

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200

201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300

301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400

401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500

501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600

601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700

701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800

801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900

901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100

1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200

1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300

1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400

1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500

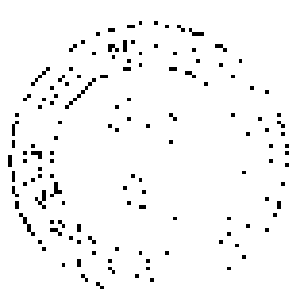


ORDER IN APPEAL :

The present two appeals have been filed by the Appellants (hereinafter referred to as 'Appellant No. 1 & Appellant No. 2') as detailed in the Table below against Order-in-Original No. BHV EXCISE 006 JC-44-2013-18 dated 22.01.2018 (hereinafter referred to as 'the Impugned order') passed by the Joint Commissioner, Central GST and Central Excise, Bhubaneswar (hereinafter referred to as 'the lower adjudicating authority'):

Sr. No.	Appellant	Appellant No.	Name of the Appellant
1	VEDA BROTHERS PVT. LTD.	Appellant No.1	M/s. Veda Bp. Brokers Pvt. Ltd., 2010, 520, Near Newraj Shopping Center, Malabadi, Bhubaneswar-751 001.
2	VEDA BROTHERS PVT. LTD.	Appellant No.2	Shri Ashutosh Agrawal, Director of Veda Bp. Brokers Pvt. Ltd., 2010, 520, Near Newraj Shopping Center, Malabadi, Bhubaneswar-751 001.

2. The brief facts of the case are that officers of the Directorate General of Central Excise Intelligence (hereinafter referred to as 'DGCEI') conducted coordinated search at the premises of some brokers at Bhubaneswar, of various manufacturers and transporters. After detailed investigation, Show Cause Notice No. DGCEI/AZU/36-54/2013-18 dated 05.06.2013 was issued proposing demand of recovery of Central Excise duty of Rs. 24,92,32 /- for clandestine manufacture and clearance of finished excisable goods and Central Excise duty of Rs. 34,80,662/- on account of undervaluation of goods from Appellant No. 1 under the proviso to Section 11A(4) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') along with interest under Section 11AA of the Act; imposition of penalty on Appellant No. 1 under Section 11AC(1)(a) of the Act and also under Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as 'the Rules'). The DGCEI also proposed to impose penalty under Rule 25(1) and Rule 25(2) of the Rules upon Appellant No. 2. The Show Cause Notice was adjudicated by the lower adjudicating authority, vide the impugned order, in which (i) Central Excise duty of Rs. 59,52,971/- was confirmed under Section 11A(1)(4) of the Act along with interest under Section 11AA of the Act and penalty of Rs. 59,52,971/- was imposed under Section 11AC(1)(a) of the Act with reduced penalty upon Appellant No. 1, (ii) penalty of Rs. 6,03,300/- under Rule 26(1) of the Rules and penalty of Rs. 3,59,358/- under Rule 26(2) was imposed on Appellant No. 2 i.e. Sri Ashutosh Agrawal, Director of Appellant No. 1, (iii) penalty of Rs. 1,12,101/- and Rs. 2,58,656/- under Rule 26(1) & 26(2) of the Rules, respectively, was imposed on Shri. Bharat Bhoj, Broker.



(Signature)

3. Being aggrieved with the impugned order, Appellant no. 1 to 2 have preferred appeals of various grounds as under:

(A) Appellant No. 1:

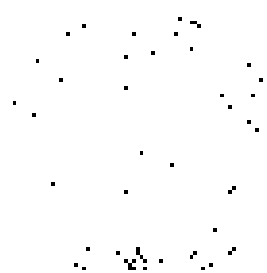
(i) The lower adjudicating authority failed to appreciate the material facts of the case and did not give proper attention towards submissions made by the appellant and issued the impugned order without considering their written reply and various orders/judgements cited by them;

(ii) The request for re-examination of all transporters was not entertained by the lower adjudicating authority without providing any specific reasons for not allowing. Thus, the lower adjudicating authority not followed principles of natural justice by not allowing cross-examination of all transporters and thus relied upon the following case laws:

- *Sulfinic Agencies* - 1990 (270) FT 53 (74) (40),
- *L. Chennuravasa* - 1990 (231) LL 209 (11),
- *Tushla Sarkar* - 2001 (31) FT 568 (71) (40),
- *Shree Chemels* - 2001 (12) LL 270 (14) (40).

