 1 under Section. (1AC of the Acl;

26(2)(i) of the Central Excise Rules, 2002 (*Invaluation released to as*, "the CER").

- (e) Penalty should not be imposed upon Appeliant Ro. 2 Uncer Rule 26(1).
   & 26(2) (JEH::: CER.
- (f) Penalty under Rule 26(1) & Rule 26(2) of the CER should not be imposed upon Appellant No. 3 and Appellant No. 4, who concerned the neetyes in selling of excisable goods in clandestine manner, which they knew und pad courson to believe that the sente were liable to confiscation.
- (g) Penelby should not be imposed upon Appellant No. 5 Under Rule 26(1) of the CFR.

2.1. The above SCN was adjudicated by the lower adjudicating authority due the impugned order as under *p*-

(.) confirmed demand of CE duty of Rs. 79,12,581/- under Section 11A of the Act along with interest under Section 11AA and also broaded penalty of Rs. 79,12,583/- upon Appellant No. 1 under Section 11AC of the Act and gave option to pay penalty © 25 % of demand confirmed, in demand along with interest and reduced penalty, all are paid within 30 days of the receipt of the Impugned order;

(ii) imposed penalty of Rs. 2,29,3207 (under Rule 26(2)(i) of the CER on Appelant No. 1;

(III) Imposed penalty of Rs. 8 (akhs under Rule 26(1)) of the (TeR and IRS. 2,29,320/- under Rule 26(7)(1) of CER (on Appellant No. 2,

(iv) imposed penalty of Rs. 6,46,720/- on could of - Appellant No. 3 and Appellant No. 4 - ander Rule 26(2) of the CE9;

(v) imposed penalty of Rs. 2,29.3207- under Rule 26(2) of the CER on each Appellant Nu. 3 and Appellant Nu. 4;

(vi) imposed panalty of Rs. 4.65/476/- under Rule 26(1) of the CER of Approand No. 5.

Being ageneved with the impugned order, Appellant No.1 to Appellant.
 No. 5 preferred appeals, intervalio, on the various grounds as under ;

 $\sum_{i=1}^{n} |a_i| = 1$ 

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# Appellant No. 1 :--

i) The imputties order has been passed only on the basis of the Hind party's cylobroes; thet the lower adjudicating authority has not given specific findings while passing the impugned order and relief upon the pocket books, diaries, evolusized from the off-op-comine/denue promises of Shn Vinod Patel and Shr. Kishor: Patel: that cross examination of brokers, transporters, angedies have not been granted, and therefore, the impugned order is not promet; That staten erus of third persons like, vehicle owner / transport agencies / angetios cannot be relied upon without any companiative evicence; that they relied upon the case, aws as under to

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Manz axial Dyeing Millisported as 2016(343) ELT 453 (TRAND)
 A Tance Alloys Pvl. 11d. reported as 2016 (038) FLT 749 (Td-Che)
 Jineal Drugs Pvt. Ltd. reported as 2016 (340) ELT 67 (78.P)

This lower adjusticating encharity has erred in recording lindings that the search private accords have been combonettal on the basis of Ataleniens, of crokers, ataliase ters, etc. as these are nothing but the third party evidences; that theil private records/diaries, trip registers, records and register of Sujarat. Marilime Roanil, statements of blockers are not direct material evidences; that the charge of relandeship henoval is accuricy. On prevential form which the final production, electricity, and rev material consumed from which the final product had been manufactured and cash flow back: that permission to cross examine the witness had not been granted; that they have sold only one propeter "white hard" to Mys. Maruli Metal Incustries, Bhavnagar through Appeliant No. 3 and they, the impugned order has been paralel only in the backs of presumption and examption.

(i) The charge of clandest he removal of the exceptible goods involving duty of Rs. 83,415/- has been confirmed on the basis of entry of each payment received from Appellant No. 3 (Shif Micod Patel) which was found from Note books selees from Appellant No. 3 without ascertaining the mame of ionyons and therefore, charges of clandestine removal cannot be proved in this regard.

 iv) The charge of clandestine removal of the excisable goods involving duty of Rs. 97,828/Las calculated in Annexure – VK-2 has not been proved with

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comobonative evidences, names of end buyers have not occh ascertained, details, of weightient slips and flow back of sales proceeds have not been ackluted.

v) The charge of nightly find where the constraints grands framed on the havia of saidest protect diaries, involving CF duty of Rs, 1,61,458/ contraculated in Announe KBS 1, has not been proved, as instant of the goods and means of transport has not been proved; that investigation has not taken up matterial buyer's and and therefore, instant charge of dandestine removal of goods cannot be sustained.

vi) The said goods were sold by them of the factory gets and transportation of the said goods used to be managed by the buyers of the goods or by the brokers on their benalt and the ireight charges were also paid by the huyers and after cassing of the trucks 'backet will goods from the factory gets, there was no control of Appelant No. 1; that it is the fact that Appelant No. 1 had received vales proceeds of the goods from the concerned buyers either through cheques on through KRCS and therefore, the charge or passing to fraudulently Cenval Credit of Rs. 2,29,320/-based on saided private records is not correct; no penalty Is Imposable on Appellant No. 1 in this regard.

vii) Proporting confirmation of differential LE duty (Annexure UV-1 to the Show Cause Notice ). In respect of under valuation of the goods Appeliant No. 1 submitted that they have assessed goods all Transaction Value as per Serfor 4 of the Act; that inales quicked by M/s. Major and Minur, as well as other agenties/berson reason by considered as actual rates; that differentiating invoices of the basis of price mentioned by agency is not kepaliants proper; that the prices directable by the market research agencies cannot be taken as the Act for the goods sold by the appellant; that the lower adjudicating authority has not established that Appellant No. 1 actually received money own and above the amount shown in the respective consignments and therefore, the impligned order confirming differential CE duty on the charge of under-valuation is not correct.

viii) The Show Cause Notice dated 6.2.2013 is time-formely as documents, were spized under Parkimama dated 30.3.2010 and dows 6.7.2010 and statement of Appelloch No. 2 was recorded on 23.11.2012.

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ix) Reçarcing Imposition of penalty of Rs. /0.12,581/- under Section 11AC of the Act, and Rs. 2,29,320/- under Rule 26(2) of the CER, Appellant No. 1 submitted that the immugrized order, has not meritaned any section or rule of the Central Excise Law under which penalty has been and therefore, may could not defend this charge; that there is no mata Frie involved and therefore, Imposition of penalty under Section 11AC of the Act, is illegal.

×) Appellant No. 2 is also not rable to penalty under Rule 26(1) and under Rule 26(2) of the CER; that case laws cited by the lower adjudicating authority is not applicable to Their case; that Appellant's robed upon the following case laws :

(a) Panmababh Dveing & Finishing Works (1997(90)EUT313(10))

(b)	Sangamermar India Pvt. Ltd.	2003(158)EL1703(T+1)
(0)	Essvee Polymers P. Ltd.	2004(165)EL(291(11)
(ð)	Parahusara Gemeet Lid.	2003(160;EL7213(17)
(c)	Kapatha Cyyling Reaching	2000(124)8LT822(Tri)
(t)	Om Aluminum (Nt. 1td.	2014(1):1):0356(56)

(g) Bayrang Lesting Ltd. Order No. A/10033-11034/2015.
 dtd 17.7.2015.

### Appellant No. 2 :-

3.1 Appellant No. 7 reilerated submissions made by Appellant No. 1 agoinst imposition of penalty of Ro. 3 Lakins - under Rule 26(1) of the CER Appellant Imposition of penalty of Ro. 2,29,020/- under Rule 26(2) of the CER, Appellant No. 2 referented submissions related in respect of Appellant No. 1.

# Appellant No. 3 & Appellant No. 4 :--

(i) Appellant No. 3 and Appellant No. 4 reflecated the convention made by Appellant No. 1 that request for cross examination of Shri Mahendrabhal A. Kana, Partner of M/s. Marub Melal Industries, Bhavnagar has not been entertained and therefore, principle of natural justice has been violated; that the lower adjudicating authority has not recorded findings regarding request made for cross Avanination of Sari Mahendra Rana, Partner of M/s. Muruti Mids, Industries (Appellan, No. 5) and in this regard relied upon the following case laws of

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(i) L. Chandrasekar	1990 (46)ELT263(1m)
(ii) ∛akshila Spinners	2001 (1.31) ELT 566 (1M)
(III) Sharma Chemica s	2001 (130) EUT 271 (T4)

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(ii) The impugned order is non-speaking and non-reasonic indefinition. so the lower adjudicating authority has not dealt the pleas made by there in their written submission and judgments referred to have been completely ignored; that the impugned order is issued against principle. of natural justice as relied upon documents to bettend have not been supplied to then; that diary/collected recovered during the search conducted by the officers do not contain details of clancesting removaas made out by the Department, but 't is not Estimates, and thus the Department has not discharged curcen of proof cast upon them; that details regarding illicitly deared goods and its purchaser has not been provided; That findings of the lower adjudicating authority that they have indulged in diandestine removal of the goods to volving buty of Rs. 6,46,720/- (Rs. 4,65,478/- (+) Rs. 97,828/- (+) Rs. 81,416/-) as per Andexure – VX-1 and Annexure – VK, 2 is not correct and thus, penalty, under Rule 26 of the CER is not imposable of them; that they relied upon Sodrey Sovie & Mfg. Colreported as 2002 (148) EUT 161 (1) and Ram Nath Singh reported as 2003 (151) 55T 451 (T:I).

