



2019-2020 (सीमा) में प्रविष्टि कर पर सेवा करण की नीति उद्घाटन सूचना  
 AND THE PRINCIPAL COMMISSIONER (APPEALS & GENERAL INQUIRY)



निर्देश सं. 10/2019-स. 10/2019-ए. 10/2019-ए. 10/2019-ए.  
 निर्देश सं. 10/2019-स. 10/2019-ए. 10/2019-ए. 10/2019-ए.

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**BHV-ENCL-5-0001-APP-091-TO-092-2019**

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10/2019-स. 10/2019-ए. 10/2019-ए. 10/2019-ए.





**ORDER IN APPEAL**

M/s. Satyanarayan Steel Industries, Plot No.200A, CIDC-2, Sifer, 584240 (hereinafter referred to as 'Appellant No.1') and Shri Narenara R Gupta, Person In Charge, of M/s. Satyanarayan Steel Industries, Plot No. 200A, CIDC-2, Sifer, 584240 (hereinafter referred to as 'Appellant No.2'), filed appeals against Order-in-Original No. 54 (Excise-Demand) /-18 dated 16.9.2010 (hereinafter referred to as 'the impugned order') passed by Assistant Commissioner, CGST Division Bhavnagar. H. Bhavnagar (hereinafter referred to as 'the lower adjudicating authority').

2. The brief facts of the case are that the CGCEI carried out coordinated searches at various premises of major brokers of Bhavnagar through whom ship breaking units at Alang were engaged in large scale evasion of Central excise duty and passing on fraudulent Cenvat Credit by issuing Cenvatable invoices without physically sending goods to whom only invoices were issued. Investigation was also carried out at Transporters end and also at Ankadiss end. CGCEI seized various incriminating documents including Books maintained by Brokers, Trip Registers etc. and their statements were recorded. Show Cause Notice F.No.9/15-100/DevtHQ/2213-14 dated 7.3.2014 was issued by the Acting Commissioner, Central Excise, Bhavnagar to Appellant No.1 and Appellant No.2 for demands of V.R. Round Bars and V.S. Plates / Waste & Scrap of Iron and Steel of standardline and also for wrong availing of Cenvat Credit alleging as under:-

- (a) Central Excise duty of Rs. 5,17,34/- on standardline manufactured and cleared excisable goods should not be demanded from Appellant No.1 under Section 11A(1) / 11A(4) of the Central Excise Act 1944 (hereinafter referred to as 'the Act')
- (b) Interest should not be recovered from Appellant No.1 under Section 11AA of the Act
- (c) Penalty should not be imposed upon Appellant No. 1 under Section 11AC of the Act read with Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as 'the CER')
- (d) Cenvat credit of Rs. 2,80,353/- wrongly taken by Appellant No.1 should not be demanded and recovered under Rule 14 of Cenvat Credit Rule, 2004 (hereinafter referred to as 'CCR,2004') read with Section 11A(4) of the Act along with interest
- (e) Penalty should not be imposed under Rule 15 (2) of CCR,2004 upon Appellant No.1

*(Signature)*

(i) Denial of refund on the said order (Appellant No. 2 under Rule 20(1) of the CE Act.

2.1. The above ECN was adjudicated by the impugned order confirming demand of Rs. 1,30,356/- under Section 9(A)(1) of the Act, Interest under Section 11AA, penalty of Rs. 1,30,356/- on Appellant No. 1 under Section 11AC of the Act with order to pay Rs. 18,49,900/- under Section 11AC, Confirmed demand of Rs. 1,30,356/- under Rule 15 of CGR, 2004. Imposed penalty of Rs. 2,60,712/- under Rule 15 (2) of CGR, 2004 and also imposed penalty of Rs. 70,000/- under Rule 20(1) of CE Act on Appellant No. 2.

2. Being aggrieved with the impugned order Appellant No. 1 and Appellant No. 2 prefers appeals inter-alia on the various grounds as under:-

#### Appellant No. 1 :-

3.1. Appellant No. 1 submitted that the impugned order has been passed in violation of principles of natural justice as none of the persons whose statements were relied upon have been examined as witnesses under Section 92 of the Act and in absence of the seized documents not provided in physical form that vehicle statements and seized documents are not direct material evidences; that there is no mention of vehicle numbers in searched copy produced in the show cause notice; that short name explained by Sri Manish Patel is not proved and is not direct evidence, that seized marks are not authentic documents to prove clandestine dealings; that it is not established that any sale has been taken place with any of the buyers; that seized diaries do not contain vehicle number or name of the buyers; that confessional statements can not be relied upon unless corroborated by other evidences.

(ii) The allegation of receipt of raw material i.e. plates of iron & steel totally weighing 268.011 MT has not been proved and no statement of any ship breaker has been taken; that cost of sea freight of goods is not taken into account and no records of transportation like weightment cheques or corroborative entries in the said seized diaries; that consumption of electricity for clandestine manufacture is not established; that Daily Stock Account maintained by them is not challenged; that payment of Service Tax on STAs by Appellant No. 1 is not taken into account; that Annexures have not been countersigned by the proper Central Excise officer.

