



1. नेशनल टैक्स मार्केट (प्रा.) लि. 11, बस स्टेशन रोड, गुरु नानक देव अंतराष्ट्रीय व्यापार केंद्र -
GURU NANAK DEW INTERNATIONAL COMMERCE APPARATUS, GATE NO. CENTRAL, LAHORE



दस्तावेज क्र. : एनटीएम/2019/172

Registration No. : 2019/172

दस्तावेज की कीमत - ₹ 172,000/-

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अतिरिक्त जानकारी के लिए -

क्र.	देशीय/अंतर्राष्ट्रीय दस्तावेज/Export/Import	बुद्धि/अवधि/दिनांक/Duration	दिनांक/Date
1	52/2019/001/2019-19, 52/2019/002/2019-19, 52/2019/003/2019-19, 52/2019/004/2019-19, 52/2019/005/2019-19,	48 महीने/48 Months/2019-19	11.06.2019

2. भारत प्रवेशीयता/अवकाश/अनुमति/Entry Permit/Invitation/Approval No. :- **BHV-EXCUS-000-APP-16R-To-172-2019**

अदेशीय/देशीय/देश/Origin	दिनांक/Date of Issue	वार्ड/अवधि/दिनांक/Duration	दिनांक/Date
भारत/India	21.06.2019	48 महीने/48 Months	21.06.2019

दस्तावेज की कीमत/Price :- ₹ 172,000/-

Prepared by Shri. Yama Kantosh, Principal Commissioner (Appellate), B-1/20.

यह दस्तावेज भारत सरकार द्वारा जारी किया गया है। इसे प्राप्त करने के लिए आपको भारत सरकार के आदेशों का पालन करना होगा।

For more information, please contact the Principal Commissioner (Appellate), Customs, B-1/20, New Delhi-110002. Email: bhv@nctc.gov.in

3. दस्तावेजों के अतिरिक्त दस्तावेजों का नाम/Name & Address of the Applicants & Respondent :-

1. M/s Piyaa Blue Pvt. Ltd, Plot No. 9-1, Sasiya Ship Recycling Yard, Sasiya, Distt. Bhanuagar.
2. Shri Sanjay P. Mehta, Director of M/s Piyaa Blue Pvt. Ltd, Plot No. 9-1, Sasiya Ship Recycling Yard, Sasiya, Distt. Bhanuagar.
3. Shri Vinod Anwarshilhal Patel, Plot No. 102, Lodon Mega City, Opposite Victoria Park, Bhanuagar.
4. Shri Kishore Anwarshilhal Patel, Prop. of M/s Shree Krishna Enterprises, 364, Ganga Paar Parima Chowk, Waghawadi, Bhanuagar.
5. Shri Jolinder Kumar, Prop. of M/s. J. K. Jindal & Sons, Motia Khan, Mandi Gooli, Distt. Bhanuagar, Sasiya, Punjab.

4. दस्तावेजों के अतिरिक्त दस्तावेजों का नाम/Name & Address of the Applicants & Respondent :-

5. दस्तावेजों के अतिरिक्त दस्तावेजों का नाम/Name & Address of the Applicants & Respondent :-

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8. दस्तावेजों के अतिरिक्त दस्तावेजों का नाम/Name & Address of the Applicants & Respondent :-

9. दस्तावेजों के अतिरिक्त दस्तावेजों का नाम/Name & Address of the Applicants & Respondent :-

10. दस्तावेजों के अतिरिक्त दस्तावेजों का नाम/Name & Address of the Applicants & Respondent :-



2. ORDERS IN APPEAL :

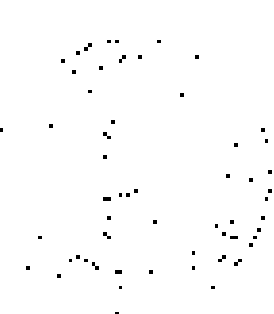
The below mentioned appeals have been filed by the Appellants (Assessors referred to as Appellant No.1 to Appellant No.5) as detailed in the table against orders relating to I.T. No. B-49 B&C(S) DSR 2018-19 dated 16.07.2018 (Assessor referred to as the impugned order) passed by Joint Commissioners, CGE and Central Excise, Bhavnagar (Assessor referred to as the lower adjudicating authority) :

Sl. No.	Appellant No. and I.T. No.	Appellant No.	Name and Address of Appellant
1	V2/57/BV/2018-19	Appellant No. 1	M/s. Piyu Blue Pvt. Ltd. Plot No. 07, Survey 5, Ina Kalyan Yard, Bostla, Dist: Bhavnagar.
2	V2/57/BV/2018-19	Appellant No. 2	Shri Sangay D. Gohil, Director of M/s. Piyu Blue Pvt. Ltd., Plot No. 07, Ina Kalyan Yard, Bostla, Dist: Bhavnagar.
3	V2/66/BV/2018-19	Appellant No. 3	Shri Vimal Anand Shah Patel, Plot No. 107, Harni High City, Opposite Victoria Park, Bhavnagar.
4	V2/65/BV/2018-19	Appellant No. 4	Shri Kishore Ashok Shah Patel, Partner, M/s. Sunil Kishore Enterprise, 204, Shoppers Mall, Central Circle, Waghewadi, Bhavnagar.
5	V2/90/BV/2018-19	Appellant No. 5	Shri Gajendra Kumar, Proprietor of M/s. K. K. Iron Works, 104/104A, Mandi Gokulganj, Dist: Panchmahal, Surbh, Bhavnagar.

