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IN ORIGINAL APPEALS :

The present cases appear to have been filed by the appellants (hereinafter referred to as Appellant No. 1 to Appellant No. 3) as detailed in the table below against Order No. Ctg no. 300/341-EXDLS-000-0-60/2017-18 (date: 15.03.2018) (hereinafter referred to as the impugned order) passed by the Joint Commissioner, Central GST and Central Excise Bhavnagar (hereinafter referred to as the lower adjudicating authority):

Sr. No.	Appeal No.	Appellant No.	Name of the Appellant
1	92/22/29/2018-18	Appellant No.1	M/s. Mahvir Industries Pvt. Ltd., Plot No. 4-5, Ship Recycling Yard, Soniya, Taluka-Talaja, District-Bhavnagar, Pin - 364 061.
2	92/23/29/2018-18	Appellant No.2	Sh. Rujinder Gupta, Director of M/s. Mahvir Industries Pvt. Ltd., Plot No. 4-5, Ship Recycling Yard, Soniya, Taluka-Talaja, District-Bhavnagar, Pin - 364 061.
3	92/24/29/2018-18	Appellant No.3	Sh. Vinodkumar Amarasilbha Patel, Plot No. 12, Gaur Nagar City, Opp. Vaidya Park, Bhavnagar, Pin - 364 002.

2. The brief facts of these appeals are that Appellant No.1 was engaged in the process of drawing goods and materials of breaking wire, nails and other fastening accessories, which amounted to their purchase in terms of Note 6 of Section 30 of the First Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as "CTTA") and had been availing Central credit from the provisions of Central Excise Rules, 2004 (hereinafter referred to as "the CER"). Appellant No. 2 (Director of Appellant No. 1) was alleged to have clandestinely cleared the excisable goods and received payment of Central Excise duty. Appellant No. 3 was known to transport the excisable goods were allegedly cleared by Appellant No. 1.

3. The officers of the Directorate General of Central Excise Intelligence (hereinafter referred to as "DGCI") conducted intelligence that wire-rod breaking units of Aaragadhia were engaged in large scale evasion of Central Excise duty by way of clandestine removal of materials to the Rolling Mills, diversion of goods, undervaluation of goods etc. with support of wire brokers who were placing orders from different Rolling Mills and purchase units and were getting the material dispatched through Transporters without Central Excise Invoice and without payment of Central Excise duty. DGCI conducted coordinated search of the premises of wire-rod transporters at Bhavnagar and recovered several incriminating documents. A search operation was also conducted at the residence cum office premises of Sh. Bimala Shah as well as Appellant No. 3 and incriminating documents were recovered.

2.2 The above investigation led to issuance of Show Cause Notice No. DSCB/JA/2012-318/23 dated 03.11.2012 proposing duties of Central Excise duty of Rs. 15,52,725/- for utmost re-manufacture and clearance of finished 6-1/2% goods and Central Excise duty of Rs. 49,63,670/- on account of under valuation of goods from Appellant No. 1 under Section 11A(4) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') along with Interest under Section 11AA of the Act imposed on Appellant No. 1 under Section 11A(1)(a) of the Act read with Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as 'the Rules') and also under Rule 26(1) of the Rules. The SCN was proposed to impose penalty under Rule 26(1) & Rule 26(2) of the Rules upon Appellant No. 1 and App. No. 3. The Show Cause Notice was adjudicated by the lower adjudicating authority, vide the Impugned order and (i) Central Excise duty of Rs. 66,26,364/- was confirmed under Section 11A(4) of the Act along with Interest under Section 11AA of the Act and appropriate amount of Rs. 1,99,577/- was levied by the Appellant No. 1 and penalty of Rs. 65,26,364/- was imposed under Section 11A(1)(a) of the Act with reduced penalty and penalty of Rs. 17,31,657/- under Rule 26(1) of the Rules upon Appellant No. 1, (ii) penalty of Rs. 5,50,000/- and Rs. 17,31,657/- under Rule 26(1) and Rule 26(2) of the Rules, respectively, was imposed upon Appellant No. 2 by Shri Rupinder Gupta, Director of Appellate No. 1, (iii) penalty of Rs. 67,647/- and Rs. 12,31,657/- under Rule 26(1) & 26(2) of the Rules, respectively, was imposed on Shri. Pradeep Sheth, Bunker, (iv) penalty of Rs. 20,000/- under Rule 26(1) of the Rules was imposed upon Appellant No. 3.

3. Being aggrieved with the impugned order, appellants No. 1 to 3 have preferred appeals on various grounds as under:-

**Appellant No. 1:**

(i) The impugned order has not at all dealt with the crucial facts and law rightly stated by the appellant before him. Their submissions and judgments referred to and relied upon has been ignored by the lower adjudicating authority which makes the impugned order non-speaking and non-reasoned; that the lower adjudicating authority has not recorded any finding on the arguments raised before him and has cursorily and mechanically set out the pleas of the appellant. The appellants adopt and reiterate the various pleas made by them in their reply to SCN and written submission filed before the lower adjudicating authority as if the same are specifically canvassed here.

(ii) They requested for cross-examination of all witnesses and accountant of Shri Pradeep Sheth, Bunker, which was not entertained by the lower adjudicating authority without stating any specific reason for not allowing. Thus, the lower adjudicating authority has

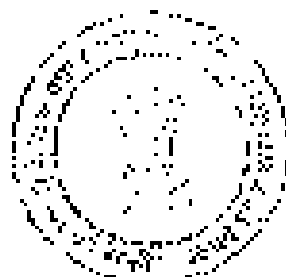
collected samples of nature justify by not allowing cross-examination of all transporters and accountants of and Shri. Shri. They relied upon the following case laws:

- State Transport Agencies - 2003 (122) ELT 168 (Tribunal);
- L. Chandan Kumar - 1990 (46) TTR 349 (Trib.);
- Taxation Board - 2001 (131) TTR 568 (Tri. Del.);
- State Transport - 2001 (130) ELT 271 (Tri. Calcutta).

