[illegible]

Speed Post No [illegible] | File No [illegible] | Date [illegible]

[illegible]

[illegible]

Date of Order: 13/06/2019 | [illegible] | 13/06/2019

[illegible]

Present: Shri Kumar Sharma, Principal Commissioner (Appeals), Rajkot

[illegible]

[illegible]

[illegible]

1. [illegible]
2. [illegible]
3. [illegible]
4. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

1. ORDER IN APPEAL

The below mentioned Appeals have been filed by the Appellants (hereinafter referred to as the Appellant No. 1 to Appellant No. 4) as due against the Table against Order-in-Original No. 31/Excise/Commr/2017-18 dated 26.07.2018 (hereinafter referred to as the impugned order) passed by the Additional Commissioner, CGST & C. Ex. Division, Sawantwadi (hereinafter referred to as the lower adjudicating authority):

Sl. No.	Appeal No.	Appellant No.	Name of the Appellant
1	V2/75/EA2/2018-19	Appellant No. 1	M/s. Aden Industries, Survey No. [illegible], Chandhili Shirol Road, Village-Vada, Taluka-Shiroda, District-Sindhudurg.
2	V2/75/EA2/2018-19	Appellant No. 2	Shri Mohd. Russain Lakhani, Partner of M/s. Aden Industries, Survey No. [illegible], Chandhili Shirol Road, Village-Vada, Taluka-Shiroda, District-Sindhudurg.
3	V2/112/BW/2018-19	Appellant No. 3	Shri Hemchandra Nandal Jagari, 33, Khan Complex, [illegible] Colony, Near Sai Mandir, Hat Wagheswari Road, Bhiwandi.
4	V2/73/BW/2018-19	Appellant No. 4	Shri Vishal Bhadouria, 5, Sitaram Chhaya, [illegible] Nagar, Teen Hath Naka, Station Road, Bhiwandi.

2. The officers of the Central Excise Commissionerate, Commissioner (Intelligence) Unit, Kolhapur Zone, Belgaum and Bhiwandi were engaged in large scale evasion of Central Excise Duty by manufacturing of Re-rolled products viz. M. S. Round, M. S. Bars etc. clandestinely with the connivance of the persons, who procured orders from different buyers and procured the re-rolled products from different re-rolling units and dispatched them through transporters without Central Excise Invoices and without payment of Central Excise duty, conducted a joint directed search at the premises of S/Shri Himanshu Nand of Belgaum and Yogeshchal Ramchandra Sangle and other brokers of re-rolled products at Bhiwandi and recovered various incriminating documents.

3. Show Cause Notice No. V15-125/DEM-II/Q/2015-16 dated 08.02.2016 was issued to the Appellants alleging, inter alia:

(i) Appellant No. 1 has clandestinely manufactured and cleared their finished excisable goods, namely, CTD/MS Round Bars evading Central Excise duty of Rs. 16,51,339/- to various customers without issuing the invoices and without payment of Central Excise duty;

(ii) Appellant No. 2, Partner of Appellant No. 1, entrusted himself in selling

storing, moving and removing the dutiable goods which he knew and had reason to believe that the same were liable to confiscation, which has made him liable to penalty under Rule 25 of the Customs Duties Rules, 2002 (hereinafter referred to as the Rules);

(ii) Appellant No. 3 & 4 [illegible] in selling the excisable goods or commodities [illegible] which he knew and had reason to believe that the same were liable to confiscation and hence, he was liable to penalty under Rule 25 of the Rules.

2.2 The Show Cause Notice [illegible] authority vide the impugned [illegible] Customs Tariff Value of Rs. 10,91,027/- was confirmed [illegible] (1)(a)(b) of the Customs Act, 1962 (hereinafter referred to as the Act), along with interest under Section 114A of the Act and penalty [illegible] imposed under Rule 25(1) of the Rules [illegible] Section [illegible] upon Appellant No. [illegible] with benefit of reduced penalty [illegible] Rs. 21,07,/- Rs. 2,50,000/- and 2,25,000/- respectively [illegible] Appellant No. 2, Appellant No. 3 and Appellant No. 4 [illegible] penalty of Rs. 75,000/- imposed under the Rules [illegible] Vogesh Bhai Ramniklal Bangadwala.

3. Being aggrieved with the impugned order, Appellant No. 1 & 2 filed the appeal, inter alia on the following grounds:

<u>Appellant No. 1 & 2</u>

(i) [illegible] evidence [illegible] records maintained by the [illegible] in law.

(ii) The SCN alleged [illegible] dutiable goods without payment of duty on the basis of [illegible] private records seized from the brokers, but these seized records [illegible] been proved as authenticated documents by the over [illegible] authority.