(iii) Regarding behally of Rs. 2,29,320/- under Rule 26(2) of the CER, Appellant No. 3.8.4 contended that the 'ower adjudicating authority has gone beyond scope of the Show Cause Notice as no proposal to impose penalty under Rule 26(2) of the CER has been made.

(iv) Penalty imposed on partner of Appealant No. 2 is 85, 8 Eshs, against total duty evasion of Rs. 79,12,561/- and therefore, imposition of genalty of Rs. 5,46.720/ ion therefore out to 100 % of the outy evasion and therefore, 't is llogical and not reasonable, that therefore Appellant No. 3 and Appellant No. 4 are input liable to penalty ander Rold 26(1) and Rule 25(2) of the Rules.

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# Appellant No. 5 :--

The imbughed order is non-speaking and non-reasoned, that the ower adjudicating authority has not dealt with all arguments and case aws ciled by Appellant; that he is not liable to pecally under Rule 26 of the CER as the fact of clandestine purchase of the goods is not proved; that he has not deal, with the excessible goods which he knew were table for confision or and therefore, penalty under Rule 26(1) cannot be imposed on him.

# Submissions during Personal Hearing ;-

4.1 During course of personal hearing Shr. N. K. Maru, Consectent appearing for Appellant No. 1 to Appellant No.2, restarated the grounds. of appeals and submitted that the impugned order has been bassed without considering their submissions: that request in cross - examine transporters / reospoil agencies, angabias mive out been considered. and therefore, provisions of Section 9D of the Act has not been. considered; that demand of CE duty has been made but only on the basis of third party's oral (statement) and socumentary evidences recovered from transporter , prokers, angadias; that Acceltant Nu. 2. has not confessed charges level ad in the Show Cause Notice; that the charge of clandestine romoval has to be established on the basis of comburative evidences of clanaestine procurament of row material. consumption of calchricity, num-power required and data of production etc. and therefore, the impogned order is required to be set aside; that the jower adjudicating authority has erred in conforming demand of CE. of Rs. 1,64,456/ Low per Annexure – KRS-1, which is based upon seized. pocket staries; that local means of transport has rull been established; that the lower adjudicating authority has also erred in sustaining the charge of fraudulent passing of Convation/dill of Rs. 2,29,320/- as the goods were so plat ex-factory gate and the transportation of the goods. were managed by buyers on which they had no control; that payments. have been received through RUGS of cheques and therefore, it connot te said that they passed on wrong Convet credit; that the lower acjudicating authority has wronely imposed penalty under Rule 26(2)(1)of the CER on Appellant No. 1 and Appellant No. 2; that they have sold

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the goods as per provisions of Section 4 of the Act and therefore, the demand of CF body of 9s, 58,87,4477 has been wrongly sestained on the ground of protect valuation of the goods as per Annexore – 0V-1 covoring 2318 consignments/transactions; that the charge of under valuation cannot be sustained haves on rates decided on the basis of market research agencies; that the Show Cause Notice is time barred as dorwheats were seized under Parichnama dated 6.7.2010 and dated 30.3.2010, and statement of partner of Appa lant No. 1 was recorded on 23.11.2012 and therefore, the Show Cause Notice pated 6.2.2013 is time-barred; that in view of above holds the appellants are not required to be penalized.

4.2 During course of personal hearing Shri M. N. Vecodariva, Advocate, Consultant appearing for Appellant No. 3 to Appellant No.5 repetated the grounds of appeals. In research of Appehant No. 3 and Appellant No. 4 he submitted that they sought cross examination of Skri-Mahendra Rana, Partner of M/s. Maruti Metal Industries (Appel ant No. 5), but the same has not been allowed; that the Show Cause Notice has been issued after 3 years of recovery of docoments; that Appeliant No. 3 and Appellant No. 4 are not involved in paysing of Servah aredit. without supply of goods; that just because both brothers, i.e. Appellant. No. 3 and Appellant No. 4 lived to the same house at the relevant time, it did not mean that they were conducting their business together; that penady of Rs. 6,46.729/- under Ruip 26 of the CTR is not imposable on them; that only few pharies in Diaries were falled, with those of Storage. device as correbonation; that Diance: No. A/7, A/9, peak drive and CD. recovered from the residence of Appellant No. 3 and Appellant No. 4. contained details of Estimates only; that date nothervold from CC were just accounting practice on Sundays, hence, it cannot be concluded (b4). the entries retrieved from CD are of clargestine removal and therefore, no peratty is intoosable under Rule 26(1) of the CER,

A.2.1 During personal hearing Shri M. N. Vapodariya, Advocate, appearing for Addellers No. 5 relterated the grounds of appeals and submitted that date which had been retrieved from Forebac. Cisk (CD)

 $\frac{Q_{1,n}^{(n)}}{2} = \frac{Q_{1,n}^{(n)} \otimes R_{n}^{(n)}}{2}$  . Page 10 of 37

had been made by Appellant No. 3 on Sundays its accounting practice and therefore, it cannot be conditiond that the patrice printowed from CD were perfaining to clandestine removal; that no penalty is impossible under Rule 26(1) on Appellant No. 5

# <u>Findlnas :--</u>

5. I have tone through the Appeal papers and find that Appellant Nul 3 to Appellant Nul 3 filled add; cations for condonation of delay in filling of appeals by 25 days, 28 days and 30 days respectively beyond normal appeal period of 60 days, but within runther period of 30 days and given vertices registers for filling of appeals late. Throndum period of 30 days and given vertices these three Appellants and proceed to decide all 3 oppeals on ments.

5.1 I have carefully gone through the tacts of the case, the implighed order and written as well as oral submissions made by the Appellants. The isotomore decided in incese appeals are as under the

- (a) Whether Appellant No.1 has clandestinely manufactured and cleared finished excisable goods attracting CF outy of Rs 20,26,1344 and Rs. 58,87,447- or, account of under valuetion should be recovered from them along with interest;
- (b) Whether pedaity of Rs. 79, 12,5807- Imposed upon Appellant No. 1 under Social 11AC of the Astread with Rule 25 of the CER is justified;
- (ii) Whether prevery of Rs. 2,25,320/- intersection Appellant No. 1 under Rule.
   26(2) of the CER is correct;
- (c) Whether penalty of Rs. 8 tasks under Rule 26(1) of the CFR and Rs. 2,29,320/- under Rule 26(2) of the CFR imposed on Aprillant No. 2 is upmatch;
- (c) Whether punalty of Rs. 6.16,/20/ imposed on count of Appellant No. 3 and cn. Appellant No. 4 coord under Ruke 26(1) of the CEU is proper:
- (f) Whether panelty of Rs. 2,29.320/ imposed on Appellant No. 3 and Appellant No. 1 under Rule 26(2) of the CER is correct;
- (g) Whether periody of Rs. 4,65,478/ again imposed on Appellant No. 5. Under Rule 26(1) of the CFR is correct ?

B. Oak

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6. I God that the officers of DGCFT conducted coordinated search and loquiny at the offices of the appellants, various Brokers, Proprietor, Transporters, Gujarat Mantime Board (GMB), Angedias, market research agencies, etc., from where incliminaling documents like Diaries, Note books, Registers, permits/trip registers, etc. were recovered and statements of concerned persons recorded under Station 14 of the Act.

6.1 I find from the statements of Appellant No. 2, Appellant No. 3, Appellant No. 4 & Appellant No. 5 and the entries recorded in the Diarlos/Note books/Registers/pendits, etc. recovered during search that the manufacture and clearances of excisable goods, namely, MS Plates, MS Scap, etc. to buyers were made against unaccounted / cesh transactions. The Appellants incorded anaccounted transactions in their private records and explained therein. Appellant: No. 2, Parloes of Appellant No. 1 through statement dated 23.11.7317, has *internality* accounted at reproduced at Para 7 of the Show Cance Notice and these are as under the Show Cance Notice and these are as under the Show Cance Notice and these are as under the

**Question - 8:** You are being stoom the instruction of felousia manaporters, having them affices in Dhavanger. Theses instruction are receivered from the respective transporters during the seatches consisters by the officers of DGC20, Akmedabad during the year 2010.

- a. Biutad Transport
- b. Bhathada Romoura Carriers -
- c. Bikaner Penjab Hargana Roadiner
- d. 🐘 Ludhiana Gujarat Romlines
- New Jar Sherikar Transport Co.
- 5 Shri Girunanah Roca Carbox
- g. Vardhewan Inviseorie

The above frammonders have matricated top registers a club own manner/mathod. The dutails therein share date, name of the parson who

# Page 91 of 188

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S. Sugar

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# л. No. DBCKI/AZU/36-926/2012-1a

booken the mater piece of Mor Mundeer from others goode were to by joaded registration conclusion of made which may sent for loading the yeards destination to adorb a tab goods while to be transported etc. Fleese we go a confirm.

Annabels - A: See, 17-we sawn olf aardt regialere gew<sup>1</sup> benfinn That where we the entry shows play minder 89, 6 pertains to either ope thereit of twee or the index makin by our indices through when the gape's one entry.

Question 9: You are being shallon the statements of responsible percents of allow merilated buildpanets which is their respective instances in algebraic that is an the achievent is supplied to technicity parts, it turns included each the genuis and genuis were transponded publicly along Stop Decified, family for genuis and genuis the succencies of the improvements of the supplication.

**Answer- 9**:1 have gone torough the statements of the above merthody manaporters. If the opened that is such of the covers tolden the vehicle that is such of the covers tolden the vehicle that is needed with the goods from our unit. By sometimes due to non accommutation with the droves of the budg about the toad to be covered, or for any where watter, the periods no indented was not tested of the our only.