(v) It is well settled principle of law that the charges of clandestine removal are serious charges and cannot be established on the basis of mere 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 against an evidence and relied upon decision of the Hon'ble Tribunal in case of Tejwal Dyer and Associates reported as 2007 (7) S. ELT 318 (Tribunal), upheld by the Hon'ble Gujarat High Court reported as 2008 (234) TTR 247 (Guj.); that they never cleared the excisable goods or completed the formalities required to be made to secure payment of excise duty; the evidence has been developed on imaginary facts or assumptions and presumptions.

(vi) The investigation in the present case did not go to the logical end. Apart from registers of transporters, which did not carry much evidentiary value, there is no evidence on record to establish the ownership of transporters by the appellants; there is no evidence except the statement of the transporters and broker, the oral statements of vehicle owners or their drivers or drivers of the goods, which were provided and no corroborative evidence are available on record about the receipt of any cash amount.

(vii) The documents and records seized from Shri. Shri. Shri, Broker are third party evidences; that SOA did not provide any list of relied upon documents of SOA, which was deciphered large number of unrecorded entries and names appearing in the books of accounts drawn up by the brokers; that no evidence has been produced by the appellants of a good faith transaction. The appellants deny all the charges levelled against them, that the appellants cleared these goods clandestinely have not been admitted by them nor is there any documentary evidence even remotely suggesting that the appellants were involved in the illegal removal of any such goods. There is no evidence in transport of goods or in any way cleared goods from the appellants' premises. The allegations of clandestine removal cannot be sustained only on the basis of statements but some corroborative evidence is required. No evidence regarding goods cleared by the appellant was found to be received by the buyer without proper invoice. No inquiry carried out at buyers. No corroborative evidence was in the books receipt of cash by the appellants. The impugned order issued on the basis of unimpeached books etc. recovered from Shri. Shri. Shri and allegation advanced based on assumption and presumptions; that the impugned order was sustained any material



evidence and it is well established that such demand based on assumption and presumption, cannot sustainable, that the onus to prove declaration removal of the goods is on the appellant, who alleged that the appellants sold the goods illegally. This may be found upon perusal of the Hon'ble Supreme Court in case of *Union of India* reported as 1991 (13) ELT 557 (SC).

(vi) The investigation carried out by Shri Vinod Patel and Shri Kishor Patel, Brokers did not produce evidences that under the Indian Evidence Act, burden of proof lies upon the department. Neither Shri Vinod Patel Broker has stated that he has procured the said taxable supply of goods from the appellant nor Shri Kishor Patel has stated that they purchased the taxable goods clandestinely from the appellants. The Director of the appellant has never stated that they have sold the goods clandestinely. The date referred from the particular bill by Shri Vinod Patel, had been due to practice of issuing bill by him. None of the witnesses has confessed that the goods cleared by the appellants had been clandestinely transferred by them and none of the angadhas confirmed that any amount has been paid to the appellant.

(vii) The appellants have not indulged in issuance of bill of the taxable goods as they have not received differential payment in cash from their buyers towards clearance of excisable goods. If the rates shown by M/s. Natar and Ninar as well as other agencies (previous and actual rates prevailing during that period as recorded by the Government of Gujarat) as Para 3.8, then they should have those bills for each and every invoice issued by the appellant during that period, however it has not been done. The investigating officers have also not by those invoices in which the transaction value is lower than the prices disclosed by the market research agencies.

(viii) As regard to passing of fraudulent credit or issuing of bills, it is submitted that there is no evidence on record to show that the appellant did not receive the payments regarding sale of goods in question through proper banking channel. There is no evidence on record to show that the appellant was deceived with the purchaser through Bill shared sheet by issuing duty paying document only. The entire alleged action of issuing impugned order is being conducted in an arbitrary manner and the same is illegal, void and violative of law rendering the impugned order liable to be quashed.

(ix) The penalty imposed under Section 114C of the Act is illegal. It is submitted that intentions about commission of any offence are to be proved. No evidence was submitted to the SC to establish that the alleged acts or omissions were done, committed by the appellant deliberately or consciously or in flagrant violation of prohibition of law or with intent to evade duty. No penalty was imposable when there was no mens rea intention to evade payment of duty.

Annexure No. 2.

(1) The impugned Order of Appellant No.1 and its reliance with any persons involve and thereby the imposition of persona penalty upon the is not proper; that penalty could be imposed only in cases where appellant apprehended or otherwise physically dealt with, any article or goods which, according to his belief or knowledge, was liable to confiscation. The appellant has no evidence that the appellant had a belief or knowledge that the goods were liable to confiscation by virtue of Rule 25(2) and hence inadvisable against the appellant.

(2) There is no evidence or record to show his involvement in evasion of Central Excise duty. Hence, as held by the CESTAT, Kolkata in the case of Keshav Kumar - Harad reported as 2013 (35) TTT 211 (Tri. - Kolkata), penalty cannot be imposed on him. The judicial pronouncements relied upon by the lower adjudicating authority are not applicable to this case.

(3) The order imposing penalty of Rs.12,31,577/- imposed on Appellant No.2 under Rule 25(2) of the Rules, is a finding that the appellant had not made clearance as mentioned in Annexure 3B.1.2 to the DC, through Shri. Satish Sheth without supply of goods to allow buyers to avail manufacturer's credit, hence, he is not liable to penalty under Rule 25(2) of the Rules.

Annexure No. 3.

(1) The appellant had requested to cross-examine Shri. Manoharabhai Arbhola Rana, Director of M/s. Bharat Metal Industries, Shrirangar. The lower adjudicating authority instead of granting permission of cross examination, adjudicated the case and thereby the impugned order has been passed without following principles of natural justice. They relied on following decisions in support of their conclusion:

- Sri Lina Agencies - 2000 (120) ELT 165 (Tribunals)
- Chankaravala - 1998 (48) TTT 285 (Tri.)
- Tantalum Syntex - 2004 (317) TTT 565 (Tri. Del.)
- Shreeji Chemicals - 2001 (130) ELT 271 (Tri. Kolkata)

(2) The appellant have relied on supply of relied upon documents so as to defend their appeal. However, they reversed the principles of natural justice.