(iii) The over [illegible] form of CD limited [illegible] principle of natural justice [illegible] Section 138 [illegible] relied upon documents [illegible] in accordance with the [illegible] Section 138 of the Act read with Section 65 of the

Indian Evidence Act and such documents cannot be accepted as the relied upon evidences to frame a charge against the appellant. They relied upon case law of M/s. Silvern Steel Corporation reported as [illegible] (3[illegible]) ELT [illegible] (Tri. Kolkata)

(iv) The lower adjudicating authority failed to recognize clearly proved the raw materials as well as failed to establish clandestinely manufactured the excisable goods from the said illicit procurement of raw materials. In absence of proving any charge of illicit procurement of raw materials and charge of clandestine manufacture of the final product or the goods, illicit procurement of raw material, the charge of illicit removal of the goods was not justifiable.

(v) The impugned order issued only on assumptions presumptions grounds that no investigation has been carried out at the end of buyer/purchaser that the entries mentioned in the seized documents were not authenticated documents; that such entries for dispatch have not been perused before the appellant; that corroboration of such entries with the records of the appellant is not sufficient without any corroborative evidence. The lower adjudicating authority did not prove money flow back with reference to clandestinely removed of finished goods and no incriminating evidence seized or recovered regarding payment of freight charges.

(vi) The duty determined on the value shown in the seized private records of unidentified buyer not genuine and correct as provided under Section 4 of the Act.

(vii) The appellants relied upon following case law:

- Om Aluminium Pvt. Ltd. – 2014 (311) ELT 354 (Tri. Ahmd.)

  Order No. A/11062-11063/2015 dated 17.12.2015 of the Hon'ble CESTAT, Ahmedabad in case of Sagar Casting Pvt. Ltd.
- Accti. Engineering Co. [illegible] (199) [illegible] (Tribunal)

  [illegible] – [illegible] (3[illegible]) ELT [illegible] (Tri. Chennai)

  Tara Chand Agarwal Industries – 2017 (352) ELT – 5 (Tri. Delhi)

  Golden Steel Corporation Ltd. – 2017 (347) ELT 573 (Tri. Kolkata)

<u>Appellant's Plea is:</u>

(3) Appellant No. 3 stated that the impugned order is non speaking and non reasoned, inasmuch as the lower adjudicating authority has not dealt with the pleas made by him in his written submission and judgments relied by him were completely ignored, that the impugned order is issued in violation of principle of natural justice as no cross examination has been allowed by the lower adjudicating authority; that Appellant No. 3 is not liable to penalty under Rule 26 of the Rules as he was broker only and he had not dealt with the

goods and [illegible] Rule 26(1) of the Rules does not arise inasmuch as the ruling [illegible] by the purchaser of M/S Bara, [illegible] had [illegible] and/or financed the deal and it cannot be said that he being a broker [illegible] would render M/S [illegible] liable to confiscation under [illegible] Rule 26(1) of the Rules [illegible] to correct penal provisions of Rule 26(1) of the Rules [illegible] not concerned or connected with the selling of the dutiable goods [illegible] and he never asked the selling [illegible] to remove the goods [illegible]

(d) That he had only [illegible] the sale of the goods and [illegible] with the sale of the excisable goods [illegible] only [illegible] the purchaser to [illegible] represented by Shri Nizamani that he was [illegible] that he was not required to get registered with the Central Excise authorities and he was not violated the rules or requisitions [illegible] that he was indulged in clandestine removal of goods and [illegible] documents are details of such illicit transactions, [illegible] to have the evidences from sellers [illegible] not covered under sub rule (2) of Rule 26 as he was not found with excisable goods in any manner whatsoever and he [illegible] under Rule 26(1) [illegible] of any excisable goods [illegible] that the goods are liable to confiscation under the [illegible] in any way concerned in transporting, removing, [illegible] concealing, selling or purchasing or has in any other manner dealt [illegible] with such knowledge or belief that Appellant No. 3 has never [illegible] with any removal [illegible] evidence has been adduced during the investigation to prove that the excisable goods [illegible] Appellant No. 3 were received by the [illegible] and the investigation has been extended to purchasers and that [illegible] the discretion of the Hon'ble CESTAT in the case of Chandan Tobacco [illegible] to emphasize their contention that the act of clandestine removal are quasi criminal and requires production of [illegible] and tangible evidences to be proved beyond reasonable doubt.

(f) The allegation of [illegible] Appellant No. 3 is not correct, inasmuch as there is nothing [illegible] transaction, place and communication of Appellant No. 3 with Appellant No. 1, that [illegible] removal

of goods, Appellant No. 3 had no knowledge that the goods sold to Appellant No. 3 was liable to confiscation under the provisions of the excisable goods; that according possession of excisable goods with knowledge or reason to believe that goods are liable to confiscation under Central Excise Act or Rules is the question, that penalty can be imposed only in the case of sufficient evidence and there is no evidence on record to say that Appellant No. 3 had in any way connived or colluded with Appellant No. 1 and therefore, imposition of penalty under Rule 26 of the Rules is not proper and legal. In support, reliance upon the cases of M/s. Godrej Boyce & Mfg. Co. reported as 2002 (146) ELT 161 (T); P. M. Kulkarni reported as 2003 (55) RLT 572(CESTAT-Mum) and Hem Nath Singh reported as 2002 (137) ELT 47 (T-Del), is contended that the ingredients contained in Rule 26 of the Rules for imposition of penalty are not satisfied in the case.