**Quantities** -  $26\pi$  · Yet: are note shorter Annastics TR-7, projected on the house of the photo cold bounds for backs independent for leading of events form the Net teacher B2 which represents your company. Therefore, we the workshop and confirm.

Another  $\cdot$  10: If they seen the Another TR is After yoing theorigh the entries regulated therein. I cannot the see the second physical product by the transfer and the two physical probabilities in using the transfer  $\beta_2$ , Along  $\cdot$ 

Question (1): The details of those sold American-Th.2 was compared with the boots bound by your copyrang. America of The [1] . Montaig the comparison of details of tracks required to you as montained of the organizations of above boundaries and herotoms isomed, on the managing detes or next day, is propried. Please, see and offer, your of purgate

As space -7.5 — 1 have seen the Annexate TR 1 is and the comparison of equations increase in my mult function that the number of the comparison of with an inducted by us to by our trained and the state from the location from the state of the state o

Quantum 22: As saw and siden by Solid in majority of the cases, the definite of bucks supplied by the above bracepowers for inciding of scales free gaar company, called with the checkbase of sump by your company and another terms. But in single cases, an breakes which is place converses thereof. But in single cases, an breakes which is place converses the outlies of mode cases, an breakes which is place bracepowers for badding of source. Any events is such receiped by show programmers for badding of source. Any events is your explanation programmers for badding of source any and give gave explanation.

Aparente dat i i truce somt Arteritio IR.7.2 and trucine approximity in the control former constant of the entries made in transporters respond formation as sinter phone we will mostly toward during. Again former,

Page 93 of 585.

Nigo Blot 97

Carles Server

# E. No. EASCH?/ AZEL/ 05-326/2015-10

procks from the country of many by pressive that against might have booked switche giving the plane numbers information out activity trucket might have index booked from allow plans.

- 115 year to the Osel Galaxie Maritime House, house Question - 33; entrolineer the Along Sideyant, issues notice proved to the millions ("notes பைட்ட நபல்து தைவியம்பையம், 350, மிமு⊢லாக 77ட்டியதாக, 5029 வில் மார் 'வர்க a gree ending registers of the main poter of sold including great is contained ப்பில்கு பலசில்கள் குறையில் entering the grant been time of entry in the still i making your and their Bow of departure from the good BCON could their some of mich gate теділаға from PRD, қашыт баны айдат. Ок алыша қі түті тедістегі connected in the protection. The fitteds of the starty made suggeber in your  $\cdot$  comparing by whome transporters, violating the passes for which no modules appear to be invent, appear matrix and 2 run he seen that bath mints were there to she althe breaking ward for may fact. Oto 7 issues Which you he privideness as a normal reading line. After soming the above details, do your agree that for action, blacks suggreed to your converse for locating of comments multi formigh path tracks?

Azisiner + 282 I have some the decoils in Origoney and Share also seen that in case of the bracks appearing in Annoxide TR.3.2. Sidd period is issued. It therefore shows that such that such that the issues from any one of tables in Along 21 is reagang that if As I stated where there includes again intent tracks (b) that has it in the manual that where the incluution place and gas backed in Some 22 is not located from our with the brack was bracked by nor unit.

- Quantitate 1.47 In the space that the tracks detailed in American-Ob- 1.2 prepared in wapon of some costuality, which haded from your company and sprop once downed without itsness of my some involve over to booth payment of Control Bacher they?
  - **AIMMER 14**: **Fugato shuk tuu dagtooko Suntinud in Arristuri-**JRJ 2 are natioarled <del>from ude</del> tedes
  - "Emotion 267 Do you wonthin that indensity work to load the ecosy."
     "from your work, is placed with transporters only offer the sale Section "finances?"

Anapare 2.55. Hypereduc, 100 material tracks for the consignation wait to Mynet-Geolegigers and to Direct solver that the tracks for the tracks per day excludinely for solves as be consepted as Read deciding with each for down wait to deal buyets filtures for building. In case of we've Decayle brefor, 10 is broken who dedees for the buildings.

(1) Question (16) — Have cell you sup that any out for a minimum much and your First number with if numbers' cours to be balled for a strong stars?

All seven 16: ( do not many, that any agains always rube is tracks of long pills number - Berryse serian profes beenfed on our pace has not reached out pills and josped () on our pill, ' pressure this could be our a of Gargerasthilly.

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Pag- 08 cl 108

 $\overline{\eta}_{1,2}^{(n)} := (1 + 1)^{n} = (1 + 1)^{n}$ 

Page 14 of 37

**Question**  $\cdot$  17: You have seen the Antientice-TP 1. Do you repressible by the entries appending in these periods to indentify for trucks much by you is some of the cases and in must of the cases brokers have indented the trucks?

Antiset -37 into once again seen the Antisetso-TR i and Factions liket based on the data modifield in transporters' registers, if is correct. Histocher, i cappotect firm consthet mess mucks in Jac' where reached out plat its 92 and get louded on first days

**Question - 26**: You have some the Annexare-TR 1, j. Do you again that we some the Annexare-TR 1, j. Do you again that we solve the Annexare-TR 1, j. Do you again that the local out of 64 enclose appending in these participants of the balance by your units series from generating to 34 mixes by living one is your by your units.

Anater - 38: I rave once again seen oue Annemane DR 1,3 and 7 confette That an exception of the energy of fourte stapplied by the transporters with barenese listed by majorith it is correct.

**Question - 29**: What can be the water for no invalues appear to be bounded in case of remaining 30 minimal

Anomer - 19: Since again water that in these ownes, the muchs have not come to our plot do. 32 and no groups when desired through these tracks from our parts

Question - 20: Do you labor the phane Electro of Phanesgar who is angling as a broken of ship landbay materials? Phane you done way business of solid of ship location across of general propage through him?

Ansoner - 2011 — Yes, Climons Sim Bhards Shets, He is the of the wayor. Storare in Science again, We have said santp through Mill.

Qneption - 91 — Do you know Also Wood Faitel and Also Notion Patel of Disconget was one enjoyed in Lusionus of ship-Descines materials as brokers/discler

Ansper - 21: Yes, 1 do know them. Taky are impliced of the presiding materials in Obernayer.

**Question** - 23: The given of DBCEI, Mourilabed conducted sparch in the resolution can basiness providers of firm band Ratel and Ris Souther Shi Rather Patri at 30.00, 2010, Darray die gesteh, Contain primale resolution todidita angles were provided from his providers and whicherson by the officers. The details matchains of 35.5 Those Papel are unified in algebraic and contract measure of State Vinod Papel are unified in algebraic and Glovar, statements of State Vinod Papel are unified in algebraic total acted measures of State Vinod Papel are unified in algebraic and Glovar, statements of State Vinod Papel above recorded during the State above and statements of State Vinod Papel above recorded during the Operation. He is to weak, the statements of the depart of the departs without of the above and statements of State Vinod Papel and the departs without by first of Vinod papels. After parts for any filling shares good year comments.

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# F. No. BC0027 APRIL 038225/2012-10

received of the above entry it win the sound time 1966 meets 5a ) (0,000) - received, 25/13 is the siste of morely of 25-13-2004. Minch agents name of the person of 20% Atran Ship Scanking Contours mains (83) means that No. 22 of whip breaking york, Alang of 20%, Alaan Ship Breaking Comparing. This catry show that each of 25. 1,00,000,mes paid by Shit Vinod Primite Pros. Ether that each of 25. 1,00,000,-

party did Shit Vinnet Fabri pand part tempony St. 2004/0567 on 25-27-20067. Do you agree that the actus closure that petit is cash to your comparty against the sale of ally breaking material sold distributions Shri Vinnet Potel?

American 39: 7 large scan the above entry 's primit diary A/S of Sui-Viscal Parel. In this connection I spate that we have not reaction any rash anyont from 6hm Wood Parel. We do not have any employee or person in firs name of 2nd Winch - Thereford, I know no common on the only make by Stat Viscal Pote to his riles.

**Quantizer** - 24s — You are taken when one page we, 45 of every no. 4/2. The energy appears is there would be under

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**Question - 25**. Vol. 2001 process Fages 30. 10 of Parliet Diary marked as "AP7" selsed from the book of Free on 30-02 2020. On the book of hyformatics consulted in the sold duary Accessive - A.A.2 is proportial. As per this weight, your company had supplied submit both to Control Escise tension was proved. Do put agrees

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Operation - 26: You may pressed poly. No. 53 & 75 or Foodst Divery mercianil or NUS- polyacithmen State wheel Polet on 30 03:2000. So there a pages, Shai Wheel Food has shown punctated of metericits from your situaspages. Shai Wheel Food has shown punctated of metericits from your situa-

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W. Harrison

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Unvaliding good (i.e. 82. . No Combon Evolve handles have bested in  $\chi_{2p}$  downs for table materials. So you again?

**Anismer** - 26: I have seen Page No. 61 its 75 of pedice: digit broken halfs- of shell Vinod Patel: I do not Judge chey brokeledge organites up main movemet mapping in Stat Rand Patel. Moreover, I have so company maffer on the entries mode in the private dierg.

Qualition - 277 You may person page 115. ) 8 of Focket Damy marked as "A/ 50" wrised from Kind Virol Patel on 30-08-2020. In these pages, this Visad Farci has shown universities of materials from your ship breaking your No. 82. No Central Staist monoto was breaked on Down dates for these institutes. Do you agree?