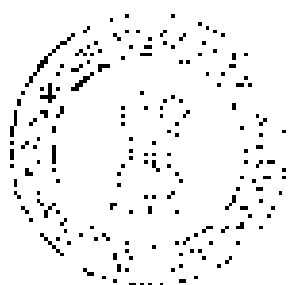
(3) The impugned order has not dealt with their pleas made in written reply and the suggestions referred to and relied upon by them have been ignored by the lower adjudicating authority and therefore, the impugned order is a non-speaking and non-reasoned order; that no findings have been recorded on the arguments raised before the lower adjudicating authority and, his has cursorily and mechanically dealt with the pleas of the appellants that the findings are not clear and well-reasoned. Hence, the lower adjudicating authority has



stated judicial discipline in not abiding by the various judicial pronouncements referred to by the appellant in support of their submission, the appellants agree and reiterate the various pleas made by them in reply to SCJ and written submission filed before the appellate authority.

(iv) Regarding findings recorded at Para 3.10.1 & Para 3.10.2 of the impugned order, the appellants submit that the entries made in the diary removed from the residence of the appellant are exclusively written by the appellant after taking into the concern of the breaker that regarding findings recorded at Para 3.10.3 of the impugned order, the appellants submit that the department neither provided any list nor called in SCJ in which they have listed deciphered large number of product names and names appearing in the various diaries, invoices, seized from the stores; that there is no evidence provided by the department of alleged illicit transaction, that the burden of proof is lying on the department; that regarding findings recorded at Para 3.10.5 & 3.10.6 of the impugned order, the appellants submitted that the allegation that the ship breaker has cleared the seized goods clandestinely through the appellant is not correct as the appellants have not admitted to this fact nor any documentary evidence even remotely suggesting that the appellants was involved in clandestine removal of any such goods; that there had to be an evidence regarding sale of so called illicitly cleared goods through the appellant to some persons; that the appellants have neither purchased nor ordered the seized goods clandestinely cleared from the premises of the ship breaker and also the authorized signature of the ship breaker has never advised that they have sold the goods clandestinely; that the allegation made by different witnesses in their statements are not relevant; that none of the transactions have confessed that the goods clandestinely cleared by the appellants has been transacted by them or none of the purchasers have confessed that the said goods were purchased by them or none of the traders confessed that amount has been paid to the appellants; that regarding findings recorded at Para 3.7 of the impugned order, the appellants submitted that the ship breaker nor whom it is alleged that the appellants have indirectly obtained the clearance of such breaking goods involving customs value of Rs. 75,840/-, have not offered any evidence nor any documentary evidence even remotely suggesting that the appellants was involved in clandestine clearance of the goods through the breaker as shown in a signature V42 to the SCJ.

(v) The appellant is not covered under Rule 28(1) of the Rules as the appellant has not dealt with the seized goods in any manner; that the ship breaker liable for a penalty under the rule is that the person has acquired possession of any excisable goods with the knowledge or belief that the goods are liable to confiscation under the Act or Rules or he has been in any way concerned in selling or purchasing or in any other manner dealt with the excisable goods; that the appellant relies on decision in the case of *Union of Mysore v. U.I. Co.* reported as 2702





1983, Act No. 101 (1) and Item No. 5 (1), amounting to Rs. 20000 (1000) and 450 (Tri. - 500.)

(2) The order impugned under Rule 26(1) of the Rules of Appellate No. 2 is Rs. 6,00,000/- for the alleged levy of 100% of Rs. 65,26,250/- (100% of Central Excise duty excluding interest penalty imposed on him under Rule 26(1) of the Rules is Rs. 75,844/- for alleged duty evasion of Rs. 75,844/- means 100% of the alleged duty evaded, which is a clear case of abuse of power and a judicial attitude of quasi-judicial authority.

3. A hearing in the matter was attended by Shri. Mahabir K. Vaidyanath, Advocate, who represented the grounds of appeal and submitted written submissions in support of the appeal to say that they had requested for cross examination of the transporter and his account and broker but cross examination was not allowed, that there are no evidences against Appellants that demand of mandating clearance can't be upheld only on the basis of secondary evidence and that the entries in the ledger of Shri. Mahabir Vaidyanath are only estimates and surveys, that the appeal may be allowed.

4. The Commissioner's finding is not only supported in the available evidence but also in the facts.

Findings -

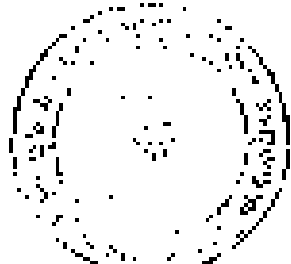
1. The order impugned is not a valid order of 60 days but with a further period of 30 days giving acceptable reasons. Since no appeal has been filed within further period of 30 days proper under Section 73 of the Act, I cannot delay in allowing appeal.

2. I have carefully gone through the facts of the case, the impugned order and written as well as oral submissions made by the Appellants. The 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.

3. I find that there were searches were conducted at the premises of various brokers and transporters and various incriminating documents like various bills, order papers, invoices, etc., were recovered, which clearly demonstrate, that a large quantity of goods, banking/IDP registers etc., were recovered.

4. The investigation including search conducted at the premises of the brokers and transporters, clearly revealed that the Appellants had indulged themselves in violation of Central Excise law as detailed in the Show Cause Notice. The Appellants claimed that the adjudicating authority, while issuing the impugned order, has ignored the submissions made by them, however, I find that the lower adjudicating authority has discussed the issues involved and also given his reasons therefor in the impugned order.