Appellant No. 4:

(i) The impugned order passed by the lower adjudicating authority is bad in law, unjust, illegal and is not maintainable in the eyes of law as the same is based on surmises on the basis of the way of submission of the concerned officer of Central Excise (Preventive), HQ, overlooking or deliberately not taking into consideration the relevant facts and circumstances of the case made out on the basis of the assumption presumption grounds.

(ii) The main charge was framed against Noticee No. 1 for clandestine removal of their final products without payment of total Central excise duty of Rs. 10,01,037/- as documented in Annexures attached to the show cause notice. That the said Annexures have not been authenticated by the concerned officer hence the notice taken from the so-called records are not genuine enough for the purpose of considering the legal evidences.

(iii) The adjudicating authority has erred in giving finding that the Appellant No. 1 has not issued Central Excise Invoices in respect of the goods sold to the Appellant No. 4 which were found from verification of such entries/records maintained in the said seized duplicate while computing the assessable particulars registers etc. of the Appellant No. 1 that to prove illicit removal of the said goods manufactured by the Appellant No. 1, such corroborative evidences viz. of receipt of raw material as and still manufacturing of the final products from the raw material were expected to be taken on record to establish such charge of illicit removal but in the present case no such corroborative evidences had been placed on record. Hence, the impugned order is not proper and legal.

(iv) In the present case, the "Daily Stock Account" maintained by the

Appellant No. 1 had not been [illegible] concrete evidence on record. It is not [illegible] that the Appellant No. 1 had not [illegible] said "fully [illegible] respect of the disputed goods removed without payment of [illegible] evidence has been taken on record regarding receipt of the [illegible] goods within period of General excise [illegible] and hence, it is [illegible] that it was not involved in the manner as specified under sub [illegible] of Rule 27 of the Central Excise Rules, 2002.

(v) The Appellant No. 1 [illegible] the [illegible] Central Excise levying the Appellant No. 4 [illegible] only for limited [illegible] purchase and sale of the said goods in the [illegible] and no any person of the Appellant No. 1 or the owner of the vehicle [illegible] the Appellant No. 4 was in known [illegible] of so called "[illegible]", [illegible] Appellant No. 4 was not liable for a penalty as imposed.

(vi) The [illegible] transaction [illegible] place in the [illegible] was not directly proved with dice to called [illegible] in the said seized [illegible] in these seized [illegible] have been discussed but no such investigation [illegible] to the [illegible] Juvenile Justice Act unless statement of such [illegible] the chance of illegal removal and cash transaction [illegible] that the [illegible] found in the seized [illegible] were only the "Noting" of [illegible] though [illegible] and this "Noting" found from the said seized [illegible] position of purchase and only in respect of the said goods [illegible] such [illegible] found in the said seized [illegible] are not the [illegible] to prove the charge of illegal removal and to have a charge of [illegible] under Rule 26.

(vii) Additional statement [illegible] evidence to establish a charge under the Central Excise [illegible] corroborative evidences that the so called duty calculation was determined only on the basis of such amount shown in the said seized [illegible] [illegible] evidences that the amount shown in the said [illegible] transaction value or not, that the [illegible] of the [illegible] and purchase of the said [illegible] goods [illegible] and only on the basis of the [illegible] travelling at the [illegible] time [illegible], the duty calculation made on the amount shown in the said seized [illegible] goods and cash.

(viii) The Appellant No. 4 [illegible] statement dated 28.07.2015 has stated that the freight charges are to be borne by the buyer-purchaser [illegible], no such inquiry has been extended to the [illegible] of the said [illegible] therefore, the chances of illegal removal [illegible] and [illegible], he is also not liable for a

[illegible] as penalised in the impugned order. The charge of [illegible] removal is not proved by corroborative evidences. It is not correct to say that he had abated in the so called clandestine removal. Mere the confessional statement made by him is not alone the document to establish such charge. It should be in corroborative corroborative evidences.

(ix) The relied upon documents had been provided in the form of CD and not supplied hard copies of the relied upon documents as required to meet with the principle of natural justice read with the provisions of Section 35 of the Central Excise Act, 1944, but not supplied the same and no had reference the case only on the basis of the facts and circumstances mentioned in the show cause notice that the private records/note books were not available for deferring the [illegible] relied upon the case of M/s. Brown Sons Corporation reported as 2014 (309) ELT 310; the case is clearly cited which [illegible] relied upon documents supplied. The form of CD are not found in accordance with the conditions laid down under Section 36B of the Central Excise Act, 1944 read with Section 65B of the Indian Evidence Act such documents cannot be accepted as sufficient to frame a charge against such person or party. In the present case, no such evidence has been placed on record that the relied upon documents had been supplied in CD form in accordance with the law. Section 36B of the Central Excise Act, 1944; that the notice relied upon the said Annexure-B had also not been provided though it was mentioned that such annexure is the Panchnama dealing to the seizure of the private made books etc. have also not been provided in the show cause CD, that no such clause has been made in the relied upon documents that the said relied documents are available for inspection as required by law of the applicant to whom the show cause notice is issued that the case law cited in this regard by the adjudicating authority are not applicable in the present case and circumstances, the findings of the adjudicating authority regarding seize of relied upon documents in CD are not justifiable.