(iii) Appellant No. 1 has relied upon following case laws before the lower adjudicating authority:

- 1887 (90) ELT 343 (Tri-Chennai) Paraonozzi Dying & Finish work
- 2003(158) E.L. 702 (Tri-Chennai) M/s. Shagemeer India Pvt Ltd
- 2004 (165) ELT 291 (Tri-Chennai) M/s. Essvee Polymers P Ltd
- 2003 (153) ELT 213 (Tri-Chennai) M/s. Parshuram Cement Ltd

(iv) The production of goods has been determined on the basis of seized diaries without verifying whether they pertained to them or on the basis of production norms taken under the pressure of Central Excise Officer that information with regard to nature of materials, classes, breakdown of rolling mill power out etc. have not been taken in account, that they relied upon decision of the Hon'ble CESTAT in the case of M/s. Om Aluminium Pvt Ltd reported as 2014(311) ELT 354 (Tri-Chennai).

(v) That Shri. Narendrabhai R Gupta, Person-in-Charge of the Appellant No.1 has not confessed the facts and circumstances recorded by the DGOI but has only perused the various documents; that he has only stated that entries were not available in their records, that charge of unification of so called classes to removal has not been framed in the SIO; that no penalty is imposable on Appellant No.1 under Rule 25 (i) of the Rules.

#### Appellant No.2

3.2 Appellant No.2, Person-in-Charge, Manager and Authorised signatory of Appellant No.1, submitted similar grounds as submitted by Appellant No.1 in foregoing paras.

4 Personal hearing notices were issued to both Appellants. In response, Appellant No.1 and Appellant No.2 vide letter dated 31.12.19 made complaint under submission. Both Appellants vide letter dated 01.02.2019 waived the opportunity of personal hearing and requested to decide the matter on the basis of the grounds of Appeal and further written submissions as under:

4.1 Appellant No.1 stated that department has not supplied physical form of seized user documents; that CD containing copies of seized user documents is not the material evidence; that all private records has not been corroborated with Central Excise records maintained by the SIO breaking units along; that it is not established that any dutiable goods had been transported from the registered premises of Appellant No.1; that statement of Shri. Marish Patel is not material evidence that diaries do not contain vehicle numbers and freight charges, that authenticity of seized records from the premises of the Eicker has not been proved

by error computation by them. (ii) Central Excise records maintained by the Appellant, that statement of supplies of excisable goods has not been recorded; that allegation has been made on assumptions and presumptions.

4.2 Appellant 2 on the 2nd jurisdictional ground and accordingly, penalty on Appellant No.2, who is a Authorized Signatory of Appellant 1 is not imposed; that this submission will stand good for Shri. Samarjitkhai R. Gupta, Appellant No.2

4.3 Appellants in their letter no. 231 dated 15<sup>th</sup> November 2016 submitted that in the show cause notice charge of clandestine manufacture of excisable goods is framed; that money flow back on account of clandestine clearance has not been established; that buyers were not identified; that no statement regarding illicit removal has been recorded and no evidence of loss conclusion has been established; that Appellant No.1 has not cleared any excisable goods without payment of Central Excise duty as alleged in the show cause notice, that they do not desire persons testing in the matter.

#### Findings :-

5. I find that Appellant No.1 & Appellant No.2 have complied with required 75% pre deposit and hence meet the requirement of Section 20F of the Act.

6. I also find that Appellant No.1 and Appellant No.2 have waived the requirement of personal hearing though granted to them and hence, I proceed to decide his appeal on the basis of grounds of appeal raised, written submissions made by both the two Appellants and on the basis of available records.

7. I have carefully gone through the facts of the case, the impugned order and written as well as oral submissions made by the Appellants. The issues to be decided in these appeals are as under:-

(a) Whether Appellant No.1 has clandestinely manufactured and cleared finished excisable goods attracting CB duty of Rs.5,75,170/- and whether it should be recovered from them along with interest or not?

(b) Whether Appellant No.1 has wrongly availed Central Credit of Rs.2,60,356/- on the basis of invoices only, without receipt of physical delivery of the goods? and whether it should be recovered from them along with interest or not?

(c) Whether penalty of Rs. 5,15,100/- imposed on Appellant No.1 under Section 11AC of the Act read with Rule 21 of the CBE is correct;

(d) Whether penalty of Rs.2,50,000/- imposed on Appellant No.1 under Rule 15 of CCR,2004 is proper.

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Officer

(d) Whether penalty of Rs.70,000/- imposed on Appellant No. 2 under Rule 26(1) of the C&E is correct or otherwise?

R find that during coordinated searches at different offices/residence of various broker, transporters etc., (CGCF) recovered non-nominating documents like series, notebooks, files, loose papers etc. I find from statements of Shri Bharat Shekh (hereinafter referred to as "the broker") and Shri Venish Patel accountant of Shri Bharat Shekh (hereinafter referred to as "the accountant of broker") and the entries recorded in the notebooks/diaries, etc. recovered during search that the manufacture and clearances of excisable goods, namely, Pales and Scraps, etc. to buyers were made against cash transactions. The broker and the accountant explained the codes used in these private records and the transactions recorded in the recovered notebooks, diaries etc. The Person-in-Charge of Appellant No.1 (i.e. Appellant No.2) in his statement dated 29.2.2014 accepted that details recorded in diaries were found to be matched with the invoices issued by their unit i.e. Appellant No.1 and he knew Shri Bharat Shekh, Broker through whom they used to purchase MS plates from various Ship breakers. The Broker and accountant of the Broker in their respective statements deciphered the codes and also explained cryptic details of sales pertaining to Appellant No.1; that Diaries / notebooks recovered during search contain details indicating quantity, address, date, commission, etc. and the same have been covered during the course of investigation and detailed in the impugned Show Cause Notice. Statements of transporters and engagers in respect of Cash transactions.