2. The brief facts of the case is that the WCH issued Show Cause Notice No. DGC/142/CGE-4/2018-19 dated 15.7.2018 to Appellant No. 1 to Appellant No. 5 for clearance of M/s. PS Sring, etc. obtained from clearing of sales clandestinely without payment of CE duty in various manners alleging as under :

- (a) Central Excise duty of Rs. 68,31,946 for standardised metal and steel sheets etc. of finished excisable goods and Central Excise duty of Rs. 37,31,365/- on account under-valuation of goods should not be remitted from Appellant No. 1 under Section 11A(1) of the Central Excise Act, 1944 (hereinafter referred to as the Act);
- (b) Interest should not be recovered under Section 13A of the Act;
- (c) Penalty should not be imposed upon Appellant No. 1 under Section 11A of the Act read with Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as the CER);
- (d) Penalty should not be imposed upon Appellant No. 2 under Rule 25 of the CER.

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- (b) Penalty under Rule 26(1) and Rule 26(2) of the CEZ which did not be imposed upon Appellant No. 3 and Appellant No. 4, who concerned themselves in selling of excisable goods in clandestine manner, which they knew and had reason to believe that the same were liable to confiscation.
- (c) Penalty which not be imposed upon Appellant No. 5 under Rule 26(1) of the CEZ.

2.1 The above SCA was adjudicated by the impugned order, which confirmed demands of duty of Rs. 1,03,23,456/- under Section 11A of the Act, along with interest under Section 11AA and also imposed penalty of Rs. 1,03,23,456/- upon Appellant No. 1 under section 11AC of the Act and gave order to pay 2% penalty, if demand along with interest is paid within 30 days of the receipt of the impugned order. The impugned order imposed penalty of Rs. 11,32,45,678/- under Rule 26(1) and Rs. 1,03,23,456/- under Rule 26(2) of Appellant No. 2; imposed penalty of Rs. 1,03,23,456/- under Rule 26(1) and Rs. 20,24,512/- under Rule 26(2) of the CEZ each on Appellant No. 3 and Appellant No. 4 and imposed penalty of Rs. 55,950/- under Rule 26(1) of Appellant No. 5.

2.2 Being aggrieved with the impugned order, Appellant No. 1 to Appellant No. 5 preferred appeals, respectively on the various grounds as under:

Appellant No. 1 :-

(i) Appellant No. 1 stated that the impugned order has been passed only on the basis of the Joint Quota's evidence; that the lower adjudicating authority has not given specific findings while passing the impugned order and reliance upon the Quota's Quota's, diaries, etc. seized under Warrant dated 10.05.2010 from the office—co-residence premises of Appellant No. 1 (Shri Vinod Patel) and Appellant No. 4 (Sri Kishore Patel), that statements of wealth owners / license agencies cannot be made upon without any corroborative evidence; that the impugned order has been passed without the following provisions of Section 98 of the Customs Act, 1962; that they relied upon the cases as under:

- (ii) *Foodware Young Pvt. Corporation vs. JAGS (P&G) Ltd. & Ors.* (1998) 111 CTR 419 (SC)
- (iii) *Alliance Alloys Pvt. Ltd.* reported as 2016 (336) DLT 749 (Tribunal)
- (iv) *Global Group Pvt. Ltd.* reported as 2016 (340) EIT 67 (Tribunal)

(Signature) Date: 4/1/16

(Signature)
 Date: 4/1/16

ii) The lower adjudicating authority has erred in recording findings that the seized private goods have been compromised on the basis of statements of brokers, agents, transporters, etc. as there are nothing but the title early entries (i.e. without adding evidence of loaders and loaders) the statement of director of Appellant No. 1 is not sustainable; that private newspapers, trip registers, records and registers of Gujarat Motor Board, statements of brokers are not direct material evidence; that the charge of clandestine removal is required to be established along with date of the production and raw material from which the Fiat engine has been manufactured; that the extended period of over and under invoice issued as accounts of their factory were audited by the Central Board of Secondary Education permission to cross-examine the transport owner / transport agents, agents, Shri. Bharat Shah, broker, Shri Vinod Patel, broker and Shri. Kishore Patel, broker had not been granted and thus the impugned order confirming demand of Central Excise duty and imposing penalties on Appellant No. 1 has been passed only on the basis of presumption and assumption.