(iii) It is well-settled principle of law that the charges of clandestine removal are serious charges and cannot be established on the basis of some registers of unverified nature; that the charges of clandestine removal which also result in criminal liabilities by way of prosecution of concerned persons are required to be proved by sufficient evidences and cannot be decided on the basis of some documents which may, at the most, create a suspicion but not an evidence and relied upon decision of the Hon'ble Tribunal in case of *Tegwal Special Industries* recorded as 2010 (212) LL 310 (11) (40), upheld by the Hon'ble Gujarat High Court reported as 2024 (254) LL 242 (10) (40) but they never showed the excisable goods in clandestine manner as alleged in the show cause notice to evade payment of excise duty; that the subject case has been covered on imaginary basis on assumptions and presumptions.

(iv) The appellant submitted that the lower adjudicating authority failed to collect corroborative documentary evidences of law applicable; that the subject case is purely based upon the records/documents/diaries and mixes reports received from the premises of Shri Bharat Sheth, broker and his statements; that DDOIT inquired with both parties and noted, not possible to the appellants to explain in write up of Shri Bharat Sheth; that neither they were provided any list of documents relied in the show cause notice which they have later deciphered large number of registers/diaries and names appearing in the pocket diaries/diaries/books seized from the brokers; that no evidence whatsoever,

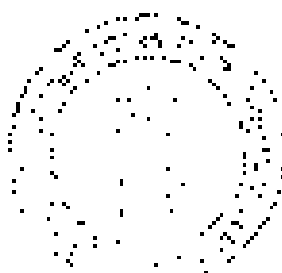


produced by the department, or alleged illicit transaction; that burden of proof is on the department; that they deny all the charges/allegation made against them regarding their involvement in clandestine removal of the goods; that the DGCEI failed to gather any evidence against them albeit for a very meagre quantity, to prove their involvement in clandestine removal of the goods; that the department failed to provide corroborative evidences with regard to movement of cash between consignee and consignee; that clandestine removal allegations cannot be fastened against the appellant based upon recovery of some private records from the premises of a broker in absence of corroborating and independent witnesses; that in this case, no such evidence is available.

(v) DGCEI on completion of investigation issued the SCN and developed the various charges; that the impugned order issued on the basis of clandestine removal allegation was not received from the appellants and allegation advanced based on assumptions and presumptions; that the impugned order not disclosed any material evidence and it is well established fact that demand issued on assumptions and presumptions cannot be sustainable; that the onus to prove clandestine removal of the goods is on the department who alleged that the appellants sold the goods illicitly; that they relied upon decision of the Hon'ble Supreme Court in case of *Ambar Lal* reported as 1950 (13) TIT 1371 (SC).

(vi) The appellants submitted that they did not indulge in under-valuation of the excisable goods, that they had not received differential payment in cash from the buyers as alleged under the show cause notice; that the investigation conducted by DGCEI regarding under-valuation from various companies does not reveal the actual market position; that it not compulsory for every one to sell goods at the price fixed by the various such agencies, it is upto the owner of the good that at what price he shall sell his goods; that the prices fixed by such agencies are for guidance and the same is not mandatory, obligatory; that demand to comply on the ground of under-valuation is on presumptions and assumptions and hence, not tenable.

(vii) It is established principle that intention about commission of an offence and culpability; that in the present case, in absence of any evidence that excisable goods manufactured by the appellants had in fact been cleared without proper invoices by them, facts and circumstances justifying the allegation of clandestine removal and under-valuation of excisable goods did not arise at all; that no evidence was adduced in the show cause notice to establish that the



(Signature)

Page 3 of 14

alleged acts or omissions may have committed by the appellants deliberately or consciously or in flagrant violation of provisions of law or with intention to evade duty; that no penalty was impossible when there was no mala fide intention to evade payment of duty; that an appellant is not liable penalty under Section 1-A of the Act.