3.4 In the instant case the non-nominating records seized during investigation have been duly corroborated by the broker, the transporters, engagers and accountant of the broker. I also find that the records seized during investigation are not related to only one manufacturer but many manufacturers involving specific persons associated in dealings of such illicit activities and hence, such evidence can not be crushed since treating them as third party evidences whereas these are common records involving more than one manufacturer and preserved by brokers, transporters etc. It is also relevant to point that the records have been perused by Appellant No.1, the Person-in-Charge of Appellant No.1 and veracity of transactions recorded in these records have been confirmed by him. In as much as 9 entries of transactions were on record, out of total 35 entries recorded in seized diary A7 and A13. Appellant No.2 has gone through all the entries and confirmed the correctness of the details recorded therein including purchase of raw material under Central Excise invoices. Appellant No.2 in reply to Question No.10 of his statement dated 29.2.2014 has stated as under:

(Signature)

Q. 10. Please advise me in regard to the entries in Annexure A-7 shown to you with your purchase register of date 12.12.2014 and offer your comments.  
A. 10. I have reviewed and found the entries mentioned in Annexure A-7 with the purchase register / purchase record of my firm and I state that many entries contained in said Annexure A-7 are not related with our purchase register / purchase record. The goods or services mentioned therein were purchased under the Central Excise Invoices issued by us and its details are recorded in the file. As regards remaining I state that the entries mentioned in your purchase register / purchase register in which goods / services mentioned in said Annexure A-7 are available in our records in respect of date 12.12.2014.

Q. 11. On comparison of the details contained in Annexure A-2 with your purchase record, it is observed that certain entries are not found in your purchase register / purchase register. This is understood that purchase invoices are available with you with regard to transactions carried out by you through Sri Charat Sheti Broker for purchase of Iron & Steel items. Please advise me your comments in this regard.  
A. 11. I state that we are not related to Iron & Steel items from various ship breaking units through Sri Charat Sheti, Charat. However, we are not aware as to who send the entries mentioned.

Q. 12. Please advise me in regard to the entries mentioned in Annexure A-5 shown to you with your purchase register / purchase record and offer your comments.  
A. 12. I have reviewed and compared entries mentioned in Annexure A-5 with the purchase register / purchase record of my firm and I state that most of the entries contained in said Annexure A-5 are not related with our purchase register / purchase record.

8.2 I find that San Waranori Himmatla Patel, Accountant of Sri Charat Sheti in his statement dated 27.7.2013, has stated as under:-

Ques 4. Who has signed the bill of lading for record A-7, A-8 and A-13 of the Resoumance dated 30.3.2014?

Ans- The copy of the bills mentioned in record A-7, A-8, A-13 of the Resoumance dated 30.3.2014 have been written by me in my own handwriting as per the instructions of Sri Charat Sheti.

Ques 5. ....  
Ans- ....

Ques 6. Regarding the record A-6 & A-13 of the Resoumance dated 30.03.2014 please explain details mentioned therein?  
Ans 6. ....

I further state that the diary mentioned in Sr. No. A/15 contains the details of the transaction carried out by Sri Charat Sheti in respect of supply of Ship Breaking Scrap to the various Rolling Mill units, provision of Central Excise Invoices to the respective purchase units for the period from 01.01.2008 to 31.12.2009.

It is said that diary also contains the details of cash money received from various Rolling Mill units / persons of the various Mills / agencies on account of supply of Ship Breaking scrap and also details of cash money of Central Excise Invoices delivered through Sri Charat Sheti.

Further, both the aforesaid diaries also contain the details of cash money given to the various ship breaking unit of Alang / Sasiya / persons of the concerned ship breaking units from which the materials was delivered clandestinely without Central Excise Invoices to the various Rolling Mill units of Gujarat and Maharashtra. Similarly, cash money was also given to the various Furnace units / persons of the Indian Furnace units for supply of Central Excise Invoices only on behalf of the concerned ship breaking unit after deducting the amount of Taxes (Central Excise - 14%) and our commission. Moreover, both the said diaries also contain the details of various expenditure incurred by Sri Charat Sheti and his family members viz. payment of household



Alls Electricity bills, petrol expenses, transport expenses etc. Both the said diaries also contain the details of monthly salary given to me. Further state that both the said diaries contain the details of transactions received in cash from the Trading MP and the supply of ship breaking scraps and from individual persons with the supply of various raw etc. Further state that majority of the entries relate to the day to day work of some of the ship breakers known as Mahabhai Sethi.

[Franchisee signature]

8.3 I find that the details of diary are explained in Page No. 55 to 57 of the impugned show cause notice with the aid of scanned copy of pages of diary at 14/3. I find that details of Diary mentioned at Sr. No. A13 to the Panchanama dated 30.03.2010 has been explained in exhaustive manner in answer to question No. 4 by Shri Manishbhai Himmatlal Patel Accountant of Sri. Mahabhai Sethi. In his statement dated 12.04.2013

8.4 I also find that in his statement dated 4.5.2011, Shri Mahabhai Himmatlal Patel Accountant of Appellant No.2, has explained as under:-

Ques-15 Please review Annexure - 23-A13 (Part to Part - V) prepared on the basis of diaries available in seized diary marked as A13. Please go through the same diary with the relevant details available in the said seized diary and after your observations also put your dated signature on the said annexure.