iii) Records alleged fraudulent passing of the goods from the appellant are in violation of penalty of Rs. 1.1 lakhs under Rule 26(1) of the Rules and penalty of Rs. 49,97,313/- under Rule 26(2) of the Rules Appellant No. 2 submitted that the lower adjudicating authority has erred in imposing penalty on Appellant No. 1 and Appellant No. 2 on the basis of claims and records etc. seized from Shri. Bharat Shah, broker, Shri Vinod Patel (in Appellant No. 3) and Shri Kishore Patel (i.e. Appellant No. 4); that the excisable goods are sold at the factory gate and transportation of the said goods used to be managed by the buyer of the goods or by the broker and the freight charges were also paid by the buyers and after passing of the trucks loaded with goods from the factory gate there was no concern of Appellant No. 1; that the statements of recipient and hauliers were recorded to establish the charge of diversion of goods; that it is the fact that Appellant No. 1 has received sales proceeds of the goods from the concerned buyers either through cheques or through RTGS; that the charge of issuance of invoice to pass fraudulent Central credit is not sustainable; that they relied upon the order of Comptroller, Central Excise, Surat and Hon'ble CBESTAT Order No. A/L 133-11034/2015 dated 12.7.2015. In the case of S/s. Jaganay Casting

By Order dated 28.07.2015

Appellant No. 1 in view of their respective penalty of Rs. 11 lakhs under para. 1(i) and penalty of Rs. 49,99,513/- under Rule 26(2) of the Rules is not impossible on Appellant No. 2 (Managing Director) who had in similar manner passing of the fraudulent contract credit disposed finally disposed under Rule 26(2) of the CEA, that penalty of Rs. 49,99,513/- under Rule 26(2) of the CEA imposed on Appellant No. 1 is also required to be set aside.

(iv) Regarding the Provision of Differential CE duty (Annexure 19-1 to the Show Cause Notice) in respect of under valuation of the goods Appellant No. 1 submitted that it was stated by the lower adjudicating authority that no evidence was available that the price of the excisable goods have decreased in the market on the basis of market price prevailing in market of BOP Agency System but the lower adjudicating authority has not established that the goods are not assessed money over and above the amount shown in the respective invoice/manifest and therefore, the impugned order on finding difference than in CE duty on the charge of under-valuation is not correct. Rs. 2,30,000/-

(v) Regarding imposition of penalty of Rs. 1,00,23,436/- the appellant submitted that the lower adjudicating authority has not disclosed the grounds regarding suppression of fact and confirmed the demand of CE duty based on the entire facts and evidence to have any corroborative evidences; that there is no reasonable mechanism and measure in violation of para. 1 (b), 23, 43(b) - money Section 11A of the Customs Act, 1962.

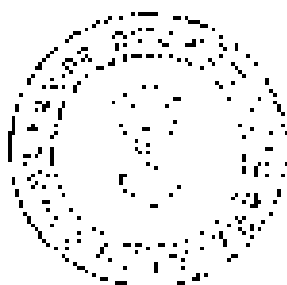
Appellant No. 2 :-

(i) Regarding imposition of penalty of Rs. 11 lakhs under Rule 26(1) and Rs. 49,99,513/- under Rule 26(2) of the CEA Appellant No. 2 reiterated submissions raised in respect of Appellant No. 1.

Appellant No. 3 & Appellant No. 4 :-

Appellant No. 3 and Appellant No. 4 submitted following grounds of appeals, which are as under :-

(i) That all the relevant paper documents were not supplied and therefore, principles of natural justice were not been following the impugned order



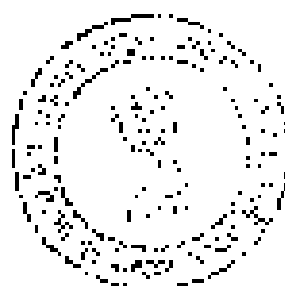
passed by the lower adjudicating authority, a non-speaking judgment rendered by them have not been considered; that they reiterated all the contentions made before the lower adjudicating authority; that diary / CD / pen drive numbers, Train No. 5 during the search conducted by the officers in 2012, were containing details of Esimabe, a.c. and bills; that no transporters or agents of goods of Angadia were identified and goods have been cleared in the clearance document;

(7) that Appellant No. 1 have not admitted that they have incurred a tax liability in removal of goods involving Central Excise duty of Rs. 27,65,658/- as worked out in Annexure - VIII-A to the Show Cause Notice; that there was no evidence suggesting the existence of amount of purchase of the goods and cost details of the goods;

(8) that the removal of goods from a factory involved physical movement and transportation however, such movement and operation of the goods removal vehicles etc. were said have not been captured by the lower adjudicating authority; that there is no evidence to suggest that the Applicant has consulted or called upon the ship breaker to facilitate the creation of Form 1 for the supply of; therefore, imposition of penalty of fine under Rule 26 of the Rules is neither proper nor legal that he relied upon the cases of Mrs. Indira Begum & Ors. vs. ITO as 2012 (148) ELT 261 (T); A.K. Kulkarni reported as 2003 (59) ITR 449 (SC-AT-Mum) and Ram Nath Singh reported as 2002 (151) ELT 451 (T-De) to contend that the ingredients of Rule 26(1) of the Rules for imposition of penalty are not satisfied in this case.