**Answer** - 27: 5 Know geen Page No. 18 of particultury northert "ht 10" of Shri Vinod Patel. I do' not have only brandledge segurillag day each material supplies to hird Vinod Union. Manadour, 1 Nove have no commente in other on the antifer mode in his pripage away.

Question - 28; An Jan Uni of station recound from that Vised Facel Icontained in GDJ on 35-55-2010, gour company has supplied White Hard" (Propellet) on G2-04-2000 to M/s. (Sanuti Identific Industries Ehavnager chrough Shit Vised Latel. That no Control Exclusionation to 19 Isourd for this remainment. Do you agree?

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ு இல்லாம்பை - மெச்தா – You is set துண்டு நாலைக் கால நாலைக் மகே சி.5 (பில்லா), நடித்து. பிரியில்பார் தாலை நால காலை வாலிக் காடலாம்ப

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6.2 Statements of brokers, namely, 5/564 Toay Shariya on 23.8.2011, Solish Gupta on 24.8.2011, Plaam Sharrro on 74.8.2011, Vinod Bhanadail on 24.8.2011, Manoj Gupta on 24.8.2011. Pavan Agerwal on 24.8.2011, Bradlp Cupta on 25.8.2011, Charmonite II, Sanghvi on 25.8.2011 and Endrapel Yedevion 25.8.2011, were recorded under Section 14 of the Activity were involved in the unocounted clearances of the excessible goods of Appellant No. 1 whorein they have expression to their respective statements recorded under Section 14 of the Unocounted clearances of the excessible goods of Appellant No. 1 whorein they have expression their respective statements recorded under Section 14 of the Section 14 o

, 4.9.13 Out-come of investigation from prokers with reference to trip registers

4.3.13(a) für perposi plit -- statisments of the valueus londers, as mentioned attain it is bacadad that these problems are doing the Utadoras of broking of white breaking scrap for more than 5 to 10 years and at the Guadoras of broking of white ship-breaking scrap on more han 35 years and as such they have vast, and in-depth. Showelks of business of broking is the sold business. These broking scrap de business of broking is the sold business. These broking which includes D/e. At the back of the ship breaking units for which includes D/e. At the back of as business of broking both and the ship breaking units for w = they - tot as business of both includes <math>D/e. At the Bhip Breaking **Company.** They have given the analytic the business of Wills/ Relation formates units/traders to whom the scrap/plates upon sold by the ship broking thats dynamic brokers. They have also given the density of scrapping wills dynamic brokers. They have also given the density of the scrapping the dynamic brokers. They have also given the density of the problems who density the brokers. They have also given the density of the problems who density the scrapping for the given the density of the problems who density finds brokers. They have also given the density of the problems due to the given the given the density of the problems who

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wishered an the indirection, which is the time the provider the tetrile above the two defines for the name of the order is to adjust of stopp pates to for agreed that the matching the grade are at the application the matching provided that they make in contine. The transportate of providing of transmission the spready photo which be extended.

• 9.13 [4] Provide Stripping in the main and by the management as produced introductions, it is control that these the inclusion by the management as the details such as date on which these was been to respective this in-okida, register encoded, continuities, name of the broads, solgh, of the goods to be management descriptions of the power, put number of the ship bryaking unit, so, The key Sections to the transporter, have also entropy as the the glob in the details about a subtraction of the power, put number of the ship bryaking unit, so, The key Sections to the transporter, have also entropy and a submated in their mappediate abbertaction which the sector was involving each to the glob gumber of the above entropy only main and the goods were transported on the respective dates to the Sectionations mentioned in the ship back registers.

• 9.18 (a) Now, which the details of employed-large units with educe the takers much to real with and as substity down in their respertors externants, are compared with the details of simplications units memories in the bip/biolong registers against the materials block the network block the details of some that the netwide mentioned in the letails are found tofted, it is therefore show that the material mentioned in the singlebook to the provide mentioned in the singlebook to the provide the details are to the toth the details are too the details of the difference of the difference of the difference of the provide to the provide the solution of an approximation of an approximation of an approximation of the difference and torrest and the methods of the details are tools and formed the tools good the solution of the difference of the solution of the solution of the difference of the solution of the solution of the difference of the solution of the solution of the difference of the solution of the solution of the solution of the difference of the solution of

6.3 The streaments of transporters, namely, M/s. R. K. Transport Company 01 2.4.2011, 15.6.2011; M/s. Bhumi Transport on 4.10.2000, 6.4.2010, 15.6.2011 and 50/s. Bikoner Punjab Haryana Road Ines on 6.4.2011, 15.6.2011, M/s. Baunda Rampina Carriers on 6.4.2011, 29.6.2011, M/s. New Job Hankar Transport on 4.10.2010, 6.4.2011, 6.7.2011, M/s. Vardhman Transport on 5.4.2011, 25.6.2011, M/s. Series Guidmoniak Road Carriers on 24.2.2011, 6.7.2011, M/s. Litch and Gajaral Roadlines on 6.4.2011, 15.6.2011, etc. were recorded under Section 14 of the Acand these statements invested that Appellant Ac. 1 was tevolved in clearances of unaccounted and non-duly paid. Excisable geods; that the transporters of on have their own frickle and they supplied thacks to Appellant No. 1 on commission basis; that they halve risk hubble path the corresponding involves, however.

Real Page Land W

where no involve was issued, nothing was mentioned in their registress. I find that the records recovered from the isporters have taken decoded, explained and comptonaled in very eleborate manner by incorporating scanned rouges of potentials/records from Page No. 7 to Page No. 87 of the Show Cause Notice. The investigation also gathered details from the register meintained at the gate by the officials of Gajarat Maritime Board and three asser failed institution has recorded as under a

"3.7.1 The investigation conducted with transporters and from the statements recorded of different transport operators revealed that whenever the entries were made in the registers of transport operators, the goods were certainly insided from the ship breaking plot. The details are entered in the trip/inputing recider maintained by the bansporters. and tracks provided by them to the Ship breaking units, supplies high weight from 24 ME to 28 ME were transported. The booking of truck and Its entry in Alang ship breaking yard was - further confirmed by the registers mainteined by the GMB. Shri Ram Kilshna Jain. Partner, of M /s. Kiron nove statement before DSCEL, he was contracted with the entries. found in the registers of the bansporters where no corresponding Involces were found to-the insped by them on by their grago of companies. bef he could not londer any tanabia explanation and in turn stated that Invite wore not loaded from units and such entries were concelled. Shill Rain Krishna Join stated in his statement that the buck bookings were. concolled in few ceses however, his reply regarding namebilition of trucks. did not stand any firm ground and answers given during the recording of the statement were not salisfactory.

3.2.2 As per the prevailing practice for transform of screet from Alang, the drivers pay entry fixed to GMT and bring their brocks inside ship resynding yord unity when they are sure of getting ruli muck load and ogravit froght charges. Further from the statement of the Hansporters it is clear and undisputed fact that the indents for bracks were always. placed after the sale deal was tinalized so as to avoid any kind of unnecessary charged to be paid to the buck owners. Further, I (ind hat there is no scope or any other truck to get the goods for loading directly. In the event of cancellation by some ship breakers. Therefore, I find that once the deal is finalized between buyer and seller, then only the Integration operators are contacted and track is tracked for Integration gooth from the intended ship recycling yord. The facts is further, supported by the unity made in the GMB redistor and focu poid by the bruck driver for entering in the ship recycling yard, Along, The stuttments, of bansport operators are supported by the entries in the GMB registurs. and hitther composited by non-satisfactory reply given by Shin Rom. Kikhan Jain in this regard. Further, Shil Ram Alishna Jain was not abio. to given any astistaciony proof regarding cancellation of brocks and deals. with the hopers regarding entries that have not been consisted with the criteics of GMB and adhies in the register or bisnsport operators. Thus, from the appearum; propanal on the Davis of registers of Danscotters. registers of GMB and on line basis of average loss carries by the truck fron the premises of M/s. Kiran I first that excisable goods as worked

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out in Annexure TR 1.2, obtained from ship breaking yard was removed clandestimaly without Issuance of proper Central Excise involce and without payment of proper Central Excise duty.

3.2.3 It is note-worthy to mention that the Trip/Booking Registrict are: maintained by the transporters in their ordinary course of business and Truck Number and Name of the Droker mentioned in the Trip Rouider. are also failled with the details of the lowelose loaved by the Ship Sceakers, Thus, authenticity of Trip / Booking Regulary mpintained by them sentral be raised out in view of its complication with the records of GMB. J. Herofordy first lists in respect of those entries contained in Trip/Renking Registers peripining to M/s Knon where no corresponding invalues and issued, genetic have been changed clandestinely without payment of Control Excise cluby by My's Kiron. Accordingly, allogation in the Show Cause Notice that N/s Kiran has cleared the ship-breaking goods is proved. 1, therefore, find that in respect of these entries contained in Trip/Booking Registers perialning to M/s. Kiran where ining new politing involues are insurely growin by a bound second dangestimaty. Vittanii poyment of Connel Facillo duty by M/s Kiron, Therefore, from The curk once of the investigation with transporter and curdences obtained. from ISMBS I find that M/s. Kiran has evaded Contral Excess Duty by ciandestine removal of excisable goods.