(x) It is admitted fact that the charge of clandestine removal of the excisable goods had been charged against Appellant solely on the basis of the entries found in the private note books etc. unless and until it is not proved that Appellant has manufactured the said clandestine removal of the excisable goods from the unaccounted raw materials, the charge of clandestine removal is not sustainable. In addition to this, the adjudicating authority has failed to take into account the [illegible] of the appellant. He had stated that the vehicles for

[illegible] In the present case, no such inquiry had been [illegible] of the truck owners whose such facts had been [illegible] to such inquiry had also been extended to [illegible] manufactured, such facts of the [illegible] required to be proved on record. But, in the present case, [illegible] been proved on record. In short, no such positive evidence has been placed on record to prove the [illegible] case has been made on a very [illegible] the appellant. In [illegible] foregoing para, he has submitted [illegible] were pertained to orders booked [illegible] absence of [illegible] cannot be [illegible].

(xiii) [illegible] of [illegible] the petitioner [illegible] of [illegible] goods manufactured. The [illegible] demand was raised on [illegible] grounds. The [illegible] authority [illegible] the basis of the [illegible] submissions [illegible] the various persons, [illegible] such independent [illegible] corroborative material evidence [illegible]. But in the present case no such [illegible] corroborative material [illegible] on record.

(xiv) No [illegible] on the appellant [illegible] the omissions, if any, [illegible] that during the course of recording of the statement of the [illegible] such entries pertain to [illegible] the appellant [illegible] the charge under Rule 20(1) of the Rules, the lower adjudicating authority would have supplied such [illegible] the [illegible] relied by the Appellant. No. 4; that the [illegible] only on the [illegible] evidence only without [illegible] pertaining to the records maintained by the Appellant No. 1.

(xv) The lower adjudicating authority has [illegible] the money flow [illegible] that the lower adjudicating authority failed to consider that the Appellant No. 4 was [illegible] that all [illegible] under dispute were [illegible] to [illegible].

(xvi) From the above [illegible] of Appellant [illegible] clearly established that the

present case had been made out by any of relevant presumption grounds and [illegible] any contrary evidence. There is [illegible] any direct material evidence that he was involved in the manner as specified under Rule 26(1) of the Customs Excise Rules, 2002. It is clearly established that the adjudicating authority has [illegible] the judicial discipline and decorum in the following case laws which have not [illegible] by him:

- Sir Aluminium Pvt. Ltd. - [illegible] (2017) ELT 354 (Tri. Ahd.)
- The Hon'ble CESTAT, Ahmedabad has passed an Order No. A/ 11033-11034/2015 dated 17.07.2015 in the case of an Appeal filed by Sahara Castings Pvt. Ltd., Shri Arun R. Bhasin.
- Hemanshu Steels Pvt. Ltd. - [illegible] (2016) [illegible] (Tri. Delhi)
- [illegible] - 2017 (3[illegible]) ELT 261 (Tri. Del.)
- Rajpurana Steel Castings P. Ltd. - 2017 (346) ELT 491 (Tri. Ahmedabad)
- Super Cassettes Industries Ltd. - 2017 (347) ELT 345 (Tri. [illegible])

4. Personal hearing was granted to the Appellant No. 1 and Appellant No. 2 on 18.03.2019, 01.04.2019, 17/18.04.2019, 03.05.2019, 20/21.05.2019 but no one appeared on the given dates. Appellant No. [illegible] vide letter dated 12.01.2019 waived his personal hearing.

4.1 Personal hearing in the matter was attended by Shri M. N. Mahajanwala, Chartered Accountant on behalf of Appellant No. 3 and reiterated grounds of appeal and made written submission contending that he neither purchased nor dealt with the seized goods; that Appellant No. 3 has just acted as a middle man between buyer and seller and that he brokered the deal; that removal of goods involved physical movement, moving vehicle and other politics which should have been investigated; that Appellant No. 3 has not any concerns of the disputed goods; that case law and judgments quoted by the lower adjudicating authority are not applicable to their case; that he is not involved in any way which would make him liable to penalty under Rule 26(1) of the Rules.

4.2 Despite several hearing notices sent to the Commissionerate, neither response was received nor any one appeared for personal hearing from the Commissionerate and hence I proceed to decide the appeals on merits.

Findings:

5. [illegible] that Appellant No. 1 to Appellant No. 3 filed appeals within prescribed period of 60 days and within further period of 30 days giving acceptable reasons. Since

[illegible] under Section 5a of the Act [illegible] filing [illegible].