Ans-15 I have reviewed Annexure - 23-A13 (Part to Part - V) prepared on the basis of details available in seized diary marked as A13 and put my dated signature on the said annexures. I have compared the details mentioned in the said annexures with the details mentioned in the seized seized diaries A13 and found the same are true and correct.

8.4 Further find that Shri Mahabhai Manoharji Sethi, Broker in his statement dated 4.5.2011 has confirmed that Sri Mahabhai Patel was his paid employee and Accountant who has maintained the diaries. Relevant portion of the statement reads as under:

Ques.6 Please state that under whose instructions Shri Mahabhai Patel Accountant has maintained the seized diaries showing the details of business transactions carried out by you?

Ans.6 I state that I am working as broker and dealing with scrap obtained from breaking of ships by the ship breaking units situated at Angul, Odisha. Shri Mahabhai Patel has maintained the diaries under my instructions only as he is my paid employee. He has maintained the said seized diaries as per my directions & instructions only.

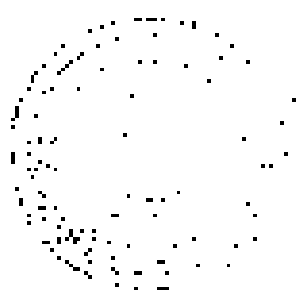
8.5 I find that creator and owner of the records has explained the set of clandestine clearances including pertinent transactions and all other relevant details including transportation. On going through explanation regarding the seized private records (diaries/panchamas) offered by Appellant No.2, I find that clandestine clearances by the Ship Breakers stand established as clear as confession by creator and owner of the records remained unchallenged. Conclusion of Appellant

Not that the investigation has not revealed the value production, buyers are not insured, money flow back, not getting credit examination, etc. are nothing but to disregard attempt to shift the cover to their activity of indulging in clandestine clearances of the excisable goods.

RG I find that at Para 10.2.1 (a) Page 1675 of the Show Cause Notice, illustrative transaction has been explained with the help of Scanned Image of page no. 182790 of serial 19177 (Image 4) showing transaction dated 8.1.2009. The said transaction recorded during the investigation (Image 1) reveals that invoice has been issued in the name of a buyer to whom physical delivery of the goods had not been made and goods have been supplied to Applicant No.1 where past transactions have also been recorded and explained. Relevant portion of the Show Cause Notice is reproduced as under:-

IMAGE-1

Sl. No.	Particulars	Amount	Remarks
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MS Bars for which MS Plates were made and material and they were purchasing and selling their raw material and finished goods mainly through the broker and he has not denied having been supplied the broker Shri Dhawal Sheth. The broker has confirmed the receipt of commission for the transactions recorded by him in respect of transactions of Appellant No.1 for supply of MS Plates. Therefore the bills rendered for the said goods were purchased by Appellant No.1 through the broker without the payment of excise and not accounted for in their statutory records. It is not the case that the Appellant No.1 a manufacturer was carrying out any trading activity. Thus the applicant has failed to establish that the MS Plates received by them are not utilized for the manufacturing of their final product. As regards assessment of output I find that Person-in-Charge of the appellant No.1 i.e. Appellant No.2 in his statement dated 28.2.2014 explained the input-output ratio, process of manufacture and also explained the burning and other losses in the process of manufacturing. It is very logical that such identification and explanation can not be dictated by any other person who is not sworn about such type of calculations and not concerned and known to such day to day activity. Thus the details given by Person in Charge are well placed to arrive at the assessment of central excise duty liability of the appellant. It is that while contesting the asses. the Appellant No.1 has not challenged the content of the evidence. It is fair to assume that investigation could not have done to select the evidence be it at brokers end or at supplier's end. Further investigation has also established by way of Admission by Transmitter accepting movement of goods recorded in Diary. The appellant has contended only by rejecting the evidences placed on record without bringing any positive facts in their support. Appellant No.1 raising evidences in form of discrepancies in Statutory records maintained by them to prove allegation against themselves can not be accepted.

3.3. Therefore, in absence of cogitive counter evidences, I am inclined to believe Appellant No.1 has no facts in their case that the demand of duty has been confirmed on the basis of unauthenticated documents by the lower adjudicating authority.

9.3. I find that the present proceedings also covers transactions recorded in those diaries where Central Excise has been passed fraudulently i.e. invoices were issued by Appellant No.1 without sending excisable goods to the buyer in whose name invoices were issued and same is dictated in text para of the order. Thus transactions covered under invoices also existed and recorded in diaries maintained by the broker.