(9) Regarding imposition of penalty of Rs. 28,24,124/- under Rule 26(1) of the Rules, Appellant No. 3 and Appellant No. 4 contended that there is no proof that buyers of the final products had taken Central Excise duty on the regular supply by Appellant No. 1 without actual receipt of the goods; that Appellant No. 1 has not admitted that Appellant No. 3 and Appellant No. 4 have incurred the financial liability of Rs. 28,24,512/-; that there is no evidence to indicate that the goods cleared by Appellant No. 1 were not transferred to the premises of Shri Krishna Enterprises or other buyers; that no copy of the Form, under Rule 26(2) of the Rules in both of them; Jt. Managing Director of Appellant

(Sd/-) *[Signature]* *[Name]*



No. 1 had been imposed penalty of Rs. 11,18,735 on alleged duty evasion of Rs. 1,32,22,438/-, whereas Appellant No. 2 and Appellant No. 4 have been imposed penalty of Rs. 27,56,560/- which is 100% of CE duty evaded.

Appellant No. 5 :-

(i) The goods weighing 25 MT which are truck bearing registration No. RJ0704/5620, Fol. No. V-1, Gaziya Abad, have been received by Appellant No. 5 via invoice No. 110 dated 27.8.2011 by paying appropriate VAT and excise tax of Punjab government and was subsequently sold by Appellant No. 506 dated 27.2.2012. Other investigating officers have manipulated records to make out case, that the case subjecting authority has not appreciated facts before imposing penalty upon him. It, as can be seen from Para 3-92 of the impugned order, was done by Mr. Kishan Kumar, Proprietor of M/s. Kamal Madan Coyali, Manoj Chhabra, Gh. Lal, Prakash, Proprietor, M/s. Kamla Steel Corporation, Manoj Pradipgaur and Kishan Kumar Gupta, Proprietor, M/s. R. C. Gupta & Co. who were engaged for loading the goods from M/s. Priya Dye Industries Pvt. Ltd. However, they have not been penalized.

(ii) The Joint Commission of Customs Excise, Sharnagar has not got territorial jurisdiction to be adjudicated to be so. Therefore, the impugned order requires to be set aside and based upon the decision of the Hon'ble CESTAT in the case of *M/s. T. International Services Ltd.* reported as 2131 (2002) E.L.T. 150 (Trib. Chand.) and *M/s. Chintalabhai Asha Beel Coal Field System Pvt. Ltd.* reported as 2104 (2002) E.L.T. 180 (Trib. Chand.).

(iii) The facts stated in the statements cannot be believed as no system of 400 yards can record statement and can't verify the truck number, name of seller, name of truck, weight, exact date of purchase, name of transporter, vehicle category, etc. Thus, all the facts stated in the statements are subjectively denied to have been recorded and agreed by the appellant, the statements were issued to record oral statement and in the statement it has been got signed as if the appellant were carrying whole of the record; that it cannot be believed that a truck bearing statement is not carried without record.

(iv) Appellant No. 5 had in some of cases cleared the position about the compelling circumstances to which the statement was got signed without being



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allowed to read. All the facts and circumstances narrated in the statement are not matching with the fact (i) possible.

(v) There is no single document stipulated by the appellant's including statement and board of broker, statement of board of manufacturer, broker statement and board of transporter, statement of board of Maritime Board showing that the disputed goods were received by the appellant without any invoice except or getting statements signed in hurry which had been returned by the appellant as has been got signed fraudulently/legally with a date stamp.

(vi) The scanned copy of receipt of the transporter has been incorporated in BCR. It does not contain the particulars of the goods in dispute but only date, time and by the appellant. The department fails to supply evidence available with them from the records of Maritime Board. It has been mentioned in BCR that information of Maritime Board is not available, entries of entry having registration of Gujarat at district are not made as entry permit is issued on a daily basis. The appellant failed to understand the investigation at the port of Maritime Board as no documents entry has been supplied to the appellant showing a clear expression to the state. Although any evidence (or board) statements got signed that the appellant purchased goods directly without payment of Central Excise duty and against such purchase and payments in cheque and against signature of dealer. The appellant received goods from broker/ship broker through agent/ship broker and ship broker jointly. The statement of dealer got signed through pressure tactics in the same manner and same way by copying and pasting the signature of the dealer which shows that whole of the investigation is false and misleading and cannot be relied upon.

(vii) Not a single trackable serial entry goods without valid Commercial entry and entry of entry Agent, Discharge has to cross State Tax/AT Check and of G.A. at Rajeshwar. It is very clear that goods are to reach Rajeshwar and there. The investigation failed to discharge duty as it has not checked the records of State Government Railway situated at the entry and exit point of territory of Gujarat, Rajeshwar, Hariana and Punjab. The respondent has not submitted any track owner/track owner involved in these transactions.

(viii) It is to prove allegation that on the appellant and the department cannot shift the camera responsibility without discharging its duty as per the following cases.

(Signature)



- *Parra News & Papers Ltd. – 2009 (221) ELT 4075*
- *Chowdhury & Sons (P.) – 2014 (311) ELT 528 (T. – Andhra)*
- *Aravalli International (P.) – 2014 (316) ELT 507 (T. – Andhra)*

(17) The department relied on the basis of presumptions and assumptions; that the appellants' claim of deduction in the case of K. Tech Polymers is rejected as 2009 (221) ELT 528 (T. – Andhra) is content that the department cannot be held liable merely on the basis of assumptions and presumptions; that the well settled law is that a merchant is responsible for any commodities purchase cannot be made the sole base for imposing penalty on other co-employee as held in the case of *Uday Singh Jadhav* reported as 2008 (226) ELT 613.