(B) Appellant No. 2:

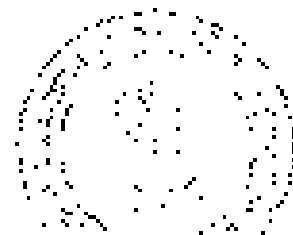
Appellant No. 2 criticised imposition of penalty of Rs. 4,50,000/- under Rule 25(1) of the Rules and Rs. 2,50,650/- under Rule 26(1) of the Rules on him on the grounds that the lower adjudicating authority has not dealt with the facts made by him (Appellant No. 2) in his reply and has not recorded any findings on the arguments raised before him; that the lower adjudicating authority has shown judicial discipline in not abiding by the various judicial pronouncements relied upon by Appellant No. 2; that the conviction of Appellant No. 2 as one of the beneficiaries is erroneous; that he as Director of Appellant No. 1 had not acted with any personal motives/benefits and hence, personal penalty imposed upon him is not proper; that a penalty could be imposed on a person who acquired possession of, or otherwise physically dealt with, any excisable goods which, according to him belief or knowledge, was liable to confiscation and thus, penalty under Rule 25 was not inoperative against him; that the department has not sought any specific evidence to prove that Appellant No. 2 actively involved himself in so called clandestine removal of the excisable goods and therefore, penalty imposed on him is not a law.

4. A personal hearing in this matter was attended by Shri Mahadev M. Vaidkariya, Advocate. He reiterated grounds of appeal and made written submissions in which he seeks to say that there is no evidence against them, that they demanded consignment notes from Shri. Bhatia, Broker and transporters but not a word; that they again demand cross examination of them and hence, request to remand these appeals/cases.

Findings:-

5. I have carefully gone through the facts of the case. The impugned order in written as well as oral submissions made by the Appellants. The issue to be decided is whether the impugned order, in the facts of this case, confirming demand and imposing penalties on the Appellants is correct or otherwise.

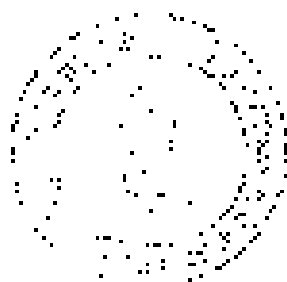
6. I find that Appellants filed appeals beyond period of 60 days but within further period of 30 days giving acceptable reasons. Since both appeals have



been that within further period of 30 days prescribed under Section 35 of the Act, I condone delay in filing appeals.

7. I find that the officers of DGCEI conducted coordinated searches at the places of various brokers and transporters, from where various incriminating documents like various diaries, files, loose papers, compact disk, pen drive, etc. and many receipts, booking/trip registers etc., were recovered. Further, investigations including search conducted at the premises of ship breaking units and rigging units revealed that the Appellants had indulged themselves in violation of Central Excise law as detailed in the Show Cause Notice and the impugned order. It is submitted by the appellants that the adjudicating authority, while passing the impugned order, has ignored the submissions made by the Appellants, however, I find that the lower adjudicating authority has discussed the issues involved and then given his detailed findings in the impugned order.

8. I find that Appellant No.2 (former of Appellant No.1) was shown all the evidences in the form of documents recovered from the premises of Appellant No.1, Brokers, Transporters and rigging during investigation at the time of recording of his statement; that he has specifically stated that he had seen all the evidences in form of documents recovered from Shri Bharat Shekh, Broker, Trip registers of transporters, statements of various transporters and brokers, and extracts prepared on the basis of investigation conducted, and para 11(a) and 12 of the order given by Shri Bharat Manharbhai Shekh, Broker and Shri Manshbhai Himmatlal Patel, Accountant of Shri Bharat Manharbhai Shekh; that he was given full opportunities to peruse the documents seized and statements made by others before giving his affidavit about the truthfulness and correctness thereof. It is seen from the statements of Shri Manshbhai Himmatlal Patel, Accountant of Shri Bharat Manharbhai Shekh, that the documents that were in the form of diary maintained by him for and on behalf of Shri Bharat Manharbhai Shekh. Appellant No. 2 was also given full opportunity to examine various documentary evidences duly corroborated by the oral evidences collected from Shri Bharat Manharbhai Shekh and Shri Manshbhai Himmatlal Patel, his accountant. At the time of recording statement of Appellant No. 2, he was shown the Panchnamas and also various statements given by Shri Bharat Manharbhai Shekh and Manshbhai Himmatlal Patel, accountant of Shri Bharat Manharbhai Shekh etc. He was also shown Annexures prepared on the basis of investigation conducted in respect of records seized from Appellant No.1 and Shri Bharat Manharbhai Shekh, Broker showing details of the transactions carried out during