3.8 The DGCEI also conducted inputy with Transporters, Brokers, GME authorities, research agencies with regard to valuation of scrap and high-section, freedom of goods, mapply of phony involves, diversion of goods, and orderwaluption of goods. The presed of statements of Angeola narroked that they were used to transfer originally of statements of Angeola narroked that they were used to transfer originally of statements of Angeola narroked that they were used to transfer originally of statements of scrapping to Ship breaking unit and its rolated units. They have accupied that they were used to transfer originals on behalf of ship breaking units, rolated by the transfers and breaking units. They have accupied that they were used to transfer originals on behalf of ship breaking units, rolated by the transporters mentions about deployment of vehicles for loading at various ship-breaking units. The register maintained by the transporters and breaking units. The register maintained by the transporters and breaking units. The register maintained by the transporters and breaking units. The register maintained by the transporters and breaking units. The register maintained by the transporters and breaking units. The register maintained by the transporters and breaking units. The register maintained by the transporters and breaking units. The register maintained by the transporters and breaking units. The register maintained by the transporters and thereby supporting the entries maintained by hariporters."

6.4 Appellant No. 1 has contended that the tower adjudicating autimity has not a lowed inner-exemination of the transporters, Shri Manendrabhai Rana etc. and therefore, the principles of nature' (ustice have been violated. In this regard, I find that the lower adjudicating authority has held as under a

17.11.1 I further lievi that linere is an provision to the Central Excisen-Law for socking cross-manningmon. How like Maximum High Court in the case of K. Reion w/c. Gow. of India myoutod in 1982 ELY(010)330, Mailtan, host held that right to cross examination is not recomming a part of memorphic opportunity and depends oppor the factor and provimentors of each case. It lengely depends oppor the myoutoming authority, who is not gooded by the roles of endence as

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such who most offer such opportunity to the party concerned as would assure him proper opportunity to defend himself. The case of K. Balan V/s Govt. of India reported in 1982 ELT(010)380 were definiguidhed by Hon`b1a\_Tribunal\_Ahmedabad\_in\_AHMA\_HartES\_PVT, 17D, Versus COMMISSIONER\_OF\_C.\_EX., AHMEDABAD-II reported of 2014 (31.1) ELT. 529 (Tri. - Ahma.) wherein if was held as undert-

3.31.2 Smillarly, in the case of 7 kankshaom Riy-N-Wond PM, 1 is ver Comm. of CDS, & C.Ex., Annangabed experiented 2004 (127) FLT 1150 (111. Membal), Herriste Tellennel, in Their ercks, in care 6, has hold as under:

" 6 ...... Their contontions that principles of natural justice are violated informuch us cross charmabon of persons, whose statements are relied upon, has to be weighed in the light of the facts that all the statements relied upon were preced before them. They had all the opportunity to demansh these statements making the proceedings. Cross-examination cannot be mainwellars a matter of right in departmental proceedings.

3.11.3 Further, the Horibic Tollynovi, in List open of Mpi, Repring Dyets V. CCE, Chemist reported in 2001 (106) FLT 300 (Trustingnovi) has observed that Non-maximizity of subregreen for cross reagministion out a failed Row when the facilitys are based on decommutations which there is no crudible explanation and nothing on record to show statements not voluntary crieffectively remacted within close proximity of the time these were detained.

7.11.4 jn\_ vjevy of above facis, I find that request <u>for cross-</u> <u>cosmination Noti</u>cere does not menil consideration and hen<u>ce cannot</u> <u>be accorded to</u> "

[Emphasis supplied]

6.4.2 Cliffed that Appeliant No. 2, Appellant No. 3 and Appellant No. 4. Who tendered their elaborate statements under Sention 14 of the Actiducary investigation.

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have apprixed (on being confronted with the invernitualing Diaries/Notebooks etc.). that the entries showing transactions and not tallying with their stationry exercisi are related to the goods dicared in clandestine manner withour payment of ICE only. Purther, records recovered from Gujaret Maritime Soard, conturing incovingation Index, also concorrete the details of transactions for which no CE duty way cald-Further, respring recovered from Gujerat Maritime Board, capturing movement of trucks, also compliance her leavis of transactions for which no CE duty was paid. Telso find that Appellant No. 5 in his statement dated 1.1.20. I on being controlited. with selzed records admitted that shorts containing lifts "MM"" were containing Stanstantions, perts tind to Ms firm, M/s. Marut, Metz, Industries, Third Utal Appellant No. 1 is Invite to blow bell and cold together. Instruct as on one hand they are admitting that they have desired like impligned goods clandestinely and on the other hand they are contesting dury existing without any evidence in their favour and merely on technical grounds. (horoforc, 1 find that Full-rys of the lower adjudicating a discriby are appropriate in this regard and length – recursionication do not have any howing on the outcome of the case, especially when there are overwherring documentary and mail evidences against Appellant No. 2. 3 would like to rely upon judgment of the Honble Macrae Jugh Court in the case of M/s. Lawn Text & Mills PVELL reported by 2016-TTO: -1924-Haable (ESTAT-MAD CX wherein it has been pelo es undor :

"30. The above focts will clopply view that the allegation is one of classestine removal. <u>It may be have that the involence</u> proving such an allegation is on th<u>e Department. However</u>, classestine removal <u>with an infection is evade payment of duty is observed to involved with an infection is evade payment of duty is observed to involved with an infection is evade payment of duty is observed to involved with an infection is evade payment of duty is observed to involved with an infection is evade payment of duty is observed to involve an involved, there may be cases where direct downwhitery evidence will not be available. However, based on the second memory evidence will not be available. However, based on the second memory evidence will not be available. However, based on the second memory evidence will not be available. However, based on the second memory evidence will not be available. However, based on the second memory of removal and the gaugestee is not able to give any plausible contrologies for the second in the allocation of clandestine removal has to be held to be original. To other words, the second and degree of proof, which is required in such research may not be the same, as in other cases where there is on allegation of classesline removal."</u>

#### [Emphasis supplied]

G.5 In This case, the Incriminating private records served during investigation have been dury conclusivated by Appellant No. 2, Appellant No. 3, Appellant No. 4, brokens, Transporters, Angadia, meterids of Guprat Martinus Roard. 7, cherefore, uphold permand of Central Exclose duby of Rs. 12.13,956/ los detailed in Annexure – TR.1.2 and Rs. 1,64,458/- as petailed in Annexure – XDS -1 to the Show Cause Notice.

**6.**0 I fied demand of CE (July of Rs, 3/46,726/1 (185, 4,65,478/- Annexure – VK – 1. Rs. 97,528/- Annexure VK-2 and Rs. 82,4157 as per Para 10,12 of the Shew Cause Notice () has been arrowed at on the basis of entries found to Diary/Note book / Pen prive / CD retrieved from Appellant No.3 , and Appellant No. 4. The petalls, contained in the paid Diary/Note Books mention dates or destances, gravitity, rate, audress of plot number of Appealant No. 1 as Plot No. (392) etc. from where the said transactions of clandestine removal were reuniced. Authenticity and veracity of the dianes, iprivate records and similary media have been established and components). In the instance case vice statisments of Appellant Ko, 3 dates, 19,04,2010, dated 20.4.2010, dated 20.12.2010, dated 23.12.2010, dated 3.1.2011; statements dated 20.4.2010, dated 17.9.2010 and dated 1.12.2010 of Appellant No. 4 and etatement dated 1.1.2011 of Appellant No. 5. The Janswers in Question No. 21 to Question No. 26 of the - Statement dated, 23.11.2012 of Appellant Nut 2 - gap lend invited a to the authenticity of the unaccounted transactions in this mesary. The increased inference that can be drawn from the transactions recorded in the incovered. Disry/Note pooks / starage media are igenuine and not imaginary or rough details or estimates as has been attempted to be made but by the Appeliants and therefore, importance of private diartes, etc and confessional statements recorded in connection. with these diaries / scorage metha named be whitted down by bald submissions of Appellant No. 1. The inspection can have indicate on the basis of appreciation of the relevent pages of diary manaed us periol New A/7, A/9, A/10 and CD (containing) sistalls of clandesting removal at Para 3.14 of the impugned order. Many statements of Appallant No. 3 and Appellant No. 4, both brokers have also forem econded wherein *modus corand*iand decedling of certails of Cigners / storage media has been explained. at lengtr.

6.6.1 (in view of above evidences and statements of Appellant No. 2, Appellant No. 3 and Appellant No. 4, T Find that idemand of CE duty of Rs. 6,46,7207 the been correctly confirmed by the lower acjudicating authority.

6.7 Infinitely CE only carband of Ray 20,25.134/- is on account of chronospheric removals as detailed at Annoxum TR-1.2, Annexure - VK -1, Annexum -VK-2 and Para 10, cE of the Show Cause Notice, and the site energy recorded during course of investigation are substantial piece of cylcknows, duly componated, which have not been retracted at any stage by the statement makers and therefore, as per the scalars logal position sancity of the same connect for undertrined by bald arguments only. 1

further find that the autrenticity of the records switch from the previses of Apueliant No. 1 and other premises have been duly componyted and tallier with the records of Appellant No. 1 and CE duby on the clandesting classrances of the guada non-accounted for online record of Appellant No. 1 have been raised. The Hon'die COSTAT in the case of Lawn Textile Mills PvL Ltd. reported as 2018 1100 1924-UC-MAD-CX has held as under the

130. The phone tacks will clearly show that the allegation is one of clandosting managed. <u>If may be bue insit the burden of proving such an</u> <u>allegation is on the Department. Normally, Clandestine temoval with an</u> <u>intention to evade provident of duty in Associations in a secrete manner</u> and not as an open management of duty in Association in a secrete manner and not as an open management of cludy in Association in a secrete manner and not as an open management of cludy in Association in a secrete manner and not as an open management of cludy in Association without the involved, where the involved, there may be cases where direct documentary evidence without be available. <u>However, based on the secret rectards of the Department is</u> able to pame facts establish the cases of clandestine for the summer then the allegation of clandesting remarks to case of clandestin for the summer then the allegation of clandesting remarks in other cases, where is no line works, the standard and degree of proof, which is required in such the allegation of demonstration and degree of proof, which is required in such the substant of demonstration and degree of proof, which is required in such there works, the standard and degree of proof, which is required in such there allegation of demonstration and degree of proof, which is required in such</u> allegation of demonstration and degree of proof.