6. [illegible] and [illegible] as well as [illegible] the appellants. The issues to be [illegible] circumstances of the case:

i) whether [illegible] under Section 11A of the [illegible] under Section 11A of the Act against appellants [illegible];

ii) whether imposition of [illegible] Rs. [illegible] by the [illegible] of Appellant No. 1 is correct or not;

iii) whether [illegible] Appellant No. 2 to Appellant No. 4 under Rule 26 of the Rules [illegible].

7. [illegible] that the officers of [illegible] premises of Appellant No. 1 [illegible] Appellant No. 2 (partner of Appellant No. 1) and Appellant No. 3 (Chief Financial Officer) were recorded [illegible] and seized records and the [illegible] which revealed [illegible] of M/s. Round/TMT [illegible] transactions without the invoices and without payment of CE duty as [illegible] Para 21.1 of the impugned order. At Para 21.2 [illegible] the impugned order, Appellant No. 3 in detailed manner explained the nature [illegible] transactions recorded in the said private note and diaries.

8. In the grounds of appeal, it is stated that the lower adjudicating authority while passing the impugned order [illegible] the submissions made by them, however, it is [illegible] that the adjudicating authority has mentioned the defense submissions [illegible] in the impugned order, and [illegible] giving his findings. Thus, [illegible] by the appellants is devoid of merits.

9. [illegible] that [illegible] have been [illegible] as per Annexure – [illegible] supporting documents of

Appellant No. 2 [illegible] documentary evidences recovered from the premises of Appellant No. 3 were [illegible] and shown to [illegible] Appellant No. 2 (Partner of Appellant No. 1) in his statement dated 05.08.2013 recorded under Section 14 of the Act had gone through Panchnama drawn at the [illegible] premises and the statements tendered transporters, brokers etc. Appellant No. 2 was also given opportunity to go through incriminating documents, statements and note calculation sheet before giving evidence and the truth and correctness thereof; that he was shown duly authenticated prepared on the basis of investigation showing transactions carried out through Appellant No. 3, broker of Appellant No. 1. I find that the documentary evidences and statements of the broker, transporters and Appellant No. 2 have been discussed and distributed [illegible] in the impugned order and many transactions recorded in the sheet provided [illegible] matching with [illegible] transactions of Appellant No. 1 which proves authenticity of transactions and details contained in incriminating relied upon documents and recovery of [illegible] from Appellant No. 1.

8.2 Before proceedings, I would like to reproduce some relevant and important paragraphs of the impugned order which are important to decide these Appeals as under:

(i) Para 13 of the impugned order – The Appellant No. 3 (broker) explaining code used in diary and confirming removal of [illegible] goods without payment of duty and without issuance of invoices: -

> '13. [illegible] I find that the above stated [illegible] were disclosed by him [illegible] Appellant [illegible] the business since last 27 years and was not having the trading business. He purchased the goods on behalf of his customers from the importers and sold the goods [illegible] the Partnership firms [illegible] other goods. [illegible] Petitioner [illegible] from a trading firm, [illegible] the goods found from a trading firm to a person [illegible] the unauthorisable place. He confirmed that the details of the goods purchased from a trading firm, the rate and total amount were written in the documents [illegible] 12.09.2013 and he referred only [illegible] in the documents maintained at Sr. No. 12 & 13 of the Annexure to the Investigation dated 12.09.2013 and he referred only [illegible] in the documents maintained at Sr. No. 12 which is numbered wise ledger in the [illegible] from an [illegible] made in the date on which payment was made to the [illegible]. He further explained that as stated in his statement dated 26.3.2013, he had mentioned the names of the trading firms in short and in code. The name was written in the [illegible] in the [illegible]. He being asked, he explained the code [illegible] the company and the name of the concerned persons with whom he used to deal for purchase of goods.'

(Emphasis supplied)

(F) [illegible] of the [illegible] order [illegible] details called [illegible] drive records seized from the [illegible] appellant [illegible]

"34. [illegible] Notice No. 2 [illegible] "Notice No. 2" [illegible] dated 12.09.2012 & [illegible] Notice No. 2 [illegible] goods [illegible] Notice No. 2 [illegible] goods [illegible] Notice No. 2 [illegible] goods [illegible] Notice No. 2 [illegible] 25.09.2014 [illegible] Notice No. 2 [illegible]"

(Emphasis supplied)

(G) Para No. 21 and 21 [illegible] Noticee No. 7 [illegible] Appellant No. 3, broker of the appellant No. 1 [illegible] proposed by Appellant No. 1:

"21. [illegible] Appellant No. 1 [illegible] goods without payment of duty [illegible]

"21.1 [illegible] 05.05.2015 [illegible] goods [illegible] duty and without payment of Customs Duties [illegible] Notice No. 5 [illegible] goods [illegible]