9.4. I find that the statements duly substantiated are essential piece of



evidences, which have not been retracted at any stage by the statement makers and therefore, as per the settled legal position, sanctity of the same cannot be undermined by arguments only. Appellant No 1 sought cross-examination of witnesses under Section 20 without specifying as to how cross-examination will arrive at different conclusions. The Hon'ble CESTAT in the case of Lawn Textile Mills Pvt. Ltd. reported as 2013 TIOJ 1524. SC MAD CX has held as under :-

130. The above facts will clearly show that the allegation is one of clandestine removal. It may be true that the custody of proving such an allegation is on the Department. However, clandestine removal with an intention to evade payment of duty is absolutely in a secret manner and not as an open transaction for the Defendant to immediately demand the same. Therefore, in case of clandestine removal where secrets are involved, there may be cases where direct documentary evidence will not be available. However, based on the sworn reports of the Department (as to the facts established in case of clandestine removal) and the assessee is unable to give any plausible explanation for the same, then the allegation of clandestine removal has to be held to be proved. In other words, the standard and degree of proof which is required in such cases may not be the same as in other cases where there is no allegation of clandestine removal.

31. As noticed above, the assessee has not furnished any of the allegations which were put forth except for simple and direct admission of the assessee and sufficient merely to establish their innocence, nothing prevented the Managing Director to say so while making the declaration. From year to another made by the assessee to state that case by coming forward to give a statement and voluntarily request. The allegation of parallel working has not been disproved in the manner known to law. Thus, we find that the Appellate Authority, the Appellate Authority as well as the Tribunal concerned on facts and spec of them see given independent reasons for their conclusion.

32. Thus, in the absence of any jurisdiction in the finding, the Court cannot interfere with the factual finding recorded by the authorities as well as the Tribunal, as the cause of the appeal before this Court under Section 85 C of the Customs Act is in nature of a substantial question of law. We find there is no question of law, much less a substantial question of law arising for consideration in the instant case. Thus, the appeal filed by the assessee is dismissed.

[Emphasis supplied]

8.11 I find that statement dated 28.2.2014 of Person-in-Charge of Appellant No 1 has not been retracted and hence, has sufficient evidentiary value. The combined appreciation of a. oral and documentary corroborative evidences reflect that Central Excise duty evasion has indeed taken place. I, therefore, find that all these evidences are vital and hard evidences and are sufficient to prove this case against the appellants. In this regard, I rely upon the decision of the Hon'ble CESTAT in the case of Giri Prakesh Agarwal reported as 2017 (345) ELT 125 (Tri-Tel) wherein it has been held as under :-

15. I note that in both the proceedings above mentioned set of facts were involved. The allegation was that evasion on evidence collected from the supplier's side - communication records and further manufacture of defective items by the appellant was sought to be sustained. Ultimately, the case is not only based on the material evidence collected from the supplier's end and also as corroborated by the responsible persons of the standards end. The receipt and use of the such unauthorised raw materials for further manufacture has

apparently been satisfied by the respondents and one duty stamp paid has also been discharged during the course of own's examination. The appellants present enthusiastic on the veracity of the former's explanation by way of details of transport money receipt etc. It is not correct that the amounts collected from the supplier's side is (approximately) same amount as receipt of the goods received of the appellants. The same is accounted and verified by the possession of their contracts by the appellant who have in charge of the suppliers' side. After their purchase and brought before the number of the appellants' side, he categorically submitted introduction statements of dutiable items. However, he did not state the factors in which such products were sold in such manner, nor charge that the appellant has refer a plea that the appellant has not satisfied the details of items etc. Inasmuch of the related goods to such nature it is seen that the records maintained by the suppliers which were submitted by the appellant in their manner are incorrect as well. It is on the case of the appellant and the suppliers maintained such records only to falsely appear the appellant. It is not the supply of unaccounted raw materials has been maintained by the partner of the appellants firm. In such situation, it is not excuse for the appellants to, even in the appeal stage, raise the plea, by requisition of cross examination etc. Similarly, none of the appellants records or the statements given have been rejected as later recorded for their veracity. In the appeal before the Tribunal, the appellant is raising a belated objection that the statement by the partner of the appellant firm is not voluntary. Various case laws relied upon by the appellants in aid of his support in the present case in the cases involving unaccounted manufacture, the evidence of such case are to be appraised by courts. As noted already, the raw materials records at the suppliers' side as submitted by the appellant's partner are neither corroborated by the appellant partner he executed only on the ground of former evidence the transaction and receipt of money has not been traced. In a standardize manufacture and clearance, each stage of operation cannot be established with precision. On careful consideration of the grounds of appeal and the findings in the impugned order, I find no reason to interfere with the findings recorded by the court authority. Accordingly, the appeals are dismissed.

[Emphasis supplied]

8.12 It is settled position of law that in cases of clandestine removal, the Department is not required to prove duty evasion with mathematical precision. My this view is fully supported by judgments of the Hon'ble Supreme Court in the cases of *Shri. Shri Gumanmal* reported as 1989 (130) F.T.R. 1031 (SC) & *Mrs. Aarti Textiles (I) P. Ltd.* reported as 2009 (235) E.L.T. 587 (SC).

8.13 These statements, if not rejected, are legal and valid evidences in the eyes of law and have to be considered as corroborative evidences as held by the Hon'ble Supreme Court in the case of *Mrs. Anandji Sukhewani* reported as 1986 (83) E.L.T. 258 (SC) and the Hon'ble Delhi High Court in the case of *Rakesh Kumar Garg* reported as 2016 (331) E.L.T. 321 HC-Delhi. I also rely on the decision in the case of *Mrs. Hariana Steel & Alloy Ltd.* reported as 2017 (353) E.L.T. 451 (Trib-Del.) wherein, it has been held that pieces notebooks (diaries) seized from the possession of appellant's employee at the time of search showing entries for accounted as well as unaccounted goods which have been explained in detail and disclosed by GM of the factory tally with invoices & gate pass is trustworthy. That statement of employee running into several pages and containing detailed knowledge to be considered

reliable – also rely on the decision in the case of *M/s. Ramchandra Redna Pvt. Ltd.* reported as 2014 (202) E.T. 681 (S.C.) wherein similar view has been taken by the Hon'ble Supreme Court.