Sri. Bhanu Manohar Sheth, Broker of Appellant No.1. I have taken from the seized copy of the Briar Sheet for the one Sheth, Broker and statements of all, it is proved that Appellant No.1 has removed the goods with the help of Appellant No.2 and Sri. Bharat Manohar Sheth, Broker clandestinely, as they as well as transporters have admitted transfer of them. I find that the Appellant No. 2 categorically admitted in his affidavit dated 20.01.2013 that whenever the invoice issued has been mentioned in Annexure 1/2 to the show cause notice, an invoice has been found issued by the Appellant No. 1. These are substantial evidences in the form of documentary and oral evidences on record recovered during search. I find that the Investigator has clearly corroborated evidences as regards evasion of Central Excise duty by Appellant No. 1 with active support of Appellant No. 2, Broker. Therefore, it is proved beyond doubt that Appellant No.1 has evaded duty of Central Excise of Rs. 58,52,971/- as detailed in Annexure of the Show Cause Notice. The records show that Sri. Bhanu Manohar Sheth, Broker and his accountant - Sri. Mansindra Hemrajai Patel whose statements were perused by Appellant No. 2 while giving his own statements, have never raised any objection at any point of time. Therefore, all these evidences substantiate the charges against Appellant No. 1 & 2 and are valid, authentic and legal evidences in the eyes of law.

7.2 I also find that DCCIT provided the availability of records seized from Sri. Bharat Sheth, Broker and also duly corroborated the same with records seized from other premises. Para 3.7.3, 3.10.1, 3.10.5, 3.10.6, 115, 3.14, 3.14.1 and 3.14.2 of the impugned order have illustrated the facts and details as to how the Appellant No. 1 has removed the excisable goods clandestinely with the help of Appellant No. 2 and Sri. Bharat Sheth, Broker.

7.3 Regarding demand raised on tracking registers of the transporter, it has been contended that the department has not adduced evidence with regard to quantity of goods and buyers of the goods. They have also raised questions on the authenticity of the register maintained by GMR at the gate of SPS Breeding yard. In this regard, I find Para No. 4 of the Show Cause Notice have detailed documentary evidences in the form of scanned images of registers maintained by the various transporters.

7.3.1 Stamped page of a page of tracking register maintained by M/s. Bikaner Punjab Haryana Roadlines, Bhavnagar is as under:

Page No. 1

in the above image, the entry marked with arrow shows that on 14.09.2009, Shri Kuldeep Sharma booked the order and supplied one Truck No. PB 12K 8263 to load goods from Plot No. 113, loc. 101 of M/s. Mrs. Ashish Ship Breakers Pvt. Ltd.

Appendix No. 1. I find that the Appellate No. 1 has issued Invoice No. 193 dated 14.09.2009 for Truck No. 12 A-4287 through Sri K. Sreenivasulu Rao, scanned image of the said invoice is attached.

APPELLATE NO. 1		INVOICE NO. 193	
DATED 14.09.2009		TRUCK NO. 12 A-4287	
Sl. No.	Description	Quantity	Rate
1	...	...	...
2	...	...	...
3	...	...	...
4	...	...	...
5	...	...	...
6	...	...	...
7	...	...	...
8	...	...	...
9	...	...	...
10	...	...	...
11	...	...	...
12	...	...	...
13	...	...	...
14	...	...	...
15	...	...	...
16	...	...	...
17	...	...	...
18	...	...	...
19	...	...	...
20	...	...	...
21	...	...	...
22	...	...	...
23	...	...	...
24	...	...	...
25	...	...	...
26	...	...	...
27	...	...	...
28	...	...	...
29	...	...	...
30	...	...	...
31	...	...	...
32	...	...	...
33	...	...	...
34	...	...	...
35	...	...	...
36	...	...	...
37	...	...	...
38	...	...	...
39	...	...	...
40	...	...	...
41	...	...	...
42	...	...	...
43	...	...	...
44	...	...	...
45	...	...	...
46	...	...	...
47	...	...	...
48	...	...	...
49	...	...	...
50	...	...	...
51	...	...	...
52	...	...	...
53	...	...	...
54	...	...	...
55	...	...	...
56	...	...	...
57	...	...	...
58	...	...	...
59	...	...	...
60	...	...	...
61	...	...	...
62	...	...	...
63	...	...	...
64	...	...	...
65	...	...	...
66	...	...	...
67	...	...	...
68	...	...	...
69	...	...	...
70	...	...	...
71	...	...	...
72	...	...	...
73	...	...	...
74	...	...	...
75	...	...	...
76	...	...	...
77	...	...	...
78	...	...	...
79	...	...	...
80	...	...	...
81	...	...	...
82	...	...	...
83	...	...	...
84	...	...	...
85	...	...	...
86	...	...	...
87	...	...	...
88	...	...	...
89	...	...	...
90	...	...	...
91	...	...	...
92	...	...	...
93	...	...	...
94	...	...	...
95	...	...	...
96	...	...	...
97	...	...	...
98	...	...	...
99	...	...	...
100	...	...	...