"21.2 [illegible] Notice No. 5 was received on [illegible] goods [illegible] Customs [illegible]

"21.3 [illegible] Appellant No. 1 [illegible] goods [illegible]

E with the sales register for the F.Y. 2012-2013 & [illegible]

(Emphasis supplied)

(iv) Para No. 33 of the impugned order - Computation of duty calculation [illegible] is as under :-

> *"33. I find that the duty calculation has been done under Annexure E for the clandestine removal made by the Noticee No. 1 on the basis of documents No. 12 & 14 of the Annexure to the Revised Notice dated 12.03.2014 at the office premises, that No. 1(i) and 1(ii) of the Annexure to the Revised Notice dated 12.03.2013 of the Notice No. 3 and document No. 1 of the Annexure to Revised Notice dated 12.03.2013. The Noticee No. 1 vide his statement dated 11.10.2013 has confirmed that all the entries of Annexure E stand containing the amount of which duty had been issued by the Notice No. 1 are related to clandestine removal of goods from the factory premises of the Noticee No. 1. Duty as "Annexure-E – DUTY CALCULATION" shows the total duty Crore. Enclosed duty amount shown given by the Noticee No. 1 duly without issue of invoice and without payment of central excise duty."*

(Emphasis supplied)

8.3 The Ld. counsel strongly contended that the incriminating documents recovered during the search at Appellant No. 3, as well as Appellant No. 2 (partner of Appellant No. 1) in their respective statements recorded by the Central Excise Officers during investigation have categorically confirmed that Appellant No. 1 had cleared goods without CT invoices and without payment of Central excise duty as per the entries in duty calculation annexures. Statements of various companies also corroborate the clearances of goods in clandestine manner by the Appellant No. 1.

8.4 I further find that there are substantial evidences duly corroborative which have not been retracted at any stage and therefore, as per the settled legal position quality of the same cannot be questioned by the Appellants only that authenticity of records seized from the premises of Appellant No. 1 and broker have been duly corroborated and corresponded and tallied with records seized from Appellant No. 1 before quantifying demand. Duty Ledger held by Appellant No. 1, Appellant No. 2 in his statement dated 05.08.2015 and 19.08.2015, as referred to at Para 31, Page 31. In Para 31.3 of the impugned order has clearly accepted Annexure computation duty calculations while computing duty calculations only entries found to be tally with the statutory records of Appellant No. 1 and such entries were excluded from demand.

8.5 Appellant No. 1 has contended that demand of duty cannot be confirmed on the basis of diaries and records recovered from the third party premises, that Sangeeta N. Tagare (Appellant No. 2) and hence demand made on the

[illegible]

basis of [illegible] in this regard, I find that the claims [illegible] as well as [illegible] transactions of Appellant No. [illegible] of private records tallied with [illegible] Thus, [illegible] of diaries/notebooks and [illegible] broker during search is clearly established. The broker and Appellant No. 2 have admitted [illegible] dealt with the [illegible] of Appellant No. 1 without General Prefix invoices and [illegible] goods without GR notes. I also find that demand has been computed on the basis of duty computation Annexure-6 produced on the basis of [illegible] Broker and Appellant No. 1. [illegible] correspondence, Appellant No. 1, Appellant No. 2, [illegible] evidence gathered during search and therefore, demand cannot be said to be based [illegible] evidence only. The case [illegible] proved [illegible] clandestine [illegible] of duty through [illegible] of [illegible] evidence of clandestine removal have been gathered by the investigating officers successfully from many places and therefore, it cannot be said [illegible] evidences but corroborative and supporting evidences against Appellant No. 1.

6.6 Further, [illegible] of Appellant No. 2 [illegible] in his statements dated [illegible] and dated [illegible] recorded during investigation, [illegible] along with [illegible] goods without payment of duty and [illegible] such transactions. These statements dated [illegible] of Appellant No. 2 have never been retracted as [illegible] authority at Para 32 of the impugned order, hence the [illegible] have sufficient evidentiary value, which [illegible]

6.7 Therefore, [illegible] facts and circumstances of the case and the [illegible] evidences available on records reflect that CE has [illegible] Appellant No. 1 [illegible] Appellant No. 2 [illegible] and sufficient to prove the case against the appellants. I also rely upon the decision [illegible] CESTAT in the case of [illegible] (2010) [illegible] (Tri-Del) wherein it has

