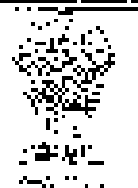


: (भारत सरकार का वित्त मंत्रालय एवं सशुद्ध कर केन्द्र, दिल्ली - 110 011)  
 GOVT. PRINCIPAL COM. & REGISTRAR, ST. & C. CENTRAL EXCISE



दिल्ली काज, संख्या: 28/100/99/99/99  
 काज के लिए जारी: 18/05/2019  
 प्रेषित: 28/05/2019  
 काज सं. 1081 - 267753-9441 - 401 - 401 - 401 - 401 - 401

अनुक्रमांक 199 का प्रस्ताव

- 1) आयोग के सदस्य -  
 Appellate No. 28/100/99/99/99/99  
 काज सं. 1081 - 267753-9441 - 401 - 401 - 401 - 401 - 401 - 401
- 2) आयोग के सदस्य के पते -  
 Appellate No. 28/100/99/99/99/99  
 काज सं. 1081 - 267753-9441 - 401 - 401 - 401 - 401 - 401 - 401

**STAY-EXCISE-APP-99-79-100-2019**

अथवा आयोग के सदस्य  
 (28/100/99/99/99/99/99)  
 श्री कुमार संतोष, (शिव अच्युत शर्मा), (कर्मचारी संतोष शर्मा)  
 District No. 28/100/99/99/99/99/99 District No. 28/100/99/99/99/99/99

1) आयोग के सदस्य के पते -  
 Appellate No. 28/100/99/99/99/99/99  
 काज सं. 1081 - 267753-9441 - 401 - 401 - 401 - 401 - 401 - 401

2) आयोग के सदस्य के पते -  
 Appellate No. 28/100/99/99/99/99/99  
 काज सं. 1081 - 267753-9441 - 401 - 401 - 401 - 401 - 401 - 401

3) आयोग के सदस्य के पते -  
 Appellate No. 28/100/99/99/99/99/99  
 काज सं. 1081 - 267753-9441 - 401 - 401 - 401 - 401 - 401 - 401

4) आयोग के सदस्य के पते -  
 Appellate No. 28/100/99/99/99/99/99  
 काज सं. 1081 - 267753-9441 - 401 - 401 - 401 - 401 - 401 - 401

5) आयोग के सदस्य के पते -  
 Appellate No. 28/100/99/99/99/99/99  
 काज सं. 1081 - 267753-9441 - 401 - 401 - 401 - 401 - 401 - 401

6) आयोग के सदस्य के पते -  
 Appellate No. 28/100/99/99/99/99/99  
 काज सं. 1081 - 267753-9441 - 401 - 401 - 401 - 401 - 401 - 401

7) आयोग के सदस्य के पते -  
 Appellate No. 28/100/99/99/99/99/99  
 काज सं. 1081 - 267753-9441 - 401 - 401 - 401 - 401 - 401 - 401

8) आयोग के सदस्य के पते -  
 Appellate No. 28/100/99/99/99/99/99  
 काज सं. 1081 - 267753-9441 - 401 - 401 - 401 - 401 - 401 - 401

9) आयोग के सदस्य के पते -  
 Appellate No. 28/100/99/99/99/99/99  
 काज सं. 1081 - 267753-9441 - 401 - 401 - 401 - 401 - 401 - 401

10) आयोग के सदस्य के पते -  
 Appellate No. 28/100/99/99/99/99/99  
 काज सं. 1081 - 267753-9441 - 401 - 401 - 401 - 401 - 401 - 401

1. The first part of the document is a letter from the Secretary of the Department of the Interior to the Secretary of the Department of the Army. The letter is dated 1910 and is addressed to the Secretary of the Army, Washington, D.C. The letter is signed by the Secretary of the Interior, Fredrick S. Henshaw.

2. The second part of the document is a letter from the Secretary of the Department of the Interior to the Secretary of the Department of the Army. The letter is dated 1910 and is addressed to the Secretary of the Army, Washington, D.C. The letter is signed by the Secretary of the Interior, Fredrick S. Henshaw.

3. The third part of the document is a letter from the Secretary of the Department of the Interior to the Secretary of the Department of the Army. The letter is dated 1910 and is addressed to the Secretary of the Army, Washington, D.C. The letter is signed by the Secretary of the Interior, Fredrick S. Henshaw.

4. The fourth part of the document is a letter from the Secretary of the Department of the Interior to the Secretary of the Department of the Army. The letter is dated 1910 and is addressed to the Secretary of the Army, Washington, D.C. The letter is signed by the Secretary of the Interior, Fredrick S. Henshaw.

5. The fifth part of the document is a letter from the Secretary of the Department of the Interior to the Secretary of the Department of the Army. The letter is dated 1910 and is addressed to the Secretary of the Army, Washington, D.C. The letter is signed by the Secretary of the Interior, Fredrick S. Henshaw.

6. The sixth part of the document is a letter from the Secretary of the Department of the Interior to the Secretary of the Department of the Army. The letter is dated 1910 and is addressed to the Secretary of the Army, Washington, D.C. The letter is signed by the Secretary of the Interior, Fredrick S. Henshaw.

7. The seventh part of the document is a letter from the Secretary of the Department of the Interior to the Secretary of the Department of the Army. The letter is dated 1910 and is addressed to the Secretary of the Army, Washington, D.C. The letter is signed by the Secretary of the Interior, Fredrick S. Henshaw.

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9. The ninth part of the document is a letter from the Secretary of the Department of the Interior to the Secretary of the Department of the Army. The letter is dated 1910 and is addressed to the Secretary of the Army, Washington, D.C. The letter is signed by the Secretary of the Interior, Fredrick S. Henshaw.

10. The tenth part of the document is a letter from the Secretary of the Department of the Interior to the Secretary of the Department of the Army. The letter is dated 1910 and is addressed to the Secretary of the Army, Washington, D.C. The letter is signed by the Secretary of the Interior, Fredrick S. Henshaw.