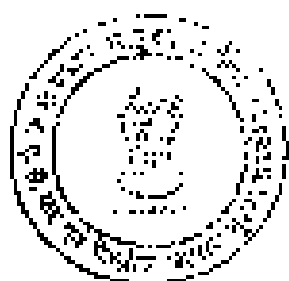
5. I find that the Appellate No. 2 (Director of Appellate No. 1) was shown evidences in the



3/11/2017

7.1.1. In the course of the investigation conducted from the premises of Appellant No. 1, Appellant No. 2, Sri Bharat Sheth, Broker, Transporters and at the time of recording of its statements, it has specifically stated that he had seen all relevant documents recovered from Appellant No. 2, Sri Bharat Sheth, Broker, his registers of importers, statements of various importers and brokers, Annexure prepared on the basis of investigation conducted, statements given by Appellant No. 3, Sri Bharat Manharbhui Sheth, Broker and Sri Manishrai Himmatrai Patel, Accountant of Sri Bharat Manharbhui Sheth, that he saw and the documents and material given by others before giving his own statements, and hence statements given have to be treated as correct and true. It is seen from the statements of Sri Manishrai Himmatrai Patel, Accountant of Sri Bharat Manharbhui Sheth that the recovered files were maintained by him for and on behalf of Sri Bharat Manharbhui Sheth. Appellant No. 1 was given full opportunity to examine various documentary evidences duly corroborated by the oral evidences obtained from Appellants No. 3, Sri Bharat Manharbhui Sheth and Sri Manishrai Himmatrai Patel, Accountant of Sri Bharat Sheth. At the time of recording statement of Appellant No. 2, he was shown the Panchnamas and also various statements given by Appellant No. 3, Sri Bharat Manharbhui Sheth and Manishrai Himmatrai Patel, Accountant of Sri Bharat Manharbhui Sheth etc.; that he was also shown Annexure prepared on the basis of investigation conducted in respect of records seized from Appellants No. 1, Appellant No. 2 and Sri Bharat Manharbhui Sheth, Broker showing details of the transactions carried out through brokers by Appellant No. 1. I find that the seized details of Appellant No. 2 and Sri Bharat Manharbhui Sheth, Broker and their statements prove that Appellant No. 1 was clandestinely removing the goods with active help of Appellant No. 2, Appellant No. 3 and Sri Bharat Manharbhui Sheth, Broker. I also find that Appellant No. 2 categorically admitted in his statement dated 22.10.2012 that wherever the invoice serial number has been mentioned in Annexure - VIII to the show cause notice, no invoice has been found issued by Appellant No. 1. These are substantial evidences in the form of documentary and oral evidences of records recovered during search of the premises. The investigation has clearly established evasion of Customs Excise duty by Appellant No. 1 with active support of Appellant No. 2 and brokers. Therefore, it is proved beyond doubt that Appellant No. 1 has evaded duty of (C.E.) of Excise of Rs. 50,76,75/- as detailed in Annexure - VIII of the Show Cause Notice. It is relevant to note that Appellant No. 3, Sri Bharat Manharbhui Sheth, Broker and its accountant - Sri Manishrai Himmatrai Patel were called and recorded at any point of time. Therefore, all these evidences substantiate the charges against the Appellants and are valid, admissible and legal evidences in the eyes of law.

7.2. I also find that the EXCI has seized the documentary records seized from Appellant No. 2 and Sri Bharat Sheth, Broker and also by corroborated the same with records seized from other premises. Para 1.1.3 to 1.7 & 1.11, 1.12, 1.13, 1.14 to 1.15, 1.16 to 1.19 and



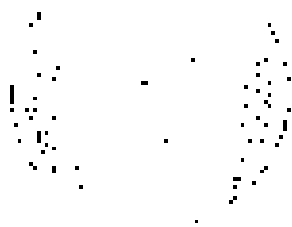
2.22 of the impugned order have illustrated the facts and details as to how Appellant No. 1 evaded the excisable goods clearance with active help of Appellant No. 2, Appellant No. 3 and Shri Bharat Shreeji Drexler.

2.23. Further the investigation undertaken by DCIT proved the authenticity of records seized from various transporters, Appellant No. 1 and Shri Bharat Shreeji Drexler and duly corroborated the same with records seized from other premises. Regarding demand books or booking registers of the transporters, it has been concluded that the department has not got any reliable data with regard to quantity of goods and buyers of the goods. It is noted that out of 42 entries found in the booking register of the various transporters, except for 41 entries in other entries Appellant No. 1 had issued invoices. Thus, authenticity of the booking register is beyond doubt. The detailed discussions by my Hon'ble S.S of the above cause matter, regarding the authenticity of entries in form of registers maintained by the various transporters, the authenticity of the booking register of the transporters is well established. It is a fact that Gujarat Maritime Board (GMB) maintained the stock at the gate of ship breaking yard and such register provided corroborating evidences in this case 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 the entries in registers maintained by the appellants are authentic. Regarding buyers of such goods, it is seen that the booking registers do not show the addresses of the buyers but show only destination for which truck was hired. There are no markings on the covers of the end of covers but this in itself does not exclude the appellants from their act of eludgement of evasion of Central Excise duty by clandestine movements of the related excisable goods without central excise invoices and without payment of Central Excise duty. It is settled law that in cases of manifest evasion, department is not required to prove the case with mathematical precision as has been held by the Hon'ble Apex Court and Hon'ble High Courts in many judgments including in the cases of *Shri Ramji & Co* reported as 1973 (13) ELT 1646 (SC) and *Katoot Textiles (India) Pvt. Ltd.* reported as 2009 (226) ELT 567 (SC). The Apex Court in the case of *D. Brookerji* - 1983 (13) ELT 1646 (SC) has also held that -

*"The well established principle having an important bearing on the standard of burden of proof is that where the weight of the evidence is to be considered to use the words of Lord Mansfield in *Smith v. Atter* (1774) 1 Cowp. 61 or *per* Lord Reid in *Shankar Prasad* (1954) 1 SCR 101, it was in the power of the State to prove and in the power of the other to have corrected. Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the defendant he is not obliged to prove them as part of its primary burden."*

(Emphasis supplied)

2.24. In view of above, it is clear that the department has secured sufficient evidence to



establish that Appellant No. 1 was actively engaged in clearance removal of the goods with help of Appellant No. 2, Appellant No. 3 and brokers and therefore, the case was filed by them and it is not to them.

6.5 I also find that Appellant No. 1 & Appellant No. 2 have intentionally adopted unlawful means to evade payment of central excise duty and their excessive mind and malafides are clearly established. Therefore, I hold that Appellant No. 1 & Appellant No. 2 have indulged in themselves in removal of excisable goods in clandestine manner with intent to evade payment of central excise duty as held by the impugned order. Section 114(b) of the Act and Appellant No. 1 is liable to pay Central Excise duty of Rs. 65,74,255/- under Section 114(b) of the Act along with interest at applicable rate under Section 114A of the Act and Appellant No. 1 is liable to penalty equal to Central excise duty under Rule 25 of the Rules read with Section 12AC of the Act.