31. As noticed above, the researce has not denied any of the alloyations, which were put forth except for simple and dimay retraction. <u>If the graveyer lend wellowing an order to establish their innervace, withing anywhich the Monodan Dimager (a set so while making the minister). If the provide the Monodan Dimager (a set so while making the minister), <u>Interview was no attended make a statement and areducing teaching the alloyation</u>. The alloyation of parallel invariant has not been disproved in the manner known to law. Thus, we find that the Adjudicating Authority, the Appellate Authority as well as the Tribunal concurred on facts and each of them has given independent reasons for their conclusion.</u>

32. Thus, <u>In the apsence of any pervensity in the finding, the Court Centor</u> <u>Interfore with the facture</u> (finding recorded by the authorities as well as the Tribunal, as the scope of the appeal before this Court under Section 354 of the Lentral Excise Act is to decide or a substantial question of law. We find there is no question of law, much less a substantial question of law anising for consideration in the Instant Case. Thus, the appeal filed by the assessor is dismissed."

#### [Emphasis supplied]

6.8 Appenant No. 1 has argued thet demand of duty cannot be confirmed to the basis of private records and it find party statements. Without support of other evidence : kall production, statement of buyers', transportation, e.d. Tri H/s regard, 1 find that both the key persons of Appellant No. 1, transporter; brokers, Angadias, Ara puncturity, Pantos, etc., hey recordedly admitted and identified the entries in

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Use private incriminating records. Further, brokers and transporters have admitted to have solid / transported goods (whong og to Appellant No. 1 without CE invokes and without covinent of duty. If also find that the demand has been computed on the tasks of Annexorea prepared during investigation based on private corrisinating records recovered during searches carried out at the previous of Appellant No. 1 and same have also been tallied with the statilities record of Appellant No. 1 and all vital links involved in the case have correctively record of Appellant No. 1 and all investigation and therefore, demand carried be said to continued without concrate cylonice and third party statements.

6.9 To sifect that ou stationer thes been normalist and hency, the statements have sufficient evidentiary value. I find that all evidences in the case are vital and hard evidences and are sufficiently proving the case against the appeliants. In this regard, i rely upon the decision of the Horthie CESTAT in the case of Cin Praketh Against reported as 2017 (346) ELT 125 (Tribed) wherein it has been held as under the

"5. Thinke livet in both the proceedings almost identical set of facts ware involved. The allegation was that based on evidences collected from the suppliers' side, unaccounted receipt and further manufacture. of dutiobly items by the appellant was sought to be sustained. <u>Admittative the case is n</u>ot only based on the diatestal evidence. <u>collected from the supplier's end and also as conclusated by the</u> <u>responsible reasons of the supplier's end. The recept and one of the</u> such unaccounted raw materials for further manufacture increasystendig. been admitted by the appellants and the duty short paid has glup brain. discharged duting the conner of incrydigation healf. The gypolysty grout emphasis on non-analyticity of the further correlated by way of defails of hangeon, meanly subject, die <u>In the present case, the</u> <u>which we collected from the supplier's are is carepone</u>al and cannot be <u>diandesh. The on any records of the suppliers have been component</u> <u>and admitted for the</u> conjectness of their contents by the person<u>s who</u> weights-charge of the supplier's units. When such evidence was brought before the partner of the appellant's unit, he categorically admitted unaccounted dearance of dullable items. However, he old not name <u>the buyens to whom you't proving using sold.</u> In such tituether, it is <u>ytopraje that the jarge fort hay natego a piso that the depictopent bus pol</u> <u>Establish at the civility of the moment in a part of the finistest gravity in </u> <u>weth beyong. It is seen that the recents uninterest by</u> the popplare. <u>which were afferred by the persons in a horner proved by implex</u>taside. It is not the case of the uppellant that the supplicer assistational specie records only to talsery ingglicate the <u>appollant</u> - In fact, the subply of unaccounted raw materials has been complorated by the permit of the appellant's firm. In such situation, it is not tenable for the appollant to, www.in the appeal stage, raise the point by requirement of crown expressionly etc. Admittedly, some of the private counts or the rmanarstu given here been rebaited or later <u>contestari for from</u>

authenticity. In the append <u>being the Tribunet, the appellant is making</u> a belabel asserbing that <u>the optimized by the partner of the app</u>ellantlimit is not unbuillage. Various cases have rolled upon by the appellants are not of any unpoort in the present case. In the cases brooking unwreamled monofoxone, the ended already, the thin part/s peculation of the support for conclusion. As noted already, the thin part/s peculation of the support of the appellants of the support of the appellants of the support of the conclusion. As noted already, the thin part/s peculation of the support of the cases brooking only on the gravitation and receipt of money has not be appellants of reactions of the appellant capper be discounted only on the gravitation and receipt of money has not been proved. In a clander, the monofoxine and receipt of money has not been proved. In a clander, the monofoxine and receipt of money has not been proved. In a clander, the monofoxine and receipt of money has not been proved. In a clander, the monofoxine and receipt of money has not been proved. In a clander, the monofoxine and receipt of money has not been proved. In a clander, the support and the findings is the impograd under of the proved of the proved and the finding of the impograd under of the proved of the proved in the finding of the impograd under of the proved of the impograd under of the proved in the finding of the impograd under of the proved of the proved in the finding of the impograd under of the proved of the proved in the impograd.

[emphase suppled]

6.12 It is syltred law that it cases of candestine removal, the Department Is not required to prove duty evasion with mathematical precision. My this view is duly supported by judgments of the Henfele Supreme Court in the cases of Shill Shan Gumanmal reported as 1963 (13) ELT 1531 (SC). & Aailoi Textiles (1) P. Lutineouted as 2005 (235) P.T 597 (SC).

6.11 The statements, if not norticaed, are legal and valid in the eyes of law and have to be iconsidered as correboratewy evidences issified. In the cases of iNaresh J. Sukhawan reported as 1996 (89) EU7 258 (SC) and Rakesh Kurrun Gerg recorred as 2016 (331) EU1 321 HC Dolh., I find that iStatements isomitting clearances of goods without payment of Central Excise duty and without issuing revorces are implemently and specific and not reliabled and hence, as missible as head in the case of 24/s. In Tech Advasives Ltd. recorrect as 2017 (346) EUT 646 (Tit-Dec)

"14. On assetut amsideration of the facts and circumstances as optimed allows, I find that the statement of Effecturis the basis for the demand. The statement is inculpatory and is specific. The Director dearly admitted that The documents/private records recovered by the officers contened details of proving need of one medicities as easily a character of fitteland grants with and without payment of they. This fact is further strengthened by the charvalian ited comy entries in itel poissie accornents are covered by the invok en imperi in lin-aso-s-an en adh ir daty sintein pain. The Birechn tas gleagy anglied the truth of the charis as pad as clandedine clearatics of growto coverned by the entries in the priorite indebtakes which are not covered. <u>ha ika mwakaza</u> . <u>Santani pinyowat in mkakadah wakai</u>danta<u>i n</u>i 1985 bera haidi. <u>by the Apers Crost in Inc. , and of Systems & Components Pol. Lid. (Sopor).</u> The activity of classification regions is required to the proved by sufficient. pendate endeterior, Henricker, Dr. Budy prevanient in confectivel constants receipted to be regulatived and examined independently. The department in this case has <u>reflect upp</u>r th<u>e confessional statement of the Director w</u>hich

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is <u>also subparted by the monthened contex in the anyate executiv</u>. There is no eventient that the statement has been taken under during <sub>an</sub>

**15.** In new of the foreacing, I find that the Commissioner (Algorith) has energin taking the view that there is not enough evidence of clanders no removal of goods. Even though the statement of Shri Sanjay Acjavicil, who is said to be the author of the private records recovered has not been recorded, it stands admitted by Shri Takiwal, Director amout the troth of the contenus of the private records. Contequently, T find in reason to directory the private of contequently, T find in reason to directory the private of private records amout the troth of the private records of the private records amout the troth of the contenus of the private records, Contequently, T find in reason to directory there is a private of the private records.

[Prophesis supplied]

6.12 Take rely on the basis on in the case of M/s. Harvaru Sovel & Alloys Ltd. reported as 2017 (355) ELT 451 (111, Del.) wherein it has been held that prevate records isolated from the possession of appellant's employee at the time of search showing entries for accounted as well as unaccounted goods which have heen explained in detail and disclosed by GM of the factory 'w'y with involves / gate pass is possible that statement of comployed number several pages and containing detailed knowledge to be considered reveable, a size rely on the accision in the rase of M/s. Rancharded Record PV, Etd. reported as 2014 (302) ELT A61 (S.C.) wherein similar view has been taken by the Honble Supreme Court

6.13 I am of the considered wiew that the admitted facts need not her proved as has been hald by the Hon'de CESTAT is the cases of Alex Industries reported as 2008 (230) ELT 0073 (Tri-Manhai) and I-Mys. Divine Solutions reported as 2006 (206) ELT, 1005 (Tri-Manhai) and I-Mys. Divine Solutions reported as 2006 (206) ELT, 1005 (Tri- (Chennai), Hontble CESTAT in the case of M/s. Knool Eng. Works reported as 2006 (106) E.C.T. 373 (Tri- Del.) has also held that Admitistion/Confestion is a substantial piece of eVidence, which can be used against the maker. Interface, the Appellant's reflance on various case laws are not applicable in light of the bostfive and tagible evidences available in this case as discussed above and in the indugred order. Fonfale CESTAT in the case of Mys. N R Sponge R Up reported as 2015 (326) ELT 453 (Tri-Del) has also held that when preporter and propability was against the Appellant, pleading of co-statements recorded from buyers, no express discription reported by the Appellant of the variable of all that when preporter and unaccounted and no input purport ratio preparation of the variable of units of the variable of the statements recorded from buyers, no express discription ratio preparation of the is of 100 use.