(18) Rule 20 applies where there is concealment of goods and hence, penalty on a principal is not to be imposed since no goods concerned as held in the case of *Sharan Traders* reported as 2012 (278) ELT 458 (T. – Delhi), that some transactors who have agreed in the statements to have supplied the trucks for the delivery of consignment of goods and some brokers who have agreed in the statements to have supplied trucks for the delivery of consignment of goods, but the FCI's were not in touch with transactors and brokers, therefore imposition of penalty under 13-A(2) of the Act is not sustainable, and no investigation has been done in the premises of Appellant No. 5. The Hon'ble High Court of Gujarat in the case of *Mahesh Iron and Steel Industries* reported as 2013 (218) ELT 674 (G.) has quashed the demand and penalty imposed on the statement of transactors and brokers and the penalty of the assessee was not valid by the investigating agency.

(19) Appellant no. 2 requested for cross examination of Director of Appellant No. 1 (Appellant No. 2), Broker, Ch. B. Bhattar, Transactor M/s. Guj. Nandk transport Co. and concerned officers of DDCI, Ahmedabad, that whether cross examination was necessary, but any reason was given in the impugned order. The appellant's submission is that the impugned order is liable to be quashed. The appellants relied upon following judgments in this regard.

- *Sankar & Associates – 2003 (243) ELT 503*
- *Sharda Synthetics Ltd. – 2014 (312) ELT 225 (T. – Andhra)*
- *Agri. Traders Tr. Ltd. – 2014 (311) ELT 529 (T. – Andhra)*

- * Swachh Paksh Case – 2009 (44) E.L. 533 (7) – Del.
- * R.M. Shree & Palsani – 2009 (44) E.L. 209
- * Indian Polyester Case – 2008 (38) E.L. 44 (395)

(vii) The impugned order has been passed without supplying R.O. through requestor by the appellants which is gross violation of principles of natural justice and in violation of CBI-Circular No. 188/97/17408 dated 13.5.2017.

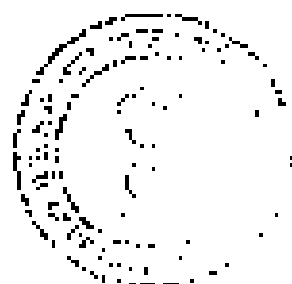
(viii) The only evidence available with the department relied upon in the impugned order is the statement of Appellant No. 5. If at all any statements of six persons can be recorded within hour as posed from the appellants, it is concluded by all the departments, that the statements saved in the computer and records of date and time of creation of file, date & time of saving the file would have proved that the files in the computer were created and saved as per rules only by changing the name of the persons making the statement over without changing date, time, date, or other facts. When under RTI Act this information was requested to supply the Public Information of the Office of DSGE, it is seen that information is not available regarding thereby that the files are deleted or lost or the important facts. The appellants had filed written application to Director, Secretary to make inquiry of this incident.

(ix) Six persons visited DSGE office on same day to record the statement. It has been got recorded from one of the persons Shri R.C. Gupta that he has got the material clandestinely write his firm R.C. Gupta had duly received material with names as mentioned in Para 12 of Affidavit.

4. Personal hearing in respect of Appellant No. 3 and Appellant No. 4 was held on 13.5.2019, 20.5.2019 and 14.6.2019 respectively, they neither appear for hearing, nor sought any adjournment and the matter is poised to decide the case on the basis of contents of the impugned order.

4.1 Personal hearing in the matter was attended by Shri Madhav N. Vaidikarya, Chartered Accountant on behalf of Appellant No. 3 and Appellant No. 4 and requested the grounds of both the appellants and vide letter no. 178, dated 08.06.2019 to both appellants Shri Madhav N. Vaidikarya, Chartered Accountant on behalf of Appellant No. 3 and Shri Anand Kumar stated that they have not been granted effective

 Shri Anand Kumar



opportunity of personal viewing and filing reply; that their request to cross-examine respondents has been denied on basis, principles of natural justice since State has been Appellant No. 1 and Appellant No. 2 both in same bench, it does not mean that both were conducting business together and both were liable to penalty under Rule 2A of the CGK; that buying of same items with a price with storage drawn did not mean concealment of the address; that data in both files are not removed from Appellants' server and no cut estimates; that investigation failed to prove any physical business for, purchase of goods allegedly declared clandestinely; that they have not dealt with any goods which they know were liable for duties and said duty is a liability is imposed upon them under Rule 2A(i) of the CGK; that Appellants have not issued invoices without physical delivery of goods as they had no personal interest; that they relied upon judgment in the case of Nagul. Alor Castings Ltd., reported as 2003 (132) FTR 171 (30) in their favour.