**ORDER IN APPEAL :**

The below mentioned appeals have been filed by the Appellants (hereinafter referred to as Appellant No.1 to Appellant No. 4) as detailed in the Table below against Order in Original No. BHV TXCLB-CCU-JG-49-2017-12 dated 25.01.2018 (hereinafter referred to as the impugned order) passed by the Joint Commissioner, Central Excise, Bhavnagar (hereinafter referred to as the lower adjudicating authority) :-

Sr. No.	Appeal No.	Appellant No.	Name of the Appellant
1	V2572BVR2017	Appellant No.1	M/s. HATRI Goods Plot No. 27-A (05), Ship Breaking Yard, Alang District Bhavnagar
2	V2573BVR2018-19	Appellant No.2	Sri Anil Jaisal Jain Proprietor of M/s. Hatmi Goods, Plot No. 24 A (06), Ship Breaking Yard Alang District Bhavnagar.
3	V2583BVR2016-19	Appellant No.3	Sri Vinod Anarash Shek Patel, Plot No. 102, Iscon Mega City, Opp. Victoria Park, Bhavnagar - 364002
4	V2571BVR2018-19	Appellant No.4	Sri Kishor Anandshibhai Patel, Plot Proprietor of M/s. Green Krishna Enterprise, 354, Shoppers Point, Parina Chowk, Daga Taredi Road, Bhavnagar

2. The brief facts of these appeals are that Appellant No.1 was engaged in the process of obtaining goods and materials by breaking ships, boats and other floating structures which amounts to manufacture in terms of sub-section 2 of Section XV of the First Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as 'CETA') and was registered with the Central Excise Department and has been availing Central Excise credit under the provisions of Central Excise Rules, 2004 (hereinafter referred to as 'the CCR'). Appellant No. 2 (Proprietor of Appellant No. 1) was alleged to have clandestinely cleared the excisable goods and evaded payment of Central Excise duty. Appellants No. 3 & 4 were brokers through whom clandestine goods were allegedly cleared by Appellant No. 1.

2.1 The officers of the Directorate General, of Central Excise Intelligence (hereinafter referred to as 'DGCEI') furnished intelligence indicating that some ship breaking units of Anandoshiya were engaged in large scale evasion of Central Excise duty by way of clandestine removal of plates to the Rolling Mills, diversion of goods, under-valuation of goods etc. and that most of such illicit activities were being carried out by the Ship Breakers with the support of some dealers. These brokers were obtaining orders from different Rolling Mills and Furnace units and many times were getting the material dispatched through some transporters without Central Excise invoices and without payment of Central Excise duty. These brokers were also procuring orders from Furnace Units and Registered Dealers for supply of Central invoices without any

*(Signature)*  
25/01/2018

physical supply of goods. DCCBI conducted comprehensive search at the premises of buyers at Bhandra and recovered several incriminating documents substantiating the intelligence. Thereafter another round of search operation was conducted at transporters, whose documents were available at the records of recipient firm at the premises of various Shri Bhandra Laxmi Dying Mills. A search operation was also conducted at the residence cum office premises of Shri Bhandra Sreth as well as Appellant No. 3 & Appellant No. 4 etc. No incriminating documents were recovered.

2.2 The above investigation led to issuance of Show Cause Notice No. DCCFI/AG/UR/90-91/2016-17 dated 01.08.2016 regarding recovery of Central Excise duty of Rs. 59,24,189/- from Appellant No. 1 on the provision of Section 11A (1) of the Central Excise Act 1944 (hereinafter referred to as 'the Act') along with interest under Section 11AB/Section 11AA of the Act and for imposition of penalty under Section 11AD/Section 11AC(1)(a) of the Act and imposition of penalty under Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as 'the Rules') and imposition of personal penalty on Appellant No. 2, Shri Bhandra Sreth, Appellant No. 3 and Appellant No. 4 under sub rule (1) & (2) of Rule 74 of the Rules. The said SCN was adjudicated by the lower adjudicating authority vide impugned order concerning Central Excise duty of Rs. 59,24,189/- along with interest and imposed penalties on Appellant No. 1 to Appellant No. 4 and upon Shri Bhandra Sreth, Bhandra as proposed in the SCN.

3. Being aggrieved with the impugned order Appellant No.1 to Appellant No. 4 preferred appeals, which are on file with the following details:

**Appellant No. 1 & Appellant No. 2:-**

(i) The impugned order has been passed only on the basis of assumption/presumption ground without any direct corroborative evidences and the impugned order passed on the basis of third party evidence only. The impugned order has been passed on the basis of the private note books seized from the premises of Shri Bhandra Sreth, Bhandra, Appellant No. 3 and Appellant No. 4 and in the impugned order, various statements of transporters/agents have been recorded and, these documents are not direct material evidences which cannot be relied upon under Section 9 of the Act, unless and until such documents have not been taken on records with regard to statutory records maintained by the Appellant No. 1. The inquiry has not been extended to the buyers premises to sustain charge of clandestine removal of excisable goods under dispute. The impugned order has been passed without benefiting the submissions of the appellants. They relied on decisions in the case of *Mithalaxmi Dying Mill* reported as 2016 (343) ELT 433 (M - Ahmed) *Aranta Arova Pvt. Ltd.* reported as 2016 (355) ELT 749 (T - Chennai) and *Jindal Dyeing Pvt. Ltd.* reported as 2016 (340) ELT 67 (P&I) in support of their contention.

(ii) The charge of clandestine removals has been framed on the basis of entries found in private records seized from the premises of Shri Bharat Shekh Broker and statements of transporters and bargidars. These evidences are hollow but third-party evidences which are far away from the Central excise records maintained by Appellant No. 1. The alleged clandestine removal of 446 MT of excisable goods has been taken from the entries maintained by Shri Bharat Shekh Broker has not been verified the Daily Production Register. The third party evidences cannot be relied upon unless and until the same are not cross examined by the adjudicating authority as there is a strict law that burden of proving the clandestine removal is cast upon the department. The charge of clandestine removal is required to be established by details of production and details of raw material used for production of such alleged clandestine removals; however, no such evidences have been placed on record to sustain the charge of clandestine removal of the excisable goods.