7.6 Regarding demand of duty on the basis of duties recovered from the Appellant No. 3 and Shri. Shant Manohar Shetty, Broker, it has been contended that the demand has been made on the basis of third party documents is not sustainable. I find that the duties maintained by Appellant No. 3 and brokers have remained intact and as well as their transactions and many transactions recorded in the diaries, invoices have actually been issued by Appellant No. 1, which establishes the custody of the diaries and other records recovered from the brokers. Further, Appellant No. 3 and brokers have admitted to have purchased the goods from Appellant No. 1 without invoices. They have also admitted that many cases in order to provide central credit fraudulently, they has supplied invoices to other parties and the goods under these invoices to other parties. Thus, the case is based not only on circumstantial evidences but also corroborated by other evidences. Appellant No. 3 (Director of Food and Drug) has, in his statement admitted that they has cleared the goods without issue of proper invoice and without payment of central excise duty. Such statements have never been retracted and hence, have evidentiary value. The combined effect of all evidences are adduced in this case establish that evasion of Central Excise duty has taken place and the appellants have indulged themselves in it. The contention made by Shri. Manish Ch. Lalai Fate, with confirmation by Shri. Shant Manohar Shetty and they never been retracted. It is contended that all transactions were recorded in diaries and coded manner, and the case was booked, 207 issued only after deciphering and decoding the same. The transactions recorded in diaries seized from Appellant No. 3 and Shri. Shant Manohar Shetty were further corroborated with relevant records. Therefore, these are total or circumstantial evidences as per Section 3 Evidence Act, 1977 and have sufficiently proved the case against the appellants.

7.7 Regarding undervaluation, it has been contended that they were buying goods at

introduction and based on material emerging from breaking of the ships and trials, the value of material sold was more than the value of high quality material sold, and therefore, the value published by M/s. Major and Minors cannot be taken when the department has not proved receipts of money from buyers over and above the invoiced value. I find that the statement of the former Assistant Commissioner, Jaipur, clearly transpires that the transactions of unaccounted cash over and above the invoice value took place. The prices published by M/s. Major and Minors are relied upon by the steel breaking yards of Mang and the goods emerging out of breaking up of their stock of iron/steel at same prices. I find that in order to be just and fair, the investigation has allowed variation upto 2% in the prices published by M/s. Major and Minors. A definitive clearance as well as identification of goods produced by them, no one can establish any direct correlation of goods sold and payments received in cash or through agencies. In my considered view, sufficient evidence are available in this regard, therefore, the prices given in the impugned order is correct. In view of Article 14 of Constitution, Excess Valuation (Determination of Price of Excisable Goods) Act, 2001 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 cited as under:-

(i) The ratio of the cases, if not varied, the same is legal and valid in the eyes of law and the same can be considered as corroborative evidence and no further evidence is required as to a in the cases of (i) *Hawas Lal Sukhawari - 1996 (83) E.L.T. 253 (SC)* and (ii) *Rakesh Kumar Gang - 2013 (31) T.T. 121 (Delhi)*.

(ii) In view of the view that admitted and unadmitted taxpayers, as they were held by CESTAT in the cases of *Abul Induljees* reported as 2008 (230) E.L.T. 507 (Mumbai), *Divine Solutions* reported as 2006 (308) E.L.T. 1005 (Tri. Chennai), etc. Confessional statements would not be valid and the evidence is weak. In evidence before CESTAT in the case of *M/s. Karam Singh & Sons* reported as 2004 (240) E.L.T. 373 (Tri. Del.) has also held that admission/declarations is a substantial piece of evidence, which can be used against the maker. Therefore, Appellate's reliance on certain case laws relating to corroborative evidences and overlooking certain case laws cannot be marks any valid in light of the positive evidences available in the case as discussed in the findings of the impugned order.

(iii) Statement of creditors and authorized persons of assessee admitting clearance of goods without payment of Central Excise duty and without paying Central Excise invoice inculpatory and specific and never retracted after oral admission is admissible as to a in the case of *In. Taram Indries*, as reported as 2017 (348) T.T. 506 (Tri-Del.), unless a person is an assessee.

11. In view of material on record and the evidence as outlined above, I find that the statement of Director is the basis for the demand. The statement is inculpatory

and is specific. The Director (app.) admitted that the standard (journal) records recovered by the officer contained details of procurement of raw materials as well as clearance or finished goods with and without payment of duty. This fact is further strengthened by the observation and diary entries in the private documents and covers by the invoices issued by the supplier, on which duty stands paid. The Director (app.) further admitted the truth of the facts 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 *Singhvi & Components Pvt. Ltd. (supra)*. The articles of clandestine nature, if required to be proved by sufficient positive evidence. However, the facts peculiar to each individual case are required to be ascertained 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 ground that the statement has been taken under duress. The question 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 (appellant) has acted in taking the view that there is not enough evidence of clandestine removal of goods. Even though the statement of *Sri Suresh Kishore*, who is not to be the author of the private records recovered has not been recorded, it stands admitted by *Sri Prakash*, Director about the truth of the contents of the private notebooks. Consequently, there is no reason to disallow 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 evidences unearthed by the department are not statutory documents and would have gone undetected but for the investigation. It would thus be a clear case of suppression of facts from the department and certainly the extended period of limitation is inoperative in this case and hence the demand cannot be held to be time barred."

(Tribunal's findings)

(g) The liability on director of company is not liable, when he was directly involved in the evasion of Central Excise duty as held in the case of *T. S. Singhvi* reported as 2001 (2) 121 10 (Guj).