8.14 It is further noted that the Hon'ble CESTAT in the case of *M/s. N.R. Spongo F. Ltd* reported as 2019 (238) E.T. 453 (Trib.) has also held that when preponderance of probability was against the Appellant, pleading of no statements recorded from buyers, no excess electricity consumption found, no raw material purchase found unaccounted and no input-output ratio prescribed by law is of no use.

8.15 I, therefore, have no option to hold that the confirmation of demand of Central Excise duty of Rs. 5,75,170/- on the ground of clandestine removal of the goods, by the lower adjudicating authority is correct, legal and proper.

8.16 It is natural consequence that the confirmed demand of Rs. 5,75,170/- is required to be paid along with interest at applicable rate under Section 11AA of the Act.

9. It is to be noted that this is a case of clandestine clearances of the goods when has been established with many positive evidences. The extent of invoking extended period of demand and imposing penalty under proviso to Section 11AC of the Act are same as held by the Hon'ble CESTAT in the case of *M/s. Sun Microsystems India P. Ltd* reported as 2016 (336) E.L.T. 479 (Trib. - Bang.) and hence the impugned order has correctly imposed penalty equal to duty of Rs. 5,75,170/- evaded on account of clandestine removal, under Section 11AC(1) of the Act on Appellant No. 1. The lower adjudicating authority has also granted option of reduced penalty @25 % of duty evaded however, the same has not been availed by Appellant No.1 within 90 days of receipts by the impugned order.

10. Regarding recovery of Rs.3,60,358/- under Rule 14 of CGR 2004 from appellant No.1 for wrongly availed Drawal Order without physical receipt of the goods, I find that the lower adjudicating authority has recorded his findings at Para 21.4 and Para 22 as under:-

21.4.....

..... Even when seized from Module No.3 contain financial flow chart or copy or account of receipt of phone bills and/or telephone charges of finished goods either directly through or through and dealer has proved it with independent inquiry.

22.....

..... The examination and scrutiny of the raw duty stamp reveals that ship-breaking units have supplied only invoices or cleared goods and other ship-breaking materials exclusively through Dealer. Dealer No.2 has given certain amount received from Billing Unit units to M/s. Sanyasreeen Mysore

stipulated removal of the goods as well as to ensure better traders against charges raised by the court of law.

10. I find that at Para 100 of Page 50 to 55 of the Show Cause Notice, illustrative transaction has been explained with the help of Scanned image of page no. 189-190 of diary 19131 (Images, image .lib) and (V) showing transaction dated 3.1.2009. The said transaction as recorded during the investigation reveals that invoice has been raised in the name of Appellant No.1 without physical delivery of the goods and cash has been managed 'in and from' through broker and commission has been paid to the broker for such facilitation. Relevant portion of the Show Cause Notice is reproduced as under:-

W3354183

The image shows a scanned document, possibly a ledger or invoice, with a large black arrow pointing to the right. The document contains handwritten entries and several circular stamps. The text is mostly illegible due to the quality of the scan, but some words like 'Invoice', 'Date', and 'Amount' are visible. There are also some numbers and dates scattered throughout the document.



Image 13(b)

3.10.52 The above is some of the page No.190 of seized diary wherein it is contained the details of all transactions on the date 07.10.52 by deceased beneficiary, viz. of this page contains details of different sizes of plates which issued by different ship-breaking companies Rolling Mill through Shri. Ram. Shri. The entries are entered in the above manner as explained in under:

In first column, the 4<sup>th</sup> entry in 1<sup>st</sup> part of Page No. 190, 11<sup>th</sup> row in 1<sup>st</sup> column, which contains plot number of ship-breaking company The Ship Corporation, Plot No. 11, Ahmed Nagar, 1<sup>st</sup> ward, column, 11<sup>th</sup> has been mentioned with details of size of the plates which size is 10.585" has been mentioned with details of the plot number of the scrap at which recipient company required to make the payment to Shri. Ram. Shri. as well as Shri. Ram. Shri. is to make payment to ship-breaking unit. In the next column, "NG" has been recorded with the name of Shri. Mercedes Gupta of M/s. Satyaranjay Steel Industries, Jhansi, to whom plates were to be dispatched by Shri. Manish Datta, Jhansi, for Shri. Ram. Shri. In the next column, the recipient's name has been mentioned, viz. of Shri. Ram. Shri. The payment terms in the payment respect of the said scrap material to be made on the spot. In the next column "10.585" has been recorded which denotes the quantity in metric ton of scrap cleared to the said unit in the entry. It can be explained that the Shri. Ram. Shri. company, Plot No. 11, Ahmed Nagar Corporation, Plot No. 11, Ahmed Nagar cleared 10585 MT of scrap of size 10.585" @ Rs. 20,000/- per MT to Shri. Satyaranjay Steel Industries, Jhansi on 07.10.52 through Shri. Ram. Shri. The payment in respect of the said transaction was to be made on the spot by the recipient Rolling Mill unit.