(iii) The charge of causing or fraudulent conveyance credit of Rs. 9,08,229/- was framed on the basis of entries found from the diaries seized from Shri Bharat Shekh Broker. It is admitted that after passing the loaded trucks from the factory gate of the Appellant No. 1, there was no control over the subsequent transportation of the goods. It is a fact that the Appellant No. 1 has received sale proceeds from concerned buyers of the said goods through cheques or RTGS. Unless and until statement of the recipient of invoices without receipt of the excisable goods is not recorded, the charge of fraudulent passing of conveyance credit is not sustainable. Further no statements of concerned drivers of the vehicles, if any, have been recorded to sustain that the excisable goods had not been physically received to the factory premises of the parties of whom control register invoices have been issued.

(iv) The charge of clandestine removal of goods involving central excise duty of Rs. 26,425/- has been confirmed on the basis of private records seized from the premises of Appellant No. 3 and Appellant No. 4 but, the para diaries dated 30.3.2010 under which the records were seized was not relied in SCN. Therefore, the charge of clandestine removal of excisable goods has been confirmed beyond SCN.

(v) Penalty under Rule 25 of the Rules is impossible where such goods are liable to confiscation. In the present case, no charge of confiscation of such goods has been framed in the SCN. The impugned order also failed to prove that the Appellant No. 1 and Appellant No. 2 were knowledge of confiscation of such goods. The appellate relied on decision of the case of *Spal Industries Limited* reported as 2005 (226) E.L.T 216 (T) - Mumbai. The lower adjudicating authority has not placed any corroborative evidences and not placed any evidence on records about buyers of the goods and no weighment slips, if any, have been placed on record to sustain the determination of so-called clandestine removal of the excisable goods. Therefore, no penalty is impossible.

under Section 14C(1)(a) of the Act and under rule 10 of the Rules.

(vi) The charge of undervaluation was raised on the basis of investigation conducted with M/s. Steel Rates and M/s. Metal & Alloy Rates Pvt. Ltd. and on the basis of statements of concerned persons of the said firms about the rates of steel iron & steel products published by them and the direct evidence to sustain the charge of undervaluation. The Appellant No. 1 has asserted the genuine transaction as well as every consignment under Section 14 of the Act and with Rules framed thereunder. The Appellant No. 2 in the statement dated 10/07/2016 stated that generally all the brokers and the buyers subscribed with regard to know the prevailing rates of steel plates and making scrap of Iron & Steel products which establish that the Appellant No. 1 was not taking help of said agencies for sale of the goods and therefore the undervaluation determined on the basis of information furnished by the above agencies is not genuine. The lower adjudicating authority has not produced any records confirming that the brokers/buyers also made use of such rates with reference to the said information and there is no evidence of money flow back were placed on record and no investigation has been conducted on the end of the buyers. Therefore, the impugned order has incorrectly discharged duty duty in respect of undervaluation of the goods.

(vii) The appellants had not suppressed any facts and circumstances with intent to evade payment of duty as also the impugned order failed to consider the same. Hence, SCN issued on 30.6.2016 by invoking exemption period for demanding central excise duty after two and half years from the completion conducted by DSOEL, which limited and SCN was required to be issued within one year from the date of procurement of the sales invoices and other details which were submitted vide appellants letter dated 14.10.2016.

(viii) The relevant documents are in huge number of pages therefore, the signature of concerned persons whose statements have been recorded including the statement of the Appellant No. 2 on various occasions and statements of Shri Manish Chauri, Accountant of Shri Dhara Steel Tower, Appellant No. 3 and Appellant No. 4 have been taken on the said statements in order of issuing period and read out. However, this is not possible during recording of statements. Therefore, the documents referred in the present case are not genuine looking to the human being natured, but just framed out the charges and confirmed the charges in the impugned order without application of mind to meet the principles of natural justice under Section 36 of the Act.

(ix) The Appellant No. 1 is a proprietorship concern and the Appellant No. 2 is the proprietor of Appellant No. 1 and therefore, both are not separate entity. If a unit works under the custody of proprietorship concern, no separate persons is imposable

upon the supervisor of the unit. Hence, penalty imposed upon the Appellant No. 2 under Rule 26(1) and Rule 26(2) of the Rules is liable to be set aside and quashed.

(x) The appellants also relied on following decisions in support of their above contentions -

- Um Aluminium Pvt Ltd - 2014 (131) ELT 364 (Tri - Ahmed)
- CBEIA v. Ahmedabad's Order No. AP/1333/1334/2010 dated 17.7.2015 in the case of Bharang Castings Pvt. Ltd.
- JSI Industries Ltd. - 1396 (108) ELT 313 (Tri)
- Kaseela Typing, Binding & Finishing Works - 2005 (124) ELT 821 (Tri)
- Insurance General Ltd - 3003 (150) ELT 213 (Tri - Del)
- Sangemacharya Pvt Ltd - 2003 (153) ELT 303 (Tri - Ahmed)
- Associated Cylinder Industries Ltd - 1905 (485) ELT 453 (Tri)
- Sansui Industries - 2017 (350) ELT 280 (Tri - Mumbai)
- Sanyal Traders - 2012 (275) ELT 458 (Tri - Del)
- B.A. Industries Corporation - 2005 (243) ELT 379 (Tri - Del)
- Vinod Kumar Gupta - 2013 (257) ELT 54 (PSM)
- Jayantibhai Patel - 2000 (244) ELT 140 (Tri - Ahmed)

(xi) The appellants have also placed above mentioned case laws during the adjudication however the impugned order has been passed in violation of principles of natural justice. The appellant relied on decision in the case of Karilaksh Finance Corporation Ltd. reported as 1291 (55) ELT 433 (SC) to say that the revenue officers are bound by the decisions of the appellate authorities and that principles of judicial discipline should be followed unhesitatingly by the subordinate authorities. The appellants also relied on instructions issued by CBEI vide F.No. 2017/2014 CX.8 dated 21.03.2014.

#### Appellant No. 3 & 4:

(i) The impugned order imposing penalty on them have been passed without entertaining their request to supply copy of relevant documents and therefore, the lower adjudicating authority has contravened the principles of natural justice rendering the impugned order as null and void.