8.1 I also rely on the decision in the case of *Harvard Steel & Alloy Ltd.* reported as 2007 (355) E.T. 51 (Tri-Del.) wherein it has been held that notebooks (if any) seized from the possession of appellant's employee at the time of search showing entries for goods used as well as unaccounted goods which have been explained in detail and disclosed by CFO of the factory truly and honestly gave possession. In addition, that when entry of employee concerning detailed knowledge to be considered as reliable. I also rely on the decision in the case of *Ramkrishna Ramesh Pvt. Ltd.* reported as 2014 (302) E.T. 441 (Tri-Del.) wherein similar view has been adopted by the Hon'ble Apex Court.

8.2 The Hon'ble CBTR in the case of *Mrs. N.R. Sengupta & Ltd* reported as 2015 (326) E.T. 473 (Tri-Del.) has held that when propounder of a plea that he was against the appellants' production of no statements recorded from his oral, to access availability of statements found, he can

the ratio of the same materials and an input-output ratio prescribed by law is of no use to the relevant portion of the electric is regulated below -

This recovery of the loose shorts and punch perforation sheets from the premises of the Appellant in the course of search proved the contents therein as representative of the materials by removed goods which were well within the knowledge of the Appellant. Afore mentioned of Appellant in that regard came to record since these materials were in the custody of the Appellant. It is common sense that the materials having utility in the possession thereof are only possessed by him. It proved ownership thereof and it is inevitable to the contents therein. Entries on such bookkeeping materials -  
evaluated clandestine clearance of 562.100 MT of Sponge Iron and 507.510 MT of such goods - respectively well explained by Appellant. It also proved clandestine removal of 516.117 MT of Iron Ore by the Appellant. Such removals were further proved from the records seized from the transportation firm - Dhanwatar Road Carriers and Mrs. Girija Dasdas. The materials recovered from transportation - brought out the evidence of clandestine removal of 45.100 MT of Sponge Iron and 45.555 MT of such goods respectively. These quantities were not substantiated by Exhibits B-10, B-11, B-12 and B-13. In the course of search, entries on such bookkeeping materials and such entries did not match the constructed entries. Hence authenticity of clandestine removals was supported by evidence. Accordingly, such quantities became subject-matter of suspicion in respect of removal of 507.510 MT of Sponge Iron without payment of Excise duty. Similarly, the same goods were evaluated, that proved removal of such goods without payment of duty to the extent of substantial quantity of goods.

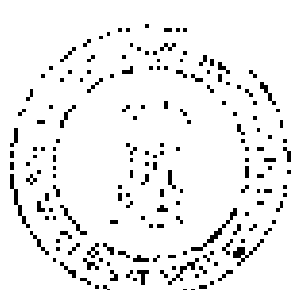
11.7 The recovery reported from this sub-business being self-speaking cannot be doubted and in view that goods are seized within whose knowledge goods were manufactured and stored, their evidence was believable, cogent and credible for the reasons that they apply described methodology of evaluation.

11.8 Added to the above, the circumstances admitted clandestine removal of the goods by violation of Excise duties. That resulted in loss of revenue to Government, admitted to make payment of the duty evaded without authorizing the relevant implications of the entries in search handwritten ledger and units recovered from possession of Appellant during search. Entry evading of the Appellant therefore, failed to sustain after search from of the Appellant came to record. Clandestine removals were well within the knowledge of the said sub-business, accounts of Director, Inventory and Accounts - goods. Such other's evidence corroborated all of them and established clandestine goods cleared without payment of duty. The said other evidence of Market Agency brought the Appellant-conspiracy to the end of litigation. All of them - established verifiable link of evasion. The Appellant by his evidence attacked all the persons involved in the chain of clandestine movement without their discomfit.

11.9 Presumptions of probability were against the Appellant. Reading in the material evidence - the burden on papers electricity consumption (input) is one material fact - the Appellant's account and its input-output ratio prescribed by law is of no use to it. It is not a measure of exact bringing out the evidence in the above cause which supports, but the Appellant's account failed to discharge its burden of proof. It did not come out that it was correct.

11.10 It is not only the evidence, but various other evidence demonstrating obvious malice of the Appellant and proved its own facts. Therefore, Appellant fails on all counts. Revenue's investigation was successful and its authority was established.

(Emphasis supplied)



3.3 I further find that the Hon'ble CJM of the case of Shri. Praveen Kumar & Ors. (Case No. 1013(28) of 2015 (T-10)) has held as under:-

"72. Adversely compressive statement which is adopted after two years without any basis has no legal value. No new facts have come on record to justify retention of such levy nor has consequent levy of duties not come out before. Further, unfavorable statement rendered by Shri. Praveen Kumar was also refuted by Shri. Praveen Kumar himself. Such a line that resulted record was given referring to books and files kept not to files pointed out in levy is clearly understood as pointing out to the fact that stated records are having reference to the accounts and not to levy as those facts were on record and were not challenged and actually admitted. Also dates on which books were paid in the statement (first instalment being after a gap of four months). Once evasion is accepted and taxations are confirmed manifesting fraudulent intentions as default, there is no force in learned Member (Judge)'s contention that there were no investigations relating to procurement of raw material and identification of raw quantity of that goods and transportation of goods. That is what is known to clearly advanced and these activities are undertaken in the darkness of night, no wonder that have proof of these activities. Once fraudulent intent is shown as manifested and later confessed, proving such evasion by other activities which are not covered, will be giving a bonus to the evader. As per Supreme Court's judgment in *U. Shivraj* (1983) 110 E.L.T. 1345 (S.C.) case, Department is not required to prove its case with mathematical precision, but what is required is the establishment of some degree of probability that a trader who may wish to take refuge in the evidence of such books etc."

(Emphasis supplied)

3.4 In view of above, I find that Appellant No. 1 with active support of Appellant No. 2 and Appellant No. 3 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 levy of duty was not a correct levy and proper in nature of both Appellants.