7.3.2 I find that the details given above in the register maintained by the ...

Transporter are matched with the details mentioned in the corresponding invoice issued by the Appellant No.1. Thus, authenticity of the booking registers of the transporters is well established. Regarding register maintained by the GM3 at the gate of ship breaking yard, it is clear that such register provides corroborating evidences to establish that the registration numbers of trucks mentioned in the booking registers of the transporters actually entered the premises of ship breaking yard on the given dates and time. Therefore, there is no doubt that the entries of booking registers of the transporters as well as entries in registers maintained by GM3 are authentic. Regarding buyers of such goods, it is seen that the booking registers do not show names of the buyers but show only destination for which truck was hired. Therefore, no investigation could be conducted at the end of buyers but this in itself does not absolve the Appellants from their act of out and out indulgence of evasion of Central Excise duty by clandestinely cleared the excisable goods without paying excise invoice and without payment of Central Excise duty. It is settled law that in cases of clandestine removal, department is not required to prove the cases with mathematical precision as have been held by the Hon'ble Apex Court and Hon'ble High Courts in many judgments including in the cases of *Shan Gulnar Mist* reported as 1984 (13) ELT 1546 (SC) and *Vatcat Textiles (India) Pvt. Ltd.* reported as 2009 (235) ITD 957 (SC).

As in view of above, I find that the department has adduced sufficient evidences to establish that Appellant No. 1 & 2 were actively engaged in clandestine removal of the goods and therefore, the case laws cited by them are of no help to them.

As I further find that Appellant No. 1 & Appellant No. 2 have intentionally adopted an avoid means to evade payment of central excise duty and their evasive mind and intention are clearly established. Therefore, I hold that Appellant No. 1 & 2 have indulged themselves in removal of excisable goods in clandestine manner with intent to evade payment of central excise duty as held by the Income tax order. In view of above, I hold that Appellant No.1 is liable to pay Central excise duty of Rs. 59,52,001/- under Section 11A(1) of the Act along with interest at applicable rate under Section 11AA of the Act and Appellant No.1 is liable to pay duty equal to Central excise duty under Rule 25 of the Rules read with Section 11AC of the Act.

As regarding demand of duty on the basis of diaries recovered from the

brokers Shri Shera. Manohar Lal Shera, whereby it has been contended that the demand made on the basis of sales party statements is not sustainable. I find that the diaries maintained by the Appellant have recorded lot and as well as lot-to-transactions and many invoices recorded in the diaries, invoices have actually been saved by Appellant, which establishes the authenticity of the diaries and other records maintained by the brokers. Further, the brokers have admitted to have purchased the goods from Appellant without invoices. They have also admitted that in many cases, in order to raise or convert credit fraudulently, they had supplied invoices to the party and the goods under these invoices to other parties. Thus, the case is based not on third party evidence but is corroborated by other evidence. The Director of Appellant No. 1 has in his responsive statement admitted that they had cleared the goods through issue of central excise invoices and without payment of central excise duty. Such statement has never been rejected and hence, may constitute value. The combined effect of all such evidence is to show that the evasion of Central Excise duty has taken place and the Appellant have indulged themselves in it. The contentions made by Shri Manohar Lal Shera were contradicted by Shri Shera Manohar Lal Shera and has never been rejected. It is to be noted that all transactions were recorded in diaries and other diaries and the case was made out after deciphering and decoding the same. The transactions recorded in diaries seized from Shri Shera Manohar Lal Shera were further corroborated with relevant records. Therefore, these are vital and crucial evidences as per the Indian Evidence Act, 1872 and are sufficiently proving the case against the Appellant.