12. Personal hearing in the matter was held by Shri Hakeem K. Sani at Advocate on behalf of Appellant No. 5 and made written PF submissions. They have also made a request to Punjab Government for entry of goods; that the allegation levelled by the Punjab Government is not correct and further that no penalty imposed that is he was asked. Shri Sachin Advanate on behalf of Appellant No. 5 in their PF submissions stated that at the time of recording of statement of respondents total 14 consignments alleged to have been accepted by the respondents without invoice against which the CGKs were issued; that Commissioner (Appals), Jaipur was directed Appal No. HM/EXDUS/2009-PH-125-10-12-1713-10 dated 12.6.2018 had questioned the legitimacy of penalty imposed if alleged clandestine receipt of goods. That the goods under dispute in the present CGK has factually been received by them in Truck No. GJ 07 GA 1022 on 24.9.2014 through M/s. Abanar Hazika Handma through Shri Bhavard, under Commercial Tax No. 175 dated 27.5.2013 hearing CR No. 1553 of the Commissioner Jaipur. Punjab State order entry serial

Findings :

13. After carefully going through the facts of the case, the Industrial order of the Appellate Tribunal in the written as well as oral submissions made by the Appellants. And that Appellant No. 1 to Appellant No. 4 have filed

(Signature) *(Name)*

(Signature)
(Name)

Appellate Nos. 1 and 2 of 60 days (or within further period of 30 days as provided in the case law/Commission Accounts) as were duly with 90% created mainly to notices of income tax department, statutory audits, etc. If any these appeals have been filed within further period of 30 days as prescribed under the Act, it condones/delay in filing these appeals and proceed to discuss all aspects in merits.

5.1 The issues to be decided in these appeals are as under :-

- (a) Whether Appellant No.1 has fraudulently manufactured and cleared in non-excessible goods attracting CE duty of Rs. 1,00,20,000/- and clearance of duty contained along with recovery of interest is correct or not?
- (b) Whether penalty of Rs. 1,03,25,436/- imposed under Appellant No. 1 under Section 11AC of the Act read with Rule 25 of the CR is correct or not?
- (c) Whether penalty of Rs. 11 lakhs imposed under Rule 26(1) of the CR and Rs. 49,37,003/- under Rule 26(2)(i) of CR imposed on Appellant No. 2 is correct or not?
- (d) Whether penalty of Rs. 27,86,038/- imposed on each of Appellant No. 3 and Appellant No. 4 under Rule 26(1) of the CR is proper or otherwise?
- (e) Whether penalty of Rs. 28,24,512/- imposed on each of Appellant No. 3 and Appellant No. 4 under Rule 26(2) of the CR is correct or not.
- (f) Whether penalty of Rs. 5,0150/- imposed on Appellant No. 5 under Rule 26(1) of the CR is proper or otherwise?

5.2 In the past the officers of Directorate General of Central Excise Intelligence conducted documented search and inquiry at office of appellants, various brokers, agencies, market research agencies, etc. For source tracing and documents like Daily Sales Report, invoice bills including cash receipts, etc. also were examined and statements of examined persons recorded under Section 14 of the Act.

5.3 In view of the statements of Appellant No. 2, Appellant No. 3, Appellant No. 4 and the witness examined in the Daily Sales Report, invoice bills, etc. recovered during search that the manufacture and clearance of taxable goods, namely MS Bars, etc. in buyers were made against cash / undocumented transactions. Appellant No. 2, Appellant No. 3, Appellant No. 4, Elidi El and Smith, transporters, brokers, agents and various paper instruments sold in ex-manufacturing transactions recorded in the return

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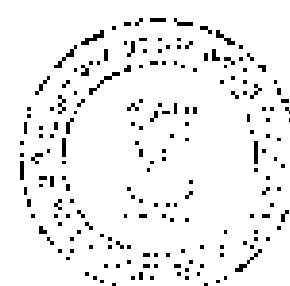
records recovered during search from their premises; including of Appellant No. 1, Appellant No. 2; Managing Director of Appellant No. 1) In his statement dated 14.07.19, the Advocate accepted "condemning removal of the evidence notes by Appellant No. 1, paragraphs 2.3 and Para 2.4 of the Show Cause Notice as unfair".

1.21) It was in the impugned replies Paragraph 70 B is incorrect and according to whom, your Hon. the J. has cleared 30 consignments wrongly valued at Rs. 4,11,52,000/- including Central Excise duty of Rs. 4,20,00,000/- (Rs. 10,40,000/- + Duty class Rs. 77,330/- + SSI/MSI duty Rs. 30,530/-) where no invoices have been issued and no Central Excise duty has been shown to be unpaid. If you have issued any Central Excise duty or collection from warehouse under the Revenue date 10.8.2019 for those 30 consignments, please produce copy of the same.

1.22) There are marks which are missing in question No. 32 is not included from our past business, an expert produce any Central Excise Invoice, Invoice and all documents.