3.5 Regarding denial of 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. While denying this opportunity, the lower adjudicating authority has relied upon the various judicial decisions as stated from paras 3.10.1 to 3.10.4 of the impugned order. This case is of clandestine removal and ably supported by the non-availability of documentary evidence. The crucial fact here is that the department has recorded its statement. It is not a case that a single statement has been recorded and relied upon but various statements of Appellant No. 2, Appellant No. 3 and shri shri. Such corroborating evidence removal of their products by Appellant No. 1 in the circumstances. Then if the contrary view had the statements recorded at different times and of different persons, it would be under duress or threat. Facts of the circumstances have been independently come known on the facts and contents of Panchnamas recorded at the time of seizure. Therefore, a set of correct and considered view that denial of cross-examination by adjudicating authority does not vitiate principle of natural justice in the given facts of this case. My view is supported by the Hon'ble Bombay High Court's judgment in the case of *U. Shri. Praveen Kumar Sang. Ors.* (Case No. 1013(28) of 2015 (T-10))



2017 (147) E.L.T. 412 (SCM) wherein it has been held that where deponents have themselves admitted the guilt and statements have not been retracted, there is no question of cross-examination. The denial of some facts not to give rise to any substantial question of law. (Relevant portion of the judgment is reproduced below) -

(3) The findings recorded following manner:

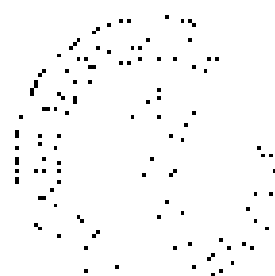
*"7. 4. Despite the denial of cross-examination of the Hon'ble and Shri Anil Kumar Gupta and Shri Anil Kumar Gupta has caused any prejudice to the Appellant. It is seen from the records that the entries made in the private records were corroborated by Shri Ravindra Shrivastava, Director of the Government of India and Shri Shri Anil Kumar Gupta, Proprietor of M/s. Anil Kumar Gupta who had admitted that the various accounts and bills and invoices and pertains to the unaccounted 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 buyers (mentioned in para 11.3) of the impugned order who purchased the finished goods from the Appellant without payment of duty have also admitted that they had received these goods without the cover of proper invoice documentation and without payment of duty. Similarly, two major suppliers, M/s. Yashwantrao Shinde and M/s. Shri Anil Kumar Gupta have also admitted that they have supplied the raw material for the manufacture of these goods without the cover of documents and they have received consideration for sale of such goods in cash. Considering these extraneous evidence in relation, we will live the denial of cross-examination of the deponent in the private records but not give any prejudice to the Appellant. In fact, none of the statements recorded have been retracted or withdrawn. In fact, the fact is well settled, cross-examination of a party is not necessary. The Hon'ble Apex Court in the case of Karam Singh Company (1981) 129 E.L.T. 1485 (SC) and the Hon'ble High Court of Andhra Pradesh in the case of Shri Anil Kumar Gupta, Ltd. (1984) have held that there is no requirement for cross-examination and if sufficient corroborative evidence, cross-examination of the deponent or the statement is not necessary. In view of the above we find that the denial of cross-examination of Shri Anil Kumar Gupta and Shri Anil Kumar Gupta who in respect of the private records has not caused any prejudice to the Appellant."*

*"Thus the above findings are also of the view that this was not a case where required cross-examination. The deponent themselves admitted the guilt. So, almost all of the facts were proved. As said above, the statements recorded were not retracted or withdrawn. Learned counsel for the Appellant submitted that he can succeed in showing that these entries should be corrected for clerical/typing mistakes, which according to him, is substantial question of law."*

*"Thus the denial of cross-examination of witnesses caused any prejudice to the Appellant?"*

*"We are not inclined to accept this submission at all. In these respects, there was no question of cross-examination, and therefore, denial of the same would not give rise to any substantial question of law. We uphold the judgment of the Tribunal and find no ground for interference in it."*

To affirm the law and authority in the person of the lower adjudicating authority in denial of cross-examination to the appellants, especially when no specific reasons for



having gross export value has been given by the appellants.

10. Regarding wrongly passed in transit credit by the appellants, the records seized from Shri Bharat Manharbhai Sheth, broker reveal that ship-breaking units raised themselves in favour of induction of new units/dealers without full units without actual supply of goods and goods corresponding to the quantity mentioned in the invoices was supplied to companies as the selling unit including Appellant No. 1 in case of the appellant No. 2 and Shri Bharat Manharbhai Sheth, broker in what has been recited in paragraph 7.15.3 of the impugned order, which is material to decide the appeal to that extent, as under:

*I further find that the DCCEI Officers erroneously vouches & debited the amounts contained in the bills no. 4 & 5 and 17 recovered from the possession of Shri Bharat Sheth and from the investigation. It was revealed that Mrs. Mahesh has issued Central Issue invoices to the selling unit pursuant to transit credit amounting to the amount of Rs. 1,70,000/- in bills no. 2, 3 and 18 as per the invoice given in the Annexure 25-13. Mrs. Mahesh stated that she made goods in selling unit through Shri Bharat Sheth and raised bills invoices to the corresponding dealers in the name of various units and passed on the same transit credit without actually delivering the goods. I also find that as per the bills Annexure 25-13, in all cases Mrs. Mahesh has cleared goods to selling unit and issued Central Issue Invoices to various units and thereby passed on the same transit credit amounting to Rs. 17,71,977/- to said various units as detailed in the Annexure and I find the same to be correct."*

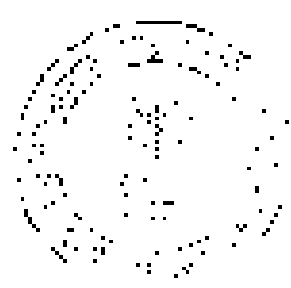
10.1 In view of above, I find that Appellant No. 1 issued only transit credit but actual supply of goods to the unit and commencing supply of goods to another unit without cover of bill of lading, wrongly passed on transit credit of Rs. 12,21,987/- in case of Appellant No. 2 and wrongly passed on transit credit Rs. 13,81,957/- with the help of Appellant No. 1 and Shri Bharat Sheth, broker.

11. Regarding penalty imposed under Rule 26(1) and Rule 26(2) of the Rules on the Appellants, I would like to reproduce para 26(1) and para 26(2) of the Rules which are as under:

**RULE 26. Penalty for certain offences.** — (1) Any person who acquires possession of, or is in any way concerned in the sourcing, receiving, depositing, keeping, forwarding, selling or purchasing, or in any other manner deals with, any excisable goods without being or not being in possession, as the case may be, of a licence under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees, whichever is greater.