been held as under :-

> "15. *I note that in both the prosecutions, almost identical set of facts were involved. The allegation was that based on vouchers collected from the supplier, they, upon their receipt and further on evidence of outside items by the accused was sought to be sustained. Admittedly, the case is not only based on the material evidence collected from the supplier's end, but was also corroborated by the necessary evidence of the supplier's end. The mere fact that in the such circumstances the evidence for further manufacture has allegedly been collected by the accused and the duty point has also been discharged during the course of investigation itself. The question goes entirely on non-availability of the further corroboration by way of evidence of transport, namely receipt, etc. In the present case, the evidence qua the supplier's end is conceded and cannot be disputed. The vehicle number of the suppliers have been corroborated and admitted for the consistence of their evidence by the persons who were in charge of the supplier's units. When such evidence was brought in fore, the partner of the accused's unit, in categorically admitted the receipt of outside items. However, he did not name the persons to whom such goods were sold. In such situation, it is strange that the accused has taken a plea that the department has not established the details of supplies and receipt of the finished goods to such buyers. It is seen that the records maintained by the suppliers, which were affirmed by the persons in charge cannot be treated false. In no way the case of the appellant that the suppliers manufactured such records only to falsely implicate the appellant. In fact, the supply of unaccounted raw materials has been corroborated by the partner of the appellant's firm. In such situation, it is not tenable for the appellant to raise in the appeal stage, raise the point by requirement of cross-examination, etc. Admittedly, none of the witnesses proving or the statements given have been repudiated or later contested, nor their authenticity. In the appeal held in the Tribunal, the appellant is making a belated assertion that the evidence by the partner of the complainant firm is not reliable. Various case laws relied upon by the appellants are not of any support in the present case. In the cases involving unaccounted manufacture, the evidence of each case are to be appreciated for conclusion. As goes already, the third party's records of the supplier's note as affirmed by the person in-charge and further corroborated by the appellant cannot be discounted only on the ground of further evidences like transportation and receipt of money, has not been proved. In a clandestine transaction, the proven facts of a transaction cannot be established with precision. On overall consideration of the grounds of appeal and the findings in the impugned order, I find no reason to interfere with the findings recorded by the lower authority. Accordingly, the appeals are dismissed."*

(Emphasis supplied)

8.6 The contention that in cases of clandestine turnover, the Department is not required to prove the case with mathematical precision by this view is duly supported by judgments of the Hon'ble Supreme Court in the cases of Gokul Sugar Mills reported as 1980 (7) ELT 187 (SC) & Ashok Leyland Ltd. (2) reported as 2009 (233) ELT 337 (SC).

8.2.1 The statements [illegible] valid evidence [illegible] of law and have to be considered [illegible] evidence [illegible] the cases of (i) Vincent J. Sukhada [illegible] (83) ITR 778 (SC); (ii) Rakesh Kumar Garg reported in [illegible] the bald statements of Appellant No. 2 admitting [illegible] document in Central Excise duty and [illegible] without issuing [illegible] mandatory and specific [illegible] not been rebutted and therefore, [illegible] Abrasives Ltd. reported at [illegible]).

> *"14. On careful consideration of the facts and circumstances as outlined above, I find that the statement of [illegible] is the basis for the demand. The document is addressed by [illegible] to C.E. The Director clearly admitted that the document [illegible]. Records maintained by the authority contains details of production [illegible] as well as clearance of finished goods with and without [illegible]. This fact is further corroborated by the [illegible] that many entries in the private records are covered by the [illegible] by the assessee [illegible] duly stamp paid. The Director has [illegible] the truth of the [illegible] as well as clandestine clearance of goods covered by the entries in the private records which are [illegible] by the [illegible]. Such document is admissible as evidence [illegible] in the case of Sylvania & Laxman [illegible]. The evidence of clandestine removal is required to be proved by sufficient positive evidence. However, the [illegible] of such individual cases are required to be scrutinized and examined independently. The department in this case has relied upon the confessional statement of the Director which is also supported by the mentioned entries in the private records. There is no evidence that the statement has been [illegible]. The evidence [illegible] appear to have [illegible] the [illegible] by [illegible] the process of adjudication.*
>
> *15. In view of the foregoing, I find that the Commissioner (Appeals) has erred in taking the view that there is no sufficient evidence of clandestine removal of goods. Even if, as the statement of Shri Sanjay Kumar, who is said to be the owner of the private records recovered, has not been recorded, it stands corroborated by the confessional statement about the truth of the contents of the private records. Consequently, I find no reason to disallow the plea of [illegible].*
>
> *16. The evidence of manufacture [illegible] has been brought on record only as a result of [illegible] undertaken by the department. The [illegible] unrelied by the [illegible] are not statutory documents and would have gone [illegible] for the investigation. Therefore, this is a clear case of suppression of facts [illegible] and certainly the extended period of limitation [illegible] in this case and hence the demand cannot be held to be [illegible]."*
>
> (Emphasis supplied)

8.3 Truly on the ratio in the case of M/s. Haryana Steel & Alloys Ltd. reported as 2007 (255) ELT 452 (Tri.-Del), which [illegible] (diaries) seized

from the possession of employees at the time of search showing entries for accounted as well as unaccounted goods which have been explained in detail and disclosed by GM of the factory duly with incriminating power in [illegible] and accounts of employees running from several pages and containing detailed knowledge to be considered. Apart from relying on the decision in the case of Rajendra Kalra [illegible] reported as 2011 (302) ELT A61 (S.C.) wherein similar view has been taken by the Hon'ble Apex Court.