1.23) From the above statement of Mr. Sunny K. Khatu, it clearly appears that the marks which are of goods or "as is where is packed" or "as per your and they are not in the knowledge of master arranged by brokers is not appropriate because brokers submit the goods only after warehouse. City, appearance of marks, availability of goods, for loading, date & time of loading, etc. Further, the plea that due to an agreement with the above and broker/agent about the loss to be carried or any other matter, the actual no. of marks might not have been issued from their yard, how to water because mark is important only after completion of negotiations and availability of goods available for shipment. Importer, when the mark is required by the transmitters, either the person of the concerned unit or the person who is internal for the mark could not have any dispute or disagreements of any kind with the driver of the truck, so according to Mr. Mr. Sunny Khatu even in battle the importance of CMO register on the ground of not having the number of the loading yard. Further, marks in the CMO registers are to be seen in contrary to the transmitters registers and not to be viewed separately. SIU registers contain that marks sent for loading of goods at the specified place have or have entered ship loading yard as being a single number. Further Mr. Sunny Khatu also states that marks are to reach yard or consignments may reach consignee there and the corresponding entries. As per the prevailing practice for transport of goods from Sialkot, the marks are sent to CMO and being their marks, marks the ship may be sent only when they are going to the yard, and again subject changes. Further from the facts and the statements of the transmitters it is clear and undisputed fact that the invoices for marks are always issued after the marks are loaded on as to mark any kind of discrepancy, reference is to be made to the cover entries. Further such practice for loading marks is now in vogue with consigning yard and all such all such transactions between involved in the said business have been done. Therefore, your said marks, in order would mark the mark through the transmitters, particularly when respective mark is marked. Considering all the above facts and circumstances, it clearly appears that Shri. Justice B. Mohan would

19/07/2019



not give any satisfactory description regarding work done in the 48 hours as mentioned in Annexure-3A.3.

7.4. Although in his statement dated 14.03.2013 Shri Sanjay K. Mehta, Managing Director of M/s. Prite Bids stated that he, besides of their shop working activities, he kept phone service replies not relevant for the investigation. The investigating officer procured all evidences at the time of recording his statement but Shri Sanjay Mehta has evaded against saying that whatever documents in the form of evidence, which have been collected or gathered by the CBI, he is least concerned about them and not going to even have look at them. In his statement dated 14.03.2013, it is very clear that whenever any document was presented for his information and requested to go through and acknowledge the same, he refused to sign the name or even of have go through the same. Shri Sanjay Mehta had been saying statements contrary to the investigation. Even at CBIHQ when being asked to go through documents/evidences gather by the office throughout recording the statement, Shri Sanjay Mehta, Managing Director of M/s. Prite Bids had become indifferent towards the queries put forth by the CBIHQ officer and showed utter lack of attitude, consideration and co-operation to the investigation being carried out by the CBIHQ, M/s. Prite Bids.

[Impress supplied]

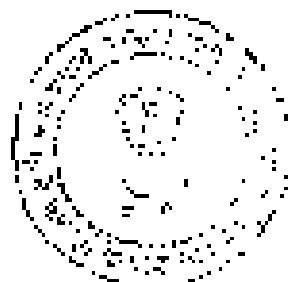
6.6. Statements of various brokers, namely, Sri. Pawan Agarwal on 14.6.2011 and 12.12.2011, Sri. Suresh Kumar on 25.8.2011, Smt. Pradip Halpali on 25.8.2011, Sri. Shanti Mehta on 24.8.2011, Shri. Pradeep Gupta on 24.8.2011 and 01.12.2011 and Sri. K. R. Bhatia on 25.8.2011 and 23.12.2011, Shri. Udaya Kumar on 25.8.2011, Shri. Dharmendra H. Sanghvi on 25.8.2011, Shri. V. Jayaraman on 24.8.2011 & 6.11.2011, Sri. Suresh Gupta on 24.8.2011 and 5.11.2011, Sri. Manoj Gupta on 24.8.2011 and Sri. Jaganmohan Das on 12.12.2011 were recorded wherein all of them in their respective statements in small letter part of 11 of the Act have stated that who ever has name appeared in the Banking / Broking / Registry Registers, they have acted as brokers by or through agents for 12 projects of Applicant No. 1 and have also arranged for translocation. Para 6.3.3 of the Impugned order reads as under:

6.3.3 And whereas status of such brokers with including M/s. Any other who known brokers would use to deal with and as stated by them in their respective statements are compared with status of any broking with mentioned in the Imp / Broking registers against respective brokers. It is observed that both details are given called. It is therefore clear that it could be observed in the Broking registers mentioned by various brokers that registration/translocation of some brokers local, respective and broking with given with other details are less and in no. 1 and in such instances of these broking registers are carried beyond their knowledge or the scope of their knowledge further and are aware of the same and the CBIHQ registers and registers of the respective authorities.

[Signature]

[Impress supplied]

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deposed by witnesses during the course of its investigation is valid and reliable for the proceedings before me, in as much as the statements of said witnesses were made by them in compliance with the provisions contained in the points raised raised from Sri Bharat Shetty, Sri Anand Patel and Sri Madhava Patel.

2.17 Accordingly, I am satisfied to believe that the said transactions relating to sales of excisable goods by Sri Bharat Shetty, Sri Anand Patel and Sri Madhava Patel referred to only by reference above raised from Sri Bharat Shetty, Sri Anand Patel and Sri Madhava Patel are proved satisfactorily. I, therefore find and hold that there is no evidence whatsoever to this effect that records relating to the said transactions are either with their sales date or account of excisable goods or in any way or manner, or indeed they require to be proved beyond doubt by corroborative statements or any other evidence / receipt and acknowledgements of various persons. Similarly, other transactions and receipts to other division / sub-division of goods or various, or simply invoices, or invoice of invoice without actual supply of the goods, and the entries raised of Sri Bharat Shetty, Sri Anand Patel and Sri Madhava Patel being wrong, the entries relating to the said entries should not have been taken into account in view of the above, it is difficult to consider that other / rest of the entries regarding description, quantities of excisable goods are wrong or not genuine.