(ii) The impugned order has not dealt with their pleas made in written reply and the judgments referred to and relied upon by them have been ignored by the lower adjudicating authority and therefore, the impugned order is a non-speaking and non-reasoned order that no findings have been recorded on the arguments raised before the lower adjudicating authority and he has casually and mechanically dealt with the pleas of the appellants. Thus, the findings are careless and self-serving in nature. Thus, the lower adjudicating authority has shown judicial indiscipline in not abiding by the various

*(Signature)*  
28/11/2017

judicial pronouncements relied upon by the appellants in support of their submissions. The appellants accept and reiterate the reasons stated made by them in reply to SCN and written submission filed before the additional authority.

(ii) The entries made in the dispatch vouchers filed by the appellants and the estimates written by the appellants after inquiry with the concerned ship broker and in absence of evidence the penalty imposed upon the appellants is not tenable. There is no evidence produced by the department of alleged inter transaction through the burden of proof is lying on the department. The appellants have not admitted the allegation that the Appellant No. 1 has cleared the taxable goods but desistently through them and there is no evidence regarding transport of taxable/clearable goods from the premises of the Appellant No. 1 and sale or purchase of goods by the buyers through the appellants. The case of the appellants is not governed under Rule 26(1) of the Rules as the appellants have not dealt with the excisable goods in any manner. The appellants relied upon decision in the case of *Goel vs. State of M.P. Co.* reported as 2002 (148) E.T.R. (T) in support of their contention.

4. Personal hearing in the matter was held on 01/06/2017 by S/SHri N.K. Jha and S/1 Guresh Consultants on behalf of Appellant No. 1 and Appellant No. 2 and reiterated the grounds of appeals and made written FH submissions that there is no evidence against them but only third party statements that the demands should be allowed in view of case laws on the issue cited by them.

4.1 Opportunities of personal hearing were granted to Appellant No. 3 & Appellant No. 4 on 25/02/19, 03/03/19 and 28/03/19 or 28/04/19 or 28/5/19, however, these two appellants did not appear for personal hearing on any of the given dates. Hence I proceed to decide their appeals on the basis of available records and grounds of appeal filed by them in Appeal Memoranda.

4.2 I find that Shri Bharat Shetye, broker has not filed appeals against the impugned order. Appellant No. 3 as well as Appellant No. 4 have filed appeals beyond period of 90 days but within further period of 90 days by stating reason that their consultant was busy with other adjudicating proceedings, that their consultant/Chartered Accountant was busy with work related to reply to notices of Income tax department and statutory work of nationalized banks. Since these appeals have been filed within further period of 90 days as prescribed under the Act, no condona order in filing these appeals and proceed to decide these appeals on merits.

**Findings:**

5. I find that Appellant No. 1 has demanded 1.5% of demand confirmed vide Cl. order dated 13/3/2012 as stated by them and Appellant No. 2 & Appellant No. 4 have



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deposited a 5% of penalty imposed on each of them respectively as submitted by them, in their Appeal Memorandum in compliance to Section 30(4) of the Act has been made by them.

5.1 I have carefully gone through the facts of the case, the impugned order and writs, as well as oral submissions made by the Appellants. The issue to be decided in the present appeals is whether the impugned order, in the facts and circumstances of this case, confirming demand and imposing penalty on the appellants is correct or otherwise.

5. I find that the officers of DGoCF, Ahmednagar conducted coordinated searches at the places of trucks and transporters, from where various incriminating documents like diaries, files, Inward papers, computer, server, etc. and LTMV receipts, booking / trip registers etc, were recovered. Further, searches were also conducted at the premises of ship breaking units and rolling mills.

6.1 It has been submitted that the adjudicating authority while passing the impugned order has completely ignored the submissions made by the appellants. However, I find that the adjudicating authority has stated detailed defense submissions of the appellants at various para-para of the impugned order and also given his findings.

6.2 It is on record that before recording the statement of Appellant No.2 (Proprietor of Appellant No.1), all evidences in form of documents recovered from the premises of Appellant No.1, 3 & 4, Shri Bharat Sheth, Broker and Transporters during investigation, were placed before him, that he has seen Panchnamas drawn at the premises of Appellants No.1, 3 & 4 Shri Bharat Sheth and at the premises of various transporters and the statements given by Shri Bharat Sheth, Broker and Shri. Manish Patel, Accountant of Shri Bharat Sheth, the statements of Appellant No. 3 & 4 and various transporters that he had been given full opportunity to peruse the same before giving testimony about the truthfulness or otherwise thereof. It is seen from the statements of Shri. Manish Patel, Accountant of Shri Bharat Sheth that the documents were in the form of diaries maintained by him for and on behalf of Shri Bharat Sheth, Broker. Thus, Appellant No.2 was given sufficient opportunity to examine documentary evidences duly corroborated by oral evidences collected from the premises of Shri Bharat Sheth, Broker and his associates as well as from the premises of Appellant No. 3 & 4 and transporters. He was also shown annexure prepared on the basis of investigation conducted in respect of goods seized from Appellant No.1, 3, 4 & Shri Bharat Sheth, Broker and transporters showing the details of the transactions carried out through Appellant No. 3 & 4 and Shri Bharat Sheth, Broker, by Appellant No.1. I find that from the documentary evidences viz. seized part of Appellant No. 3 & 4 and Shri Bharat Sheth, Broker and statements of the transporters, it is proved that Appellant No.1 has removed the goods with the help of Appellant No. 3, 4 & Shri Bharat Sheth, Broker

clandestinely and also fraudulently avoided or evaded duty by issuing Central Excise invoices without actual supply of excisable goods. These facts are also tallied with the records of Appellant No. 3, 4 & Shri Dhanraj Sheel, which are corroborated with the record of invoices issued by Appellant No. 3 and transporters, who have also admitted transfers of goods from one place to another place. These are substantial evidences in the form of documentary and oral evidences, or reports received from the firm and persons indulged in transaction with Appellant No. 1. And that the investigation has corroborated various evidences and satisfied evasion of Central Excise duty and fraudulent passing of Central Excise to Appellant No. 1. Therefore, it is proved beyond doubt that Appellant No. 1 has evaded duty of Central Excise of Rs. 14,10,004 as shown in relevant Annexure (g) of the Show Cause Notice. The records also show that Shri Dhanraj Sheel, Broker and his associate and Appellant No. 3 & 4, whose statements were accused by Appellant No. 1 while giving his own statements, never put any contradiction of statements at any point of time. Therefore, all these evidences substantiate the charges against the respondents and are valid, admissible and legal evidences in the eyes of law.