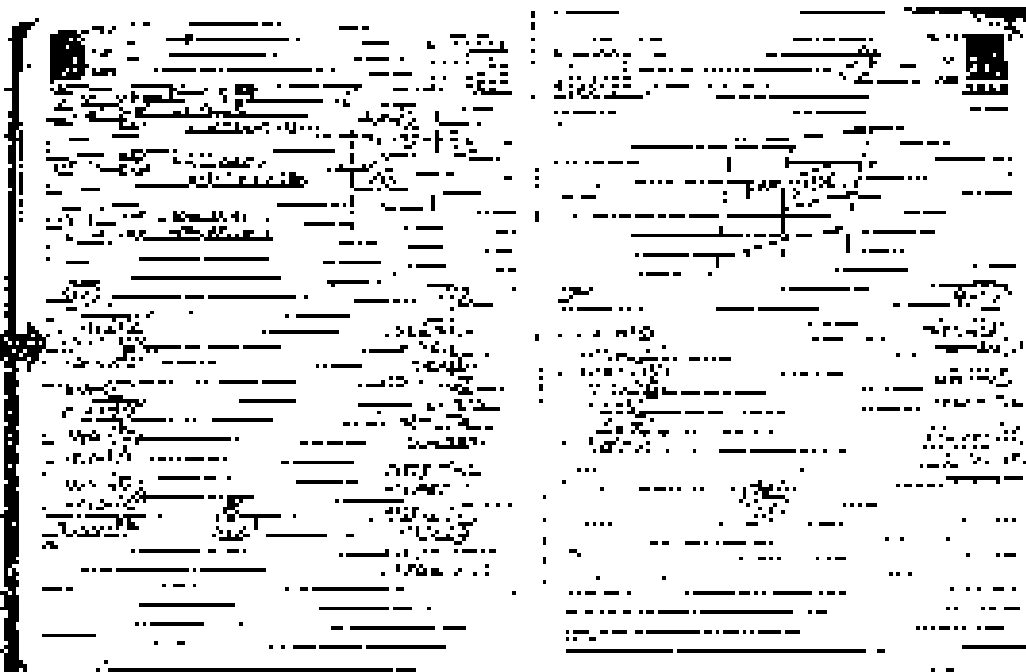
Similarly, the 7<sup>th</sup> entry available in the said page can be explained that the M/s. Shree Ganga Ship Breaking Co. Ltd., Plot No. 11, Ahmed Nagar cleared 10,500 MT of plates of size 10.585" @ Rs. 20,000/- per MT to Shri. Shree Steel Industries on 07.10.52 through Shri. Ram. Shri. The payment in respect of the said transaction was to be made on the spot by the recipient Rolling Mill unit.

3.10.53 Further, on the bottom of the page No. 190 of seized diary which is numbered as A-17 contained the details of amount given in cash on the day 07.10.52. The last entry "234490- NG" has been mentioned with details of amount Rs. 234,490/- was given to Shri. Ram. Shri. Satyaranjay Steel Industries on 07.10.52, which is followed by Shri. Ram. Shri. The above entry is not to be considered as the total amount is to be paid as a whole without considering the 7<sup>th</sup> entry. In the similar way, remaining entries are to be recorded on the page No. 190.