*Provided that where any proceeding for the purpose herein in any court has been concluded under clause (a) or clause (b) of sub-section (1) of section 114C of the Act, the request of that court, tribunal and presiding officer, in regard to proceedings against other persons, if any, in the said proceedings shall also be deemed to be concluded.*

(2) Any person who contravenes the provisions of clause (a) of sub-section (1) of section 114C of the Act, shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees, whichever is greater.



(1) *any other document or access to making such document, on the basis of which the user or any spouse or dependent is likely to take or has taken any available remedial steps. The focus of the rule, under the Justice Department's claim, is on the claiming of FOIA/RT credits under the FOIA/RT Excess Rules, 2006 or refund, shall be fully, if a credit is not exceeding the amount of such benefit or fee thousand rupees, whichever is greater.*

(Tophias supplied)

1.1.1.1. Appellant No. 2 was the key person of Appeal No. 1 and was directly involved in several transactions of goods as well as undervaluation of the goods by Appellant No. 1. He was doing other day to day functions of Appellant No. 1 and has concerned himself in matters related to export goods including manufacture, storage, removal, transportation, selling etc. of such goods. When he was knowing and had reason to believe that they were able to be concealed under the Central Excise Act, 1944 and rules made thereunder, I also find that Appellant No. 1 was passed on fraudulent credit to finance units by using central bank financial aid without actually covering the goods with the help of Appellant No. 2 and Shri Shree Shakti. Therefore, I find that imposition of penalty upon Appellant No. 1 under Rule 20(1) of the Rules and also imposition of penalty upon Appellant No. 2 – Shri Rajinder Gupta, Appellant No. 3 and No. 4 under Rule 20(1) and Rule 20(7) of the Rules are proper and justified.

1.1.2. Appellant No. 3 – Shri Vinod Kumar Sharma, Retail broker has contended that he has not dealt with the goods in the manner prescribed under Rule 26 of the Central Excise Rules, 2002 and is not liable to be liable to penalty. I find that the story maintained by Appellant No. 3 in revised statement contained details of lot as well as list of consignees made by Appellant No. 1. When asked about the entries in the diaries, Appellant No. 3 gave evasive replies. But the accounts were imaginary, he was trading in goods in February, 2011 and never got involved with the investigation. However, BCCI got the consignment details and the whole chapter of purchase and removal got revealed. The consignment details matched with the data maintained in the election form and list of consignees. Appellant No. 1 had issued Central Excise invoices without any physical transactions, no Central Excise invoices were issued and no Central Excise duty was paid. This corroborates the data maintained by Appellant No. 3. The records are entered each transactions for various buyers and sellers through invoices. Appellant No. 3 in his revised statement has stated that he has not been indulging into clandestine activities and accounts found in the spreadsheets were either for keeping accounts of business, which is ordinary business activity or for. It is also a common practice that software is to be installed in computer system or laptop and not in Pen-drive. The correlation of data furnished by BCCI and the data available in Pen Drive is not a coincidence but facts established by evidence.

1.1.3. Appellant No. 4 also argued that he had given explanations for the documents to the investigating officers during search, however, it is on record that Appellant No. 1 had not

operated with the investigator and has a very grave voice all along. Therefore, his role is very much covered under Rule 25 of the Rules and penalty of Sec. 10(34) - on the forgoing Appellant No. 1 in cascading character of an omission made by the lower judicial authority under Rule 25(1) of the Rules is normal. Legal and proper and the same shall not interfere with the same.

12. In view of above, I should the impugned order and appeal is allowed with.

शुद्ध अर्थगतताले ह्या दृशेनी नई अर्थले का मुद्दे अन्वेषण करि के किया जाई

12.1 The appeal for by the Appellant is allowed with cost as follows:-

*(Signature)*  
Sd/-  
[Name]

कुं. र. सिंह  
ज. न्यायाधीश

By RPAD

To,

1.	Mrs. Mahesh Indusomai Pvt. Ltd., Plot No. 4-5, Saha Recycling Yard, Sosya, Tuluwaleja, District- Anantnagar, Pin - 364 031.	सेक्टर - 4/5 के इण्डसोमै प्री. लि. प्लॉट नं. 4-5, साहा रिसाइकलिंग यार्ड, सोसिया, तुलुवालेजा, जिला- आन्तनगर, पिन- 364 031
2.	Sri Rupinder Sarda, Director of Saha Mahesh Indusomai Pvt. Ltd., Plot No. 4-5, Saha Recycling Yard, Sosya, Tuluwaleja, District- Anantnagar, Pin - 364 031.	श्री रूपिंदर सरा, डायरेक्टर ऑफ साहा इण्डसोमै प्री. लि. प्लॉट नं. 4-5, साहा रिसाइकलिंग यार्ड, सोसिया, तुलुवालेजा, जिला- आन्तनगर, पिन-364 031.
3.	Sh. Vinodhral Amershadai Patel, Plot No. 107, Dwar Mega City, Uda, Parkside Park, Anantnagar, Pin - 364 012	श्री विनोद राइ अमरशिंह डे पटेल प्लॉट नं. 107, दुवर्ग मेगा सिटी, उदा, पार्कसाइड पार्क, आन्तनगर, पिन-364 012

को:

- (1) नया मुद्दा आयुक्त, केन्द्रीय अक्षर ह, सेवा कर एवं केन्द्रीय अक्षर मुद्रण विभाग द्वारा अक्षर एवं अक्षर मुद्रण के लिये हेतु
- (2) आयुक्त, केन्द्रीय अक्षर ह एवं अक्षर केन्द्रीय उत्पाद शुल्क विभाग को अक्षर एवं अक्षर मुद्रण के लिये हेतु
- (3) अक्षर एवं अक्षर, केन्द्रीय अक्षर एवं अक्षर केन्द्रीय उत्पाद शुल्क विभाग को अक्षर एवं अक्षर के लिये हेतु
- (4) नया मुद्दा
- (5) I. No. 127 33/34/2016-18
- (6) I. No. 127 33/34/2016-18