It is also a fact that the investigation undertaken by C&CEI proved the authenticity of records seized from various transporters, Appellant No. 3 & Appellant No. 4 and Shri Dhanraj Sheel, Broker, duly corroborated the same with records seized from other premises. Regarding demand of duty based on booking register of the transporters, it has been contended by the appellants that department has not adduced evidence with regard to quantity of goods and buyer of the goods, despite the fact that out of 74 entries found in the booking register of the transporters, except for 21 entries, Appellant No. 1 had issued invoices. Thus, authenticity of the booking register is beyond doubt. During investigation, statements of Appellant No. 2, who is Proprietor of Appellant No. 1 were recorded in which he failed to produce copy of central excise invoices in respect of clearances mentioned therein and admitted to have cleared goods without issue of invoices. I find that the registers maintained by the GMB, at the gate of ship breaking yard, provided corroborative evidence to establish that the Truck number mentioned in the booking register of the transporter are also entered the premises of this breaking yard on the given date and time. The appellants have not challenged the fact that only after finalization of deal, the trucks are engaged, in order to save money pertaining to cancellation of booking of truck. Therefore, there is no doubt that both the registers, viz. booking registers of the transporters as well as the registers maintained by GMB are authentic and genuine. Regarding buyers of such goods, it is seen that the booking register does not show names of the buyers, it shows only destination for which the trucks were hired. It is settled law that in cases of clandestine removal, document is not required to prove the case with a reasonable precision as held by the Apex Court in the case of *C. Bhoomrai* (1968) 109 ITR 1512 (SC), wherein it was held that -

31. The other central objective having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered to use the words of Lord Mansfield in *Bligh v. Agnew* (1774) 1 Cowp. 85 at p. 85 "According to the Proof which it was in the power of one side to prove and in the power of the other in fact contradicted". Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary case".

(Emphasis supplied)

34. I find that the Department has adduced enough evidences to establish that Appellant No. 1 was engaged in clandestine removals of the goods and therefore the case goes first by their are or to held to them as the facts of the present case clearly show evidences that Appellant No. 4 was engaged in evasion of duty by way of clandestine removals of the excisable goods without payment of Central Excise duty and without issue of invoices.

7. Regarding demand of duty on the basis of diaries recovered from brokers Shri Bharsi Sheth and Appellant No. 3 & 4. It has been contended by the appellants that the demand made on the basis of third party documents is not sustainable, however I find that in the diaries maintained by the brokers as well as bill transactions of the appellant were recorded. I also found that in case of many entries in the diary, invoices have actually been sealed by the appellant. Thus, the authenticity of the diaries and other records recovered from the brokers is established. Further, the brokers have admitted to have received the goods from appellants and without Central Excise invoices and send the goods without Central Excise invoices. Thus, the case is based not only on third party documents but duly corroborated by other evidences. Appellant No. 2 and Proponent of the Appellant No. 3 has not furnished any satisfactory explanation in respect of details available in the seized diaries showing transactions of the appellants from where goods were loaded and could not produce corresponding central excise invoices in this regard. This mechanism have never been testified by Appellant No. 2 and hence have sufficient evidentiary value. The combined effect of a such evidences is that the evasion has indeed taken place and Appellant No. 1 to Appellant No. 4 have indulged themselves in such Central Excise duty evasion. Hence, in this case third party evidences backed by confessional statements are admissible. It is on record that all transactions were recorded in systematic and correct manner and the case was made out after deciphering and decoding the same, even though Shri Vinod Anandhichha Patel and Shri Kishor Anandhichha Patel did not cooperate during investigation. The transactions recorded in diaries and storage receipts seized from Shri Bharsi Sheth, Shri Vinod Anandhichha Patel and Shri Kishor Anandhichha Patel were further

corroborated with relevant materials. These are the only direct evidences as per the Indian Evidence Act, 1872 and are sufficient to prove evasion of duty by Appellant No. 1 to Appellant No. 4.

7.1 Regarding allegation of underdeclaration, Appellant contended that the rates quoted by M/s. Major and Minor as per local state agencies/persons are not actual rates prevailing during that period. The traders, ship operators and brokers subscribed to publications issued by them and other local state agencies in order to ascertain prevailing market prices so as to evade their tax liability on goods. Inquiry conducted by DGOI with various marketing research agencies revealed that day to day price of 12mm size of plate is almost equivalent to average size of 8. size or rolling plate within the range of 8 mm to 23 mm. The price adopted by DGOI is relied upon by most of the ship breaking units of Andhra and the goods emerging out of breaking up of ship are sold at these prices. It has been in order to be just and fair, the investigation has allowed variation upto 2% in the price published by M/s. Major and Minor, in cases where agencies have indulged in fraudulent declarations as well as undervaluation of the goods produced by them, so one can establish one-to-one correlation of goods sold and payments received in cash or through agencies. In my view, this is sufficiently proved from the entries in the diaries recovered from Appellant No. 1, cash transactions took place between various trading mill/units etc. and Appellant No. 1 through brokers (Appellant No. 3 to 5). Therefore, Appellant's objection of transaction value and replacement of the same by the price prevailing is correct in view of Violation Rules read with Section 4 of the Central Excise Act, 1944.