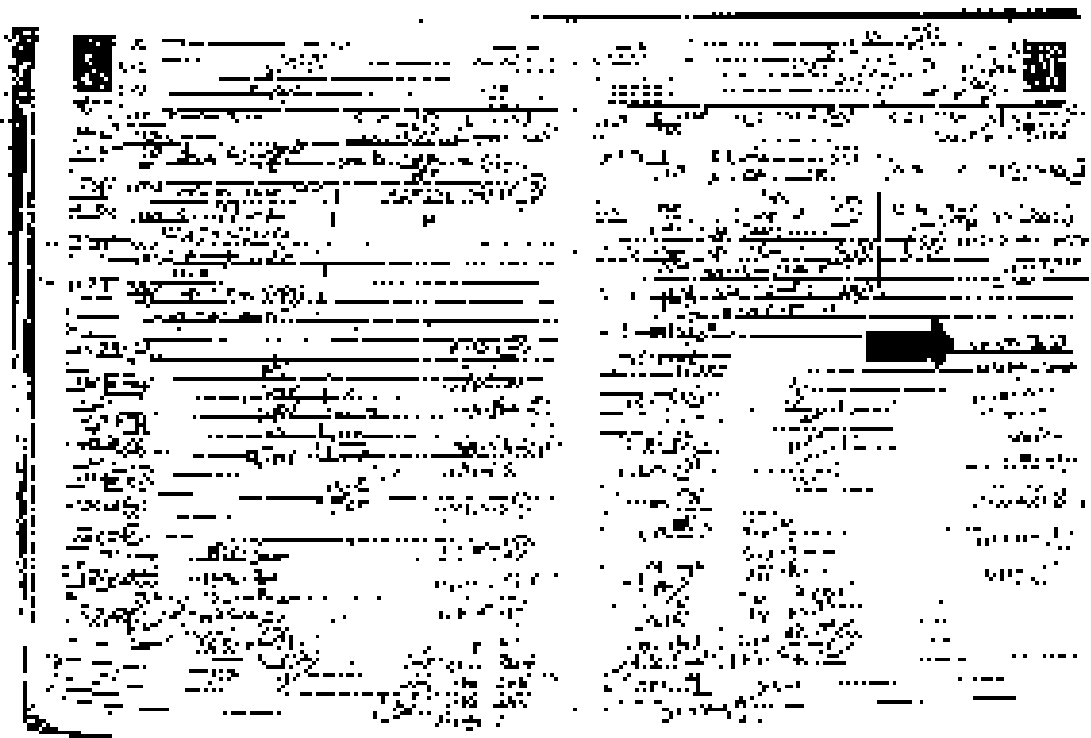
*(Signature)*

PAGE 11

10/11



11034 Further on the bottom right side of the scan of page 11 of seized Army National Guard ID contained the date 12/15/2002. The 17 entries (01000000-00000000) have been numbered with (01000000-00000000) some entries in each from 01000000-00000000. Entry 01000000 is assigned by 17 March 2002. Also, the sign "17" is not a 17, it is a 17 and the sign appears to be read as a whole without considering the "17" sign in the same way that the entries were made on this page.



10.2 The disclosures made during the investigation are not in dispute and Appellant No.2 and Person in Charge of Appellant No.1 has not denied the statement dated 28.2.2014 as discussed in heading Paras. Thus I hold that Appellant No.1 has wrongly availed Central Credit without receiving the inputs by them and on the basis of invoices only issued by the manufacturer. Therefore, I upheld the estimation of demand of Rs.3,50,358/- under Rule 14 of CCR,2004 in the impugned order.

10.3 I find that Appellant No.1 being a registered central excise assessees is well aware of the Central Credit Rules, 2004 and they knew liability to pay penalty on taking Central Credit without receipt of inputs as per Rule 15 (2) of CCR, 2004 which reads as under:-

*Rule 15 (2) In a case where the CENTRAL credit in respect of input or capital goods or input services has been taken or utilized wrongly by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of the Excise Act, or of the provisions hereunder with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of clause (a), clause (b) or clause (c) of sub-section (1) of section 144C of the Excise Act."*

10.4 I find that Appellant No.1 has availed Central Credit of Rs.3,50,358/- by making willful misstatement and by suppressing the facts in violation of CCR,2004 and hence, liable to penalty under Rule 15(2) of the CCR 2004. Therefore, penalty of Rs.3,50,358/- under Rule 15(2) imposed in the impugned order is correct and proper.

11. I find that Rule 28(1) of the CER reads as under :-

*Rule 28. Penalty for certain offences. -*

*(1) Any person who secures possession of or is in any way concerned in (i) removal, delivery, allowing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding one-fifth of such goods or two thousand rupees, whichever is greater.*


11.1 The Appellant, No.2 is the Person-in-Charge of Appellant No.1 and he is the person concerned, who dealt with such excisable goods and had reason to believe that the goods were liable to confiscation. I find that Appellant No.2 had actively involved in clandestine removals of the goods and hence, liable to penalty under Rule 28 of CER. Therefore, penalty of Rs.70,000/- on Appellant No.2 under Rule 28(1) of CER is correct and proper.

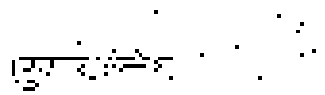
*(Signature)*

12. In view of above, I allow the first, second and third appeals filed by Appellant No 1 & Appellant No 2.

12.3 अंतर्गत आने वाले दूसरे, तृतीय व चौथे अपील का निस्तारण करवाया जाता है। अतः अपील न्यायाधीश है।

12.4 The appeals filed by the appellants are hereby allowed on above terms.

न्यायाधीश  
  
न्यायाधीश  
अदालत मुंबई-1

  
श्री. सातुबाबासाहेब

संबंधित आंक 2022

M/s Satyanshayan Shree Industries  
Plot No. 205A,  
GIDC-2,  
Sector 38-2/40,  
Shri Vardnra, Tal. Dahanu,  
Person In Charge,  
M/s Satyanshayan Shree Industries  
Plot No. 205A,  
GIDC 2,  
Sector 384240

श्री. सातुबाबासाहेब  
अधीनस्थ  
श्री. सातुबाबासाहेब  
श्री. सातुबाबासाहेब  
श्री. सातुबाबासाहेब  
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श्री. सातुबाबासाहेब  
श्री. सातुबाबासाहेब

आज्ञे

1. पक्षों को अपने-आपके खर्चों पर खर्च करने के संबंध में अंतर्गत आंक 2022, मुंबई-1 और अंतर्गत आंक 2022 के संबंध में न्यायाधीश है।
2. अंतर्गत आंक 2022 को खंड कर के संबंध में अंतर्गत आंक 2022, मुंबई-1 अंतर्गत आंक 2022 को खंड कर के संबंध में अंतर्गत आंक 2022 है।
3. वास्तविक अंतर्गत आंक 2022 को खंड कर के संबंध में अंतर्गत आंक 2022, अंतर्गत आंक 2022, अंतर्गत आंक 2022 को खंड कर के संबंध में अंतर्गत आंक 2022 है।
4. श्री. सातुबाबासाहेब
5. आंक 2022/2022 अंतर्गत आंक 2022