8.10 I am of the considered view that the admitted facts need not be proved in the present case by the Hon'ble CESTAT in the cases of Uttar Industries reported as 2006 (230) ELT 302 (Tri. Mumbai) and Divine Solutions reported as 2005 (206) ELT 308 (Tri. Chennai). Hon'ble CESTAT in the case of Kalpataru Works reported as 2004 (165) ELT 373 (Tri. Del.) has also held that Admission/Confession is a substantial piece of evidence, which can be seen against the maker. Therefore, the Appellants contention in [illegible] are not applicable in light of the positive evidence available in the case as discussed above and in the impugned order. Hon'ble CESTAT in the case of Vik Sponge P. Ltd. reported as 2013 (295) ELT 473 (Tri.-Del.) has also held that when preponderance of probability was against the Appellant, pleading of no [illegible] recorded from buyers, no cross-examination found, no new material purchase found unaccounted and no input credit not prescribed by law, is of no use.

8.11 In view of above, I find that the contentions raised by the appellants are of no help to them and the Department has adduced sufficient and cogent documentary corroborative evidences to demonstrate that the Appellants were engaged in clandestine removal of the goods. In my opinion, I find that the confirmation of demand of Central Excise duty of Rs. 10,91,087/- by the lower adjudicating authority is correct, legal and proper.

8.12 Since demand of duty is confirmed, the interest is also required to be paid at applicable rate under Section 11AA of the Act. I, therefore, uphold the impugned order for recovery of interest.

9. I find the only issue of clandestine clearances of the goods without Central Excise Invoices and without payment of duty and interest. The impugned order has correctly imposed penalty equal to duty of Rs. 10,91,087/- on Appellant No. 1 under Section 11AC(1) of the Act with option to pay reduced

[illegible]

[illegible] of duty [illegible] as per [illegible] of Section 11AC of the Act and as per judgements [illegible] Supreme Court in the case of Rajasthan Tobacco [illegible] reported as 2009 (238) E.L.T. 3 (S.C.) and CBEC Circulars No. [illegible] dated [illegible] and No. 855/05/2009-CX, dated 2-6-2009.

9.1 Appellant No. 2 (Petitioner in Appeal No. [illegible]) has contended that the over adjudicating authority has [illegible] as to how he [illegible] in the [illegible] evasion of Central Excise duty [illegible] imposed under Rule 26(1) of the Rules. I find that the facts of this case very clearly establish that [illegible] was responsible for [illegible] of the goods [illegible] by Appellant No. [illegible] as partner [illegible] of Appellant No. 1 and [illegible] concerned himself in [illegible] indicating manufacture, [illegible] of goods which he knew or had reason to believe that they were liable to confiscation under the Act and the Rules thereunder and that imposition of penalty upon him as partner under Rule 26(1) of the Rules in addition to imposition of penalty on the partnership firm is legal [illegible] proper. Simultaneous imposition of penalty upon partnership firm and partner is also sustainable in light of the judgment of the Hon'ble High Court in the case of Amritakshar Machine Works reported as 2[illegible] (Bom).

9.2 Insofar as penalty under Rule 26(1) of the Rules on Appellant No. 3 and Appellant No. 4 is concerned, they have contended that their role was limited as the persons and they were not involved in the goods and therefore penalty is not imposable upon them. I find that they were the key persons in evasion of CE duty by Appellant No. 1 and [illegible] goods were despatched without cover of CE invoices and without payment of CE duty. The various incriminating documents established in the [illegible] seized from the premises of Appellant No. 3 and Appellant No. 4 during search on [illegible] 12.09.2017 and 2.09.2017 respectively [illegible] clandestine transactions were recorded in their loose sheets and these contained details of the goods, truck no., cash payments [illegible] have been [illegible] discussed in the impugned order. In fact [illegible] based on the documents recovered from their premises and therefore they cannot plead that their role was [illegible] I find that their role

[illegible] under Rule 26(1) of the Rules [illegible] appeals.

10. In view of above, I [illegible] the impugned order to reject all 4 appeals.

11. [illegible]

12. The appeals filed by the appellants are dismissed [illegible]

[illegible]
[illegible]
प्रधान आयुक्त (अपील)

By RPAD

To,

1	M/s. Helen Industries, Survey No. [illegible], Gharkul-Shivar Road, Village Vavdi, Taluka-Sihor, District Bhavnagar.	[illegible]
2	Shri Nafisa Hussain Lakhani, For M/s. [illegible] Survey No. [illegible] Gharkul-Shivar Road, Village Vavdi, Taluka-Sihor, District Bhavnagar.	[illegible]
3	Shri [illegible], [illegible] Village [illegible], [illegible] Road, [illegible] Bhavnagar.	[illegible]
4	Shri [illegible], [illegible] Road, Station Road, Bhavnagar.	[illegible]

प्रति,

1. [illegible]
2. [illegible]
3. [illegible]
4. [illegible]
5. [illegible]
6. [illegible]