5.14 To view of above, 118nd that the contentions ruised by Appellicul No. 1 are of no help to them and the Department has adduced software undered both mentary.

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corroburative evidences on deconstrate that the Angellants were engaged in chardretine territyal of the goods, f, therefore, find that the confirmation of domand of Rs. 20,25,134/, by the lower adjudicating authority is correct, legal and process

6.15 Jt is natural consequence that confirmed demand of Rs. 20,25,1347 is required to be paid along with interest at applicable rate under Soction 11AA of the Act. I, therefore, upholo order of recovery of interest under the impugned order.

6.36 If find that this is a case of dandestize clearances of the goods which has hear established. The logradiant for linkoxing extended period of demand and imposing periodly updet provision: Sedino 11AC of the ACI are also available in the case as cells by the Hon'dly CESTAT in the case of Sun Microsystems India P. 144, reported as 2016 (360) E.E.1. 475 (1rt. Rang.) and hence, the impughed order has correctly imposed equal certainy of Rs. 20.25/134/ juncer Society 11AO(1) of the Action. Appellant No. 1. The lower adjucted intervaluently has also correctly granted option of reduced penalty of 25 %, on the conditions, as per Section 11AO of the Act or Appellant No. 1.

7. Regarding confirmation of demand of doty of Ro. 56,67,447/- (Annexure – UV-1 to the SCN) on the ground of undersveluation, Appellant No. 1 submitted hall the said charge has been confirmed on the basis of the rates obtained by them from various market research agencies which were higher than rates dedared by Appellant No. 1 in its Central Excise involces: that as per Section 4 of the Act, price prevaluing at the transaction value charged by Appellant to different customers for assessment purpose must be accepted; thet the demand raised by the department by rejecting the transaction value on the basis of rates obtained from market research agencies.

7.1 If the lower adjudgating authenty has confirmed the charge of under-valuation, *inter alla*, giving findings as under :

"3.15" The Show Cause Nonce alleged evasion of Central Excise duty by vary of under voluction of the goods obtained out of breaking up of ships. It is not in dispuse that vencus Research Agencies circulate the meet considering oil the factors of domand and supply and there is no reason from prices circulated by such agencies are unrealistic one. It is in this bankdron that com Ship Resolving Replaying and idea of subscribe to such market research agencies to have an idea of

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provalling prices so as to earlike from to cell their goods at maximum rate. It is also not in digm<u>in that the re-railable places (anging homuize simin (4 An) to 25m (MAni) are emerged out of excessing of ships and the majority of <u>minolitible plates emerged</u> of preaking up of ships and the majority of <u>minolitible plates emerged</u> of preaking of ships are of 12 nm size. <u>In order to substantiate this allegation</u>, the <u>UKEET conducted linguity with various marketing</u> (psearch agencies including Mar Major & Ninor with reference to pricing date of various which reministed that day to day price of 10mm size of plates is almost equivalent to that day to day price of 10mm size of plates is almost 25mm.</u>

3.16 Un comparison of the price mentioned in the involves of M/s Paras vis-à-vis of the prices rin object by M/s. Mator & Minors It was also revealed that in many cases the transaction value declared by the M/s Paras voice for less than the octual value prevailing in the market during the rospective period. <u>The ship-breakers have, by not declaring</u> <u>Dis adaptions of this Plates cleared by them, undervalued</u> <u>MS Recollable</u>, Plates so as to enable them to <u>declare out period</u> (more value of such goods in the <u>involver and roblect the differential value</u>, over and above the decla<u>red involver value</u>, <u>by way of undecounted</u> cash anomals.

3.37 I, therefore, find the worksyce in <u>the alkendion of under-</u> **Bilation** in the present show caren <u>which particularly when divide</u> **secen** from Shij Vinor Palet and Shit Kistion: Palet almost combining details of and tearast tions with various Brokers / Shieffs / Annadias Had the algements allegation of under-valuation from not corrors, there which be large toget involvement of symplex of bage annount of costs which includes part of the undervalued cost of share brooked matematic

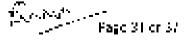
To view of the above, League with the contention of the DGGT 3.18 That minut variation in prior is obvious considering variant factors like payment terms. Quantity & Quality of the goods, relation with bayers, domand and supply situation, therefore, 2% difference in price is -considurable one. As stated above, Brokers / Ship Breakers / Payers take the reference of the price quoted by market research algebracy like M/s. Reportant Rinor. <u>1.</u> sh<u>arefore, find and hold thet there is ne</u> reason to poubl that price quoted by M/<u>s\_Malor and Minor is actual</u> one variation of (+/- 2%) i.e. rates of Plates and Scipp 2% <u>Jess</u>or <u>than</u> (he rate of M/k, Major and Minor is considerable, I, therefore, fully wome with the view adopted by DGCEI that duty short cald on account of spherical of price more then 2% is an account of underveitation of the googy and rightly recover, site from Mit Kiran. For they, I also find tivat a kargo number ahip brosking units, dealets hard Alang and brokers were gromber of Mar Stort rates, and were receiving day to dev updated on the duity price ratio of whip howstang materials therough SNS alorts and omnils. <u>It is a</u>by mynakul Ural Mys Steeltates were <u>advating the most velentific and appropria</u>ting advisation of the detail gathered by them. The Shin brookers were fully event of the rates of The scrap generated fo<u>rm ship brooking and introducibli</u>y undervalued <u>the goods with Intent to grade pownent of Central</u> Excise duty. Buther Indulty was conducted your John Mann Committee, Kolkalla

 $\left( \prod_{i=1}^{n} \left( \frac{1}{2} + \frac{1}{2} + \frac{1}{2} \right) \right) = 1$  Page 30 or 37.

and I find that in India, Joint Plant Committee in the only instigution which is empowered by the Ministry of Shell for the purpose of tormulating additions for provinction, silvertion, priging and distribution of iron & short radiation in the country as well as to funding an Use official facilitator of the industry. JPC was constituted in 1964 by list. Removing of India under the powers conferred by cleans 17 of The Iron & Secol Control Order, 1956, JPC consist of mombure and representatives from the Ministry of Steel, steel Authority of India Late, Tata Steel Ltd., Rastnya Ispac Negam Ltd., etc. With its outbonty and vast experience, JPC has meintained a comprehensive database which is considered to be the most authentic and reliable information on Indian Aleet Industry. This Gelebook includes capacify, production and struck of all the major sheet produc ors of the analys, domestic methol price of iron 8 stort, CO9 and CF. primes and kineticli cent of strict practicing, extract-impart data on ran  $\delta$  . sterd precipity, production and prices regerate for which majoritik for stock making, state-wise and eavegory-wise details of dispatches of iron & secol, etc. Apart from the regular use by researchers, academicians, marketing/business strategies of entroproneurs, financial analysis by the Fis and banks, some of the key uses of the JPC assebase includes ducy formulation on customs, exase, export, Tormulation of GDP, Industrial Production Index, Understanding of price tends, delead trade cases, formulation or five Year Plans;" economic sprouge and union budgets, State- site flow of materials and indiction stor. In stori, the dynamic price data on iron & steel products maintained by JRC in canademed an ine most subhenfic data. of the type for the stock industry. <u>This Markipper and his undervalued</u> their excisable goods with intent to examin or ment of General Excise. duly & arus based on the calculation done by DGCELT first (Unit MAL Kiran have avaded Central Excis<u>e Dyty of Rs. 58,87,447/</u> 1 "Emphasis supplied"

7.2 I Full that demand of Rs. 58,87,4477- has been confirmed on the ground their Argellant No. 1, was fully aware of actual rates of the strap generated from ship breaking and intentionally undervalued the goods , with intent to evolve payment of CF doly. The ower adjustcating authority has affirmed the valuation, as per rately generative from the reported market research agency.

7.2.1 Estyp find that valuation of goods has been arrived et after scientific analysis of the data released by Turk. Size Committee, an institution empowered by Ministry of Styp. (ov), of Tadia and Imarket research agencies i.e. M/s. Major & Minor and M/s. Stechao), Appeland hes init dispoted the seld analysis, however, contested that no excess payment over and above involced proces was received by them, 1 find that Appellant No. 7 in his statement cated 23.11.2012 has admitted that they did not market or back of the clates in the involces. Reevant Q.32 and its



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"G:32. Do you monitor the thickness of ploton on the involute? If yes, since when?

A 32 We were not montraining the theirness of the distes in the involces issued by under Section. However from August. 2016, we have similar declaring the thekness of the plates in the involces."