7.7 Regarding average value, it has been contended that they were clearing the cargo at competitive rate based on material emerging from breaking of the ships and thus, the valuation was dependent on many factors like age of ship, quality of materials etc., and therefore, the price published by M/s. Major and Minors cannot be taken as the sole of assessment based on transaction value especially when the department has not proved receipt of money from buyers over and above invoice value. I find that the statements of various Agents were recorded, wherein clearly it appears that the transactions in unaccompanied cash were made and above the invoice value was paid. The prices published by M/s. Major and Minors are related to the ship breaking yards of Alang and the goods emerging out of breaking of ship are sold at or about the same prices. I find that in order to be just and fair, the investigation has allowed variation



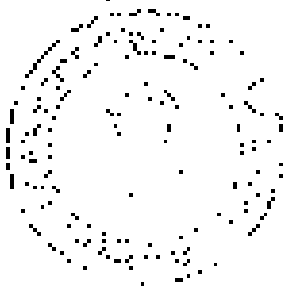
para 2 with the price published by M/s. Major and Minor. This fact alone that in a case where the appellants have indulged themselves in clandestine clearance as well as undervaluation of goods produced by them, no one can establish one-to-one correlation of goods sold and payments received in cash or through cheques. In my view, sufficient evidences are available in this case as per the sales recovered from brokers, cash transactions took place between various milling, mill/ft mill units and the appellants through the brokers. Therefore, I find that addition of prices payable to Ship Breaking units is correct in view of Rule 11 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 as well as Section 4 of the Central Excise Act, 1944.

7.3. In view of above, I find that Appellant No. 1 with active support of Appellant No. 2 has evaded payment of Central Excise duty by way of clandestine removal of goods as well as by undervaluation of the goods and hence, the order has to be held as correct, legal and proper in respect of both these Appellants.

8. As regards denial or opportunity of the Cross Examination, I find that the lower adjudicating authority did not find it fit to accord the opportunity of cross examination to the Appellant No. 1 (M/s. Jeyraj) (his opportunity). The lower adjudicating authority has relied upon the various judicial case-laws as is seen from paras 3.11.1 to 3.11.4 of the impugned order. This case is of clandestine removal and is fully supported by the host of oral and documentary evidences. The crucial fact here is that no department has contradicted its statement. Therefore, I do not see any difficulty in the denial of the lower adjudicating authority to deny to the cross examination to the appellants, especially when no specific reason for seeking cross examination has been given by the appellants.

9. Regarding wrongly passed or debit credit by the appellant, the records seized from Shri Bharat Manharbhai Sheth, Broker revealed that ship breaking units/units, invoices in favour of induction furnace units/dealers, milling mill units, without actual supply of goods and goods corresponding to the quantity mentioned in the invoices was supplied clandestinely to the various mill units including Appellant No. 1 with help of Shri Bharat Manharbhai Sheth, Broker. I would like to reproduce paragraph 3.14.2 of the impugned order, which is submitted to justify the appeal to that extent, as under:

"Under the name of Bharat Sheth, Sub No. 515, 542, Eastern Growth Ltd Bharat Sheth, Brokerage & Co. passed bills received from the Appellants and cleared for transaction of goods without payment of duty. The nature of the transactions in this case was the same as in the case of M/s. Jeyraj. Thus, it was instrumental in clandestine clearance of



13/11/77

goods by (1) direct supply to units or (2) to a unit that then supplies another absent from consideration) and the manner in which goods are and should be taken to the units. The evidence shows that Appellants No. 1 and 2 were made aware of the policies and procedures of the units. Further, the Appellants' knowledge of distribution to goods and means of means of unit and (b) actual physical supply of goods to a unit for an supply of goods (either through a direct or indirect unit) that the unit does not supply (quantity of 12 units from or to 1,234,567) by issuing an invoice or bill of lading without delivery of goods specified therein."

9.2 In view of above, I find that Appellant No. 1 issued only invoices without actual supply of goods to one unit and nonexisting supply of goods to another unit without cover of invoice and thus wrongly passed on certain credit of Rs. 2,59,654/- I find that Appellant No. 1 has wrongly passed on certain credit Rs. 7,59,858/-.