8. The following case-laws are relevant to decide the correctness of the impugned order which are discussed as under:-

(a) The statements of the accused, if not rebutted, the same is legal and valid in the eyes of law. And his statements can be considered as corroborative evidence and no further evidence is required. The above has been held in the cases of (i) Nareesh L. Sukhewan (1986 (93) IIT 258 (SC); (ii) Rakshit Kumar Bary (2012 (33) EIT 321 -C-Galvt);

(b) That the admission is useless or is a substantial piece of evidence, which can be used against the maker of it has been held in the cases of (i) Asex Industries (2008 (230) 073 EIT (Trib. Mumbai); (ii) M/s. Dyne Solutions (2006 (205) EIT (Tri. Chennai); (iii) M/s. Kanti Fagg Winks (2004 (13) EIT 475 (Tri. Delhi);

(c) Statement of a trader and a witness persons of assessed admitting clearance of goods without payment of the tax - Excise duty and without issuing Central Excise licences compulsory and specific duty never imposed later on is admissible as admissible as held in the case of H. Jagan Appasaheb (S) reported as 2017 (346) EIT 600 (Tri. Del);

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

15. In view of the foregoing, I find that the Commissioner (Appeals) was wrong in taking the view that there is not enough evidence of clandestine removal of goods. Even though the statement of Shri Sarjaj Karjkar, who is said to be the author of the private records recovered has not been recorded, it stands admitted by Shri Tejendra Director about the truth of the contents of the private documents. Consequently, I find no reason to discard this piece of evidence.

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

(Emphasis supplied)

(b) The penalty on director of company is inordinate, when he was directly involved in the evasion of Central Excise duty has been held in the case of *F. B. Singh* reported as [2017 (271) ELT 15 (SC)].

(c) It is settled legal position that once a case of clandestine removal of excisable goods is established as has been done in the instant current case, it is not necessary to

proved the same with material evidence established by the Hon'ble Supreme Court in the cases of (i) *Shah Gulzar Mahomed vs* (1983) 15 E.L.T. 1546 (S.C.) and (ii) *Ashraf Textiles (India) Pvt. Ltd.* reported as (2001) 26 E.L.T. 106 (S.C.).

8.1 Appellant also rely on the decision in the case of *Haryana Spinn & A. Coys Ltd.* reported as 2017 (36) E.L.T. 191 (T. Del.) wherein it was held that no stocks (goods) seized from the possession of appellant's premises at the time of search showing entries in accounts as well as unaccounted goods which have been explained in detail and disclosed by GM of the factory with valid invoice/ gate pass is trustworthy. Oral statement of employee containing local knowledge to be considered as reliable. I also rely on the decision in the case of *Haryana Spinn Pvt. Ltd.* reported as 2014 (302) E.L.T. 481 (S.C.) wherein similar view has been adopted by the Hon'ble Apex Court.

8.2 Part of the view that admitted case need not be proved as has been held by CESTAT in the cases of *Alex Industries* reported as 2006 (33) E.L.T. 6003 (Mumbai), *M/s. Daire Sautons* reported as 2005 (20) E.L.T. 1005 (Chennai) that Confessional statements would hold the facts and there is no need to search for evidence. Hon'ble CESTAT in the case of *M/s. K. Gov. Engg. Works* reported as 2004 (192) E.L.T. 373 (T. Del.) has also held that Confession is a substantial piece of evidence, which can be used against the maker. Therefore Appellant's reliance on various case laws in regard to corroborative evidence and establishing circumstantial evidence cannot be validly explained in light of the positive evidences available in the case as discussed in the findings of the impugned order.

8.3 Hon'ble CESTAT in the case of *M/s. K.R. Sangee Field* reported as 2015 (328) E.L.T. 453 (T. Del.) has held that a total absence of probability was against the Appellant pleading of no material evidence from buyers, no excess electricity consumption found, no raw material purchase found unaccounted and no input output ratio contradicted by laws of physics. The relevant portion of the decision is reproduced below:

110. Recovery of the case assets and general ledger entries from the premises of the Appellant in the course of search proved the critical issues as representative of the clandestinely removed goods which were well within the knowledge of the Appellant. Whole involvement of Appellant in that regard cannot be denied since those materials were in the custody of the Appellant. It is obvious from the evidence that the materials being taken to the possession of them are only possessed by him. He proves ownership thereof and is answerable to the contents thereof. Receipt on which corroborating materials demonstrated clandestine clearance of 552.20 MT of Sponge iron and 897.00 MT of steel coils respectively was explained by Appellant. That also proved clandestine removal of 51,016 MT of Dolomite by the Appellant. Such removals were further proved from the records seized from the transporters (viz. Transporters Road Carriers and M/s. Global Roadways). No materials recovered from transporters brought out the exclusion of clandestine removal of 86,060 MT of Sponge iron and 55,555 MT of steel goods respectively. These clearances were not

substantiated by Excise invoices. When certain entries in the period handwritten ledger matched with the General Excise invoices and other books did not match, the unmatched entries, became testimony of clandestine removals not supported by invoices. Accordingly, such clearances became subject matter of allegation in respect of removal of 827.589 MT of sponge iron without payment of Excise duty. Similarly, the loose sheets when evaluated, that proved removal of taxable goods without payment of duty to the extent of aforesaid quantity of goods.

10.2 The statement recorded from shift supervisors being self-speaking cannot be brushed aside. Likewise, they knew the persons within plants knowledge goods being manufactured and cleared. This evidence was however, crucial and authentic for the reason that they vividly described methodology of removals.

10.3 Added to the above, the primary grounds, clandestine removal of the goods, not supported by Excise invoices. That resulted in loss of revenue. The invoice issued to, make payment of the duty evaded without contributing the revenue. Impoundment of the goods in period handwritten ledger and duty recovered from possession of Appellant during search. Entire planning of the Appellant therefore, failed to sustain when mala fide of the Appellant came to record. Clandestine removal was well within the knowledge of the shift supervisors, accountants, Director, transactions and commission agent. Each owner's evidence considered all of them and established unaccounted goods cleared without payment of duty. The most lively evidence of Kailash Agarwal brought the Appellant company to the veil of allegation. All of them established inextinguishable link of evasion. Shri Agarwal by his evidence attached all the persons involved in the chain of clandestine clearances without their detachment.