7.2.2 The contention that transaction value federed in the involves under Section 4 of the Actionmutice rejected does not have funce, when Appeliant No.1 is involved in clandestne clearances and they aid not specify the grade/quality of the goods in the involce and diadies seized from Shri Appellant No. 3 (i.e., Vinort Patel) and Appellant No. 4 (i.e., Kistore Patel) arready containing details of cash transactions with variable Brokere / Transporture / Angadias, etc. 1, and therefore of the view that appellant failed to establish the grade and quality of the goods cleared to justify the lower prices adopted by them and cence I find impugned order legal and proper and toerofore, 1 upheld confirmation of CE daily of Rs. 58,57,447/- talong with interest and imposition of legal behalty under Section 11AC of the Act.

7.3 In view of above, Loo not find the impugned order improper and accordingly. uphoid: continnation of CE duty or Rs. 58,87,447/- along with interest therewoon and equivalent penalty provid Soution (1)AC of the Add Trichis pagent, Trefy upon the case laws as under p-

(i) ISMUUL 2017(6) SET 298 (Tri-Mara).

"7. Honble High Court of Meane had an accerton to decide the learns whether declarge of duty before examples of dominantly from conclusion sectors of dominantly from conclusion sectors 114C of Control Exchanded, 1944, in the case of CCE. Madural V. Metal Powder Co. Ltd., 2014 (303) ET.T. 71 (Mad.). It is neits that the penalty is punishment for on act of deliberate decryption in societies with the penalty is punishment for act of deliberate decryption in societies with the penalty is punishment for a last of deliberate decryption in societies with the penalty is punishment for an act of deliberate decryption in societies with the facts of the factors duty adopting <u>any of the meane meniformal in Society 114C of</u> the factors before the appellants in the present case, decryption in the last at the present in laster of deliberate intention to evode duty without in laster of decide and the amount in the exact in laster of used of without in the exact of without in laster of the second without in the second without in the resent of the order of goods. This could not have been been been been appelled on the reserve on could without in the exact of second of the second of the median of the second without in the exact of second of the theory of the second of the s

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2017 (355) E.L.T. 369 (A\*.) (j) GXN Manufacturing P. L.

"15. Having found that the invocation of extended period is justified, the provisions of Section 11AC will statutorily require to be invoked and hence <u>penaliy</u> aqual in the d<u>uty or differential ri</u>aly determined <u>yall</u> necessarily by we in the imposed. In arriving at this conclusion, we draw sustemation from the catho laid down by the Honble Apric Court in the landmark judgmuni of 1571 v. Dharamendra Textile Processors - 2008 (231) E.L. (. 3 (S.C.) and the subsequent judgment in UOE v. Rajadilien. Subisting & Weaving Mills - 2009 (758) F.L.T. 3 (S.C.). Accordinally, 201 note that appellants (H/y, DXIV Harbar Manufacturing cannot escape the penalty of Rs. 2, 83, 94,5447. Imported on Meild under Section 11AC of the Central Exclose Act, 1944 as onlined by the adjudicating authority. (htt icalo penalty is therefore uphold "

1 Fail Hall, Rule 25(1) of the Central Excise Rules, 2002 mode as follows (-8. " Role 20. Privally for certain offences. -

(1) Any perturn where explaining procession of, or is in any way concerned in manaparting, remembry, risplaulting, keeping, concealing, selling or purchasing, or in any other member deals with, any excisable goods. which he knows of her a great to believe are liable to confiscation under the Act or these mics, shall be lighte to a penalty not exceeding the dury on such goods or two throughout repress, whichevel is greater. ..... ..... ..

Appellant No. 2 is a live parate of Appellant No. 1 and that concerned 8.1 himself in Tremoving and solling the isot-duly paid goods, which were liable to contistation, and penalty imposed is also propertionate and reasonable. Therefore, behalty of Ra, 8 Jakes imposed on him under Rule 26(1) is justified and 5 uptold this penalty as correct, logal and property

Regarding moostop of penalty equal to Crawic Chall of Ball 7,79,320/-Ξ. under Rule 25(2)(1) of CER on Appellant No. 1 for wrongly pure/ny un Cerezzi un dii, Appellant No. 1 contended that sale of MS strap, etc. was made by Appelland No. 1. ex-factory gate and delivery thereof was given at factory gate. Apoviant No. 1 also: submitted intratilities constantment of the goods is subsequently divertexi, it is not responsibility of Appellant No. 1 as they mad handed over delivery of the goods to the hovers at the factory date of Appellant No. 1.

Para 10.9713 of the impligned order has seld as under th 9.1

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50.964.4 . Since the tensor constraints are as predation of the interact proof. Note that  $g_{
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# P. (19, EGGE)/NUL/26 825/20/2-12

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Sec. Sec. 

9.2 In view of above, 3 find that the Department has surfacently discharged onus of proving Ligassing of fraudulent Cenvec Credit of Rs. 2,29.320/- with help of documentary evidences. I, therefore, uphold impovition of penalty of Rs. 2,29,320/utder Rule 25(2) of the CER on Appellant No. 1.

3.3 Regarding imposition of cenalty of Rs. 2,29,320/H on Appellant No. 2 under R0/9 26(2) of the CER, 1 would like to reproduce Role 26(2) of the CER, which means as follows :-

" Rule 26. Perioliy for contain offences. -

 $(0) \mapsto \dots \mapsto$ 

(7) <u>Any network who instant</u> (i) an excise duty <u>prester</u> valificat delivery <u>of the monds</u> specified therein or abers in making such involves or

(ii) any other document on shets in making such paganjent, on the basis or which the user of said involce or document is likely to take or has taken any ineligible benefit under the Act or the rules made there under like claiming of COMAT credit under the CENAT Credit Rules. 2004 or refund, unwil he liable to a penalty not exceeding the emount of such trought of functionant rupers, whichever is greater."

"Emphasis supplied",

9.3.1 As discussed above in this order, Appellant No. 2 has indulate himself in issuance of CP invokes without accompanying the said goods and with the aid of such invokes multiplications availed in eligible penetit of Canvat credit and thus, a role that penalty has been companying meanweation him and fluphold the imposition of penalty of Rs. 2, 20,320/1.

10. Regarding imposition of penalty of Rs. 6/16,720/- model Role 76(1) of the CER and Rs. 2,29,320/- under Role 26(2) of the CER on Appellant No. 3 and Appellant No. 4, 1 find that Appellant No. 5 has relimined his involvement in duty evasion vide. Pis statements pated 19,04,2010, (bled 20,42010, (bled 20,12,2010, dated 3,1,2011 and 26,2,2011). Taker find that Appellant No. 4 has also edmitted that he aided and operted Appellant No. 1 in CE duty evasion and togethelesional statements dated 20,1,2010, (algorithed that he aided and operted Appellant No. 1 in CE duty evasion and togethelesional statements dated 20,1,2010, (algorithed 10,2,2010, dated 11,2,2010, and 25,2,2011). The causing of Cenval: credit freudulently has also been found correct. Ty horefore, hold that Appellant No. 3 and Appellant No. 4 have played instrumental role and correct themselves in removing and set by in the non-puty paid goods, which were table to conflication.

The Association of the

end hence, I uphoid penalty imposed on Appellant No. 3 (Shri Vined Patel) and on Appellant No. 4 (Shn Kishere Patel) under Rurd 26(1) and also under Rule 26(2) of the CER in the impligned order.

**1.** Regarding moosition of behaby of its, 4,65,4/8/- under Rule 26(1) of the OTR on Appellant No. 5, 1 find that from Question/Answer. Nos. 16 to 29, in his statement dated 1,1,2011, no his domitted his offence purchasing guerts without duly maying documents and hence, penalty increase: on hen does not require any saterference.

 To view of my above finalings, 1 uphold the impugned order and reject appears filed by Appellant No. 5.

13. अप्रोलकर्ता व्युप्त दले की गई अमेरा का लिपरास उपसेल्ल तरीके से किया जाता है।

13. The Appears filed by all 3 AppeStants are distinate off in above terms.

्ि यो विस्तृति हो स्तित् (कुम्बर संतीष)

अन्यूक्त (अपीन्त)

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

**-**D.

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 Mys. Rivan Ship Breaking Co., Plot No. 67, Ship Breaking Yang, Alang, Post Munar, Disc. Shavnagar.

と Shn Rem Krishena Tain, Parloer of Mrs. Kirot. Ship Breaking Co., Piol No. (2, Ship Breaking Yard, Alang, Post-Munar, Dist, Shevragar.

 Spri Mhodshai Amarsh/bhai Pah/, Pint No. 102, Isoun Mega City, Opposite Victoria Park. / Pict No. 20, Sectoria Park Society, Subhashnagar, Bhavnagar.

 ScAlkishord Amappingh Patel, Proprietor of M/s., Shreel Krishnal Enterprise, 304, Shoopeny Point, Farmat Chowk, Weghawadi Road, Rikaynagan - 564 001.

5. Spri Matendra Artbalo, Baua, Partner M/s-Maroli Metal Industrius, A-209, Leels of Mis-Waghawad Roed, Bhavnagar – 364-301.

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- ५६७ मुख्य ३५५७० ४४५ ५४ लेग भर गर्रा केन्द्रीय उत्पद्ध शुरुष, युत्तरात क्षेत्र, अहमराबार ३१ - अलवगरी हेनु।
- 2) अधुवता, वस्तु एवं सेता कर एव केन्द्रीय उत्तमद्ध शुक्रम, कव्दा अण्युकतातल, भावनगर । को आजे आवश्यक कार्वचाही हेतु।
- सहायक आचुरूत, वस्तु एवं सेवा कर एवं केन्द्रीय आगाद शुल्बः, मण्डल II. आनमगर।
- 4) शाहे फ्राइट.

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