10. Regarding penalty imposed under Rule 26(C) and Rule 26(D) of the Rules on the Appellant No. 2, I was directed to impose Rule 26(C) and Rule 26(D) of the Rules, which are as under:

26(C) Penalty for breach of order - (1) any person who breaches or causes or permits to be breached any order made by the authority in writing, providing for the levy, collection, payment or distribution of any tax or duty or any other sum payable by or for any person, shall be liable to be punished with imprisonment for term not exceeding three years, or with fine not exceeding one lakh rupees, or with both, whichever is greater.

Provided that where any proceedings for the offence aforesaid have been conducted under clause (b) or clause (c) of section 217 of the Act in respect of any offence and penalty or punishment in respect of offence aforesaid persons, things or the property or the proceeds thereof have been dealt with, the provisions of this clause shall not apply.

(2) any person who contravenes any order made by the authority in writing, providing for the levy, collection, payment or distribution of any tax or duty or any other sum payable by or for any person, shall be liable to be punished with imprisonment for term not exceeding three years, or with fine not exceeding one lakh rupees, or with both, whichever is greater.

(3) any person who contravenes any order made by the authority in writing, providing for the levy, collection, payment or distribution of any tax or duty or any other sum payable by or for any person, shall be liable to be punished with imprisonment for term not exceeding three years, or with fine not exceeding one lakh rupees, or with both, whichever is greater.

(Emphasis supplied)

10.1 I find that Appellant No. 2 was the key person of Appellant No. 1 and was directly involved in clearance, storage of goods as well as transportation of the goods by Appellant No. 1. He was responsible for day-to-day functions of Appellant No. 1 and has concerned himself in matters related to excise goods including manufacture, storage, removal, transportation, selling etc. of such goods, which he was knowing and had reason to believe that they were liable to confiscation under the Central Excise Act, 1944 and rule made there under. I also find that Appellant No. 1 has passed on fraudulent certain credit to various units by issuing certain excise invoices but without actually delivering the goods with the help of Appellant No. 2 and other State Units. Therefore, I find that Appellant

of service under Appellate No. 2 (order Rule 26(1)) and also under Rule 26(7) of the Rules is proper and justified.

11. In view of above, I uphold the impugned order and dismiss both appeals.

12. अतिरिक्त शिप ब्रोकर की नई अपील के निष्कर्ष उन्नीसवारी के से किए जाते हैं।

13. The appeals filed by the Applicants stand dismissed for the reasons given.

क्र. 100/2018/303-9
प्रधान जज (का. अपील)
श्री अ. ए. ए. ए.
श्री अ. ए. ए. ए.

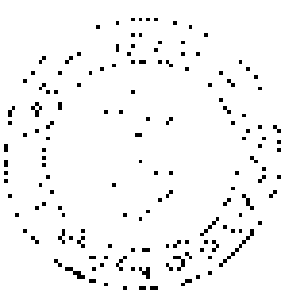
By Order
To

1.	M/s. Ansal Ship Brokers Pvt. Ltd., 22/19-22, Near Mainj Mandi Singh Center, Kalyabid, Bhavnagar 381302.	सेसल आशीष शिप ब्रोकर प्रा. लि., 22/19-22, नजदीक शोचि: सेसल के गज. जमिंदार बिल्ड. भावनगर - 381302.
2.	Shri Ashish Agrawal, Director of M/s. Ansal Ship Brokers Pvt. Ltd., 22/19-22, Near Mainj Mandi Singh Center, Kalyabid, Bhavnagar 381302.	श्री अशीष अग्रवाल, डायरेक्टर ऑफ. सेसल आशीष शिप ब्रोकर प्रा. लि., 22/19-22, नजदीक शोचि: सेसल के गज. जमिंदार बिल्ड. भावनगर - 381302.

प्रति,

- (1) जमान नुसत आचूष, केंद्रीय उत्पाद शुल्क का केंद्रीय उत्पाद शुल्क, अहमदाबाद क्षेत्र, अहमदाबाद को भेजना है।
- (2) जमान नुसत आचूष, केंद्रीय उत्पाद शुल्क का केंद्रीय उत्पाद शुल्क, अहमदाबाद को अग्रिम कार्यवाही है।
- (3) जमान नुसत आचूष, केंद्रीय उत्पाद शुल्क का केंद्रीय उत्पाद शुल्क, अहमदाबाद को अग्रिम कार्यवाही है।

(1) 17/06/2018 (2) F. No. 1275/303-2018-9.



2

3