10.4 Preponderance of probability was against the Appellant. Pleading of the substantial material facts, never to excess resulting consequences found, no real material evidence found unaccounted and no without-duty iron presented by any is of no use to it. Revenue consequently, avails of gross income out the allegation in the above cause which sustains. But the Appellant miserably failed to discharge its burden of proof. It did not come out with clean hands.

10.5 It is not only one evidence, but multiple concrete evidence demonstrated oblique motive of the Appellant and proved its mala fide. Therefore, Appellant fails on all counts. Revenue's investigation was successful and its sufficiency was established.

(Emphasis supplied)

3.4 I further find that the Hon'ble GFSTAT in the case of M/s. Praveen Kumar & Co reported as 2015(326) F.T. 226 (T. Del) has held as under:-

"25. Voluntary confessional statement which is retracted after two years without any basis, has no legs to stand. The new facts have come on record in justify retraction when levy was paid consequent upon confession not made but twice. Further confessional statement rendered by Shri Praveen Kumar was also sanctioned by Shri Rajendra Kumar authorized signatory. Contradiction that remained removed even only referring to purchase and time taken and not to filed purchase of invoice is merely shorthought as pointing out to the fact that seized record are having reference to the purchase etc. Law no force as those facts were on record and were not challenged and volently admitted. Also duties on avoided invoices were paid in two instalment (2nd instalment being after a gap of four months). Once evasion is accepted and documents are confronted manifesting fraudulent intention to defraud, there is no room in learned Member judicial's contention that there were no investigators referring to impoundment of the materials and manufacture of huge quantity of final goods and transportation of goods. If first once an evasion is clearly admitted and these activities are undertaken in the

distances of eight or twelve miles from these activities. Once fraudulent intent to evade is established and facts established, proving such evasion by other activities which are not recording, and so giving a bonus to the dealer. As per Supreme Court's judgment in *C. Sivaraman v. ITO* (1925 (13) E.L.T. 1046 (S.C.) case, Examination is not required to prove its case with mathematical precision, but what is required is the establishment of such a degree of probability that a prudent man may on its case believe in the existence of facts in the issue.

(Emphasis supplied)

6.5 I find that no statements have been recorded by any person and facts recorded in the statements and contents of accounts have been assessed by Appellant No. 1, 2, 3, 4 & Sri Brahm Singh Bhandari in the statement. It is not a case that a single statement has been recorded and based upon the various statements of Appellant No. 2, 3, 4 & Sri Brahm Singh establishing evasive removal of final products by Appellant No. 1. In the circumstances, I am of the considered view that the statements recorded at different time and of different persons are not recorded under duress or threat. Facts of the statements have been conclusively corroborated by the facts and contents of Panchnamas recorded at the time of seizure. Therefore, I am of the well-considered view that denial of cross-examination by adjudicating authority does not violate principles of natural justice in the given facts of this case. My views are supported by the Hon'ble Bombay High Court's judgment in the case of *M/s. Sarda Ramdas Bangle* reported as 3317 (1967) CLT 412 (307) wherein it has been held that where directors have themselves admitted the guilt and statements have not been recorded, there is no question of cross-examination and denial of same does not give rise to any substantial question of law. Relevant portion of the judgment is reproduced below:

(3) The Tribunal recorded the following reasons:-

15.1 As regards the denial of cross-examination of Sri Thakur and Sri Anand Kumar Yadav and whether the said denial has caused any prejudice to the Appellants, it is seen from the records that the entries made in the private records were corroborated by Sri Ramdas Shivram Bangle, Director of the Appellant firm and Sri Anand Ramdas Bangle, Proprietor of M/s. Anand Bangle Machine Works, whom the clandestinely removed goods were sold whereas they had admitted that the entries recorded are true and correct and pertain to the unrecorded production, purchase of raw materials without accounting and sale of the finished goods in cash without payment of duty. Further from the records it is seen that about sixteen persons referred to in para 11.12 of the impugned order, who purchased the finished goods from the Appellants without payment of duty have also admitted that they had received these goods without the cover of proper valid documentation and without payment of duty. Similarly, two surplus suppliers, Mr. Yousuf Anwar Sheikh and Mr. Sheikh Muzamil Qureshi have also admitted that they have supplied the MS scrap which is the raw material for the manufacture of these goods without the cover of documents and they have received consideration for sale of such scrap in cash. These facts were evident from available records, as held that the denial of cross-examination of the authors of the private records has not caused any prejudice to the Appellants in fact none of the statements recorded have been refuted or doubted. In such a scenario, when the fact is not disputed, cross-examination of the party is not necessary. The Hon'ble Apex Court in the case of *Kanungo Company*



1923 (13) JT 7 1493 (S.C.) and the Hon'ble High Court of Andhra Pradesh in the case of Shri Sri Steels Pvt. Ltd. (supra) have held that there is no absolute right for cross-examination and if sufficient corroborative evidence exist cross-examination of the deponent of the statement is not necessary. In view of the above we hold that the denial of cross-examination of Shri Tharva and Shri Arvind Kumar Yadav who maintained the private accounts has not caused any prejudice to the Appellants.

From the above conclusions, we are also of the view that this was not a case which required cross-examination. The Government witnesses admitted the guilt. Six other allegations were proved. As said above, the statements recorded were not rejected or disputed. Learned counsel for the Appellants submitted that he can succeed in showing that these appeals should be admitted for deciding following question which according to him is substantial question of law:-

*"Whether denial of cross-examination of witnesses caused any prejudice to the Appellants?"*

We are not inclined to accept this submission in any of these appeals. There was no question of cross-examination, and therefore, denial of the same would not give rise to any substantial question of law. We perused the judgment of the Tribunal and find no scope to raise question. It is not necessary to interfere in it.

*(Emphasis supplied)*

8. In view of above, I find that Appellant No. 1 has evaded payment of Central Excise duty by way of clandestine removal of goods as well as by under-valuation of the goods. Hence, I hold that the order of adjudicating authority is correct, legal and proper.

9. As the said Appellant No.1 has intentionally adopted unlawful means to evade payment of central excise duty, the evasion, time and means-free of Appellant No.1 is clearly established. Therefore, I hold that the removal of excisable goods in this case was of nature to nature, illicit removal with intent to evade payment of excise duty and hence Appellant No.1 is liable for penalty usual to the duty under Rule 25 of the Rules read with Section 14C of the Act. In view of above, I hold that Appellant No.1 is liable to pay Central Excise duty of Rs. 58,24,158/- under Section 14 of the Act. It is a natural consequence that the continued duty is required to be paid along with interest as applicable as per Section 14A of the Act.

10. Appellant No. 2 has contended that Appellant No. 1 is a proprietorship concern and when penalty on Appellant No. 1 is imposed, no penalty on Appellant No. 2 is imposed under Rule 26(1) of the Rules. I find that in a case of proprietorship concern, the proprietor of the firm is not a separate legal entity and therefore, personal penalty under Rule 26(1) of the Rules cannot be imposed on Appellant No. 2 when penalty under Section 14C(1)(a) of the Act read with Rule 25 of the Rules is already imposed on the proprietorship concern. Hence, I set aside penalty of Rs. 2,50,000/- and Rs. 6,38,279/- imposed on Appellant No. 2 respectively under Rule 26(1) & Rule 25(2) of the Rules.

10.1. Sri Vinod Amarsinhrai Patel and Sri Kishor Amarsinhrai Patel, brothers (Appellant No. 3 & 4) have contended that they are not dealt with the goods in the manner prescribed under Rule 26 of the Central Excise Rules, 2002 and therefore they are not liable to penalty. It is found that the diary maintained by Sri Vinod Amarsinhrai Patel in coded language contained details of lot as well as date of clearance by Appellant No. 1. When asked about the entries in the diaries, he gave evasive replies. In the accounts were imaginary, he was giving accounts on Sundays, etc. He never cooperated with the investigator. However, BEO's officers got the coded data decoded and the whole picture of clearance he ran was got revealed. The decoded data matched with the data maintained in the electronic form and in case of some transactions, Appellant No. 1 had issued Central Excise invoices whereas for many transactions, no Central Excise invoices were issued and no Central Excise duty was paid. This authenticates the data maintained by Sri Vinod Amarsinhrai Patel. His brother Sri Kishor Amarsinhrai Patel was handling business of registered dealers and was involved in facilitating clandestine removal through his branch firm. The records also showed cash transactions for various lawyers and agents through a godown.

10.2. Appellant No. 3 & 4 in their submissions argued that they have not been indulging into clandestine activities but, accounts found in Pen Drive/Computer were written for learning about the software etc. It is found that they were not only indulging themselves in handling goods cleared clandestinely but were also indulged in abetting Appellant No. 1 in clandestine removal of the excisable goods. As far as data recovered from Pen Drive/Computer is concerned, this argument of learning about the software is nothing but an attempt to get out of duty liability. It is a common practice that any software is to be installed either in computer desktop or laptop and not in Pen-drive. To do something special with intent to carry out a way that is to one's knowledge, at later stage about the data, it is a practice to create records in Pen Drive to avoid detection from the computers. The correlation of data recovered by BEO's with the data available in Pen Drive is neither a mere coincidence nor a coincidence.

10.3. Appellant No. 3 & 4 also argued that they had given assistances for the documents to the investigating officers during search itself. It is understood, that Appellant No. 3 & 4 had not cooperated with the investigation and had given evasive replies at all. Therefore, their case is very much covered under rule 26 of the Rules and penalties of Rs. 23,465/- for abetting Appellant No. 1 in clandestine clearance of the excisable goods in each of Appellant's by the adjudicating authority under rule 26(1) of the Rules is proper and there is no need to interfere with the same.

10.4. It is found that the facts of the case and findings made from the judgments relied upon by these two appellants is as much as the documents recovered, analysis thereof and data storage services have been corroborated by the statements of Appellant No. 2.

Sri. Dr. S. S. Bicker and Shri. Manish Patel, Accountant, & Shri. Sheel Sheth, statements of Appellant No. 2 & 4, statements of transactions and records obtained from SBI authorities and the statements have never been restricted. The persons involved in this case have sincerely performed assigned and managed all affairs of deceased as details are made by Appellant No. 1 and hence, penalty imposed on Appellant No. 2 & 4 is justified in view of case-law discussed from Para 6 to Para 8.5.

11. In view of above, I shall be impugned order for demand confirmation and imposition of penalty on Appellant No. 1, Appellant No. 3 and Appellant No. 4 and reject their appeals, however, I set aside penalty imposed on Appellant No. 2 and 4 on his appeal.

12. आचार्यजीने दस्तावेजों की शर्तों के अंतर्गत उपरोक्त तरीके से किया जा रहा है।

12. The appeals filed by the Appellants stand disposed off in above terms.

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(सुनील शर्मा)  
अध्याक्ष (अपीलवाला)

By R.F.A.2,

To,

1. M/s. Estimote Steels,  
Plot No. 24A (85)  
Ship Breaking Yard  
A-802  
District-Bhavnagar.
2. Shri. Anil Usha Jain,  
Proprietor of M/s. Estimote Steels,  
Plot No. 24A (85)  
Ship Breaking Yard,  
A-802  
District-Bhavnagar.
3. Shri. Vinod Anandshikha Patel,  
Plot No. 102,  
Joshi VGS Colony,  
Opp. Victoria Park,  
Bhavnagar - 384002.
4. Shri. Kishor Anandshikha Patel  
Proprietor of M/s. Shree Krishna Enterprise,  
S.M. Builders Point,  
Hemrao Chowk  
Waghmawadi Road  
Bhavnagar.

Copy for information and necessary action to:-

- 1) The Principal Chief Commissioner GST & Central Excise Ahmedabad Zone Ahmedabad for his kind attention
- 2) The Commissioner GST & Central Excise Bhavnagar Commissionerate Bhavnagar.
- 3) The Additional Commissioner GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar
- 4) The Assistant Commissioner GST Divisional, Bhavnagar.
- 5) ~~Copy File.~~
- 6) T No. V215/DVR/2019-19
- 7) F.No. V289/DVR/2018-19
- 8) - No. V271/DV/2019-18