(Impressis supplied)

6.5 Appellant No. 1 has contended that the lower adjudicating authority has not allowed a cross-examination of transporters, brokers and therefore, principles of natural justice have been violated. I find that the lower adjudicating authority has observed as under:-

"3.11.1 Whether and that there is no provision in the Central Excise Act for seeking cross-examination. Justice Mathew (who dissented in the case of A. Deben vs State of Andhra reported in AIR 1963 SCR 1000), had held that right to cross-examination is not necessarily a part of reasonable 'necessity' and depends upon the facts and circumstances of each case. It largely depends upon the adjudicating authority who is not guided by the order of courts as such who would offer such opportunity to the party considered as would amount to unfair opportunity to defence counsel. The case of A. Deben vs State of Andhra reported in AIR 1963 SCR 1000 was re-considered by Hon'ble Tribunal Ahmedabad in A. Deben vs St. U.P. State COMMISSIONER OF EXCISE, AHMEDABAD reported in AIR 1964 SCR 525 (The - Ahmed) wherein it was held as under:-

"In A. Deben's case (supra), the Hon'ble High Court stated that the necessity of cross-examination depends upon the facts and circumstances of each case. The Adjudicating Authority has to give an opportunity to the party concerned or would assess the proper opportunity or unfairness. Quantity of cross-examination is given wherever it is relevant, justified and genuine and is not for protecting the proceedings. The manner in which Justice Mathew case (supra) is applied in the above that cross-examination should be granted as a matter of course and is to depend upon the facts of each case. The Tribunal's decision

effect in the later of 2012. That can also be similar effect - that cross-examination or not creates a mandatory procedure to be adopted in all cases. My request should not be dismissed arbitrarily or without explaining its relevance in the facts of each case. The Adjudicator's Commission may require cross-examination for justifiable reasons...

3.11.7. Wardship In the case of Steven Pich-Wood (at the Commission of Enq. & C.E.C. Amalgamated received at 2504 (1/7) 22/ 11/99 (in Amalgamated Ward to Tribunal in New and is at para 6) but not on record: 1.0. 11.11.11. Their comparisons that concludes of natural justice are suitable procedure as cross-examination of persons, whose statements are relied upon, has to be regarded in the light of the facts that at the statements relied upon were placed before them. They had at the time opportunity to demand their statements during the proceedings. Cross-examination cannot be refused as a matter of right in administrative proceedings.

3.11.8. Further, the Hon'ble Tribunal in the case of Mrs. Beatty Diver v. C.E.C. Amalgamated at para (116) 22/ 11/ 99 (in-Chambers) has observed that non-availability of witnesses for cross-examination will not be taken into account when the findings are based on documents about which there is no credible suspicion and nothing on record to show statements not voluntary or otherwise obtained within their proximity of the time these were obtained.

3.11.9. Further, in the case of Mrs. Beatty Diver v. C.E.C. Amalgamated at para (116) 22/ 11/ 99 (in-Chambers) has observed that non-availability of witnesses for cross-examination will not be taken into account when the findings are based on documents about which there is no credible suspicion and nothing on record to show statements not voluntary or otherwise obtained within their proximity of the time these were obtained.

[Emphasis supplied]

5.5. Find that Appellate No. 1 and Appellate No. 4, Sri Chitra Sheela, Appellate No. 2 have endorsed their statements under Section 14 of the Act and have categorically accepted, or believed to be true with the accompanying Daily Side Reports and Case Critic only, that the material showing such transactions was not being with statutory records and in the nature of the goods, deemed in clandestine manner in which no CE duty has been paid by them. Legitimate have also not spell out as to what they intend to cross-examine for. Therefore, I find that findings of the lower adjudicating authority are appropriate in this regard and a cross-examination does not have any bearing on the outcome of the case.

6.6. The above records the Daily Side Reports, Issue Note, CD, perfiles, etc. seized during investigation case duty have corroborated by confirming their findings and recorded confessional statements of brokers, transporters, GMB, members of Appellate No. 1. 1. Therefore, do not find reason to interfere with the findings under and upheld record of CE duty of Rs. 38,74,000/- (in the amount of T.D. to the State Cause No. 10)

(Sd/-) _____
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5.7 I further find that CE copy of Rs. 77,95,666/- (Annexure - 25-2 to the DUN) has been confirmed with the impugned order for clandestine removal of DDMG Plates on the basis of balances made through Appellant No. 3 and Appellant No. 4. While confirming the demand the impugned order has found as under:-

"5.10.3 Moreover, the details written in the diaries are fully deciphered by DCEI leaving no scope of any other interpretation. It has been clearly ascertained by DCEI that Shri Bharat Shetty, Shri Vinod Patel and Shri Kishore Patel functioned as major suppliers of DDMG transactions and they were functioning as regular employees of office. I find that such and large transactions mentioned in diaries in detail as physical existence and identifiable one and cannot be explained in a legitimate way. The nature of diaries and the entries are fully admitted which only strengthens the case of investigation. From an analysis has been shown by Shri Bharat Shetty, Shri Vinod Patel and Shri Kishore Patel in para 10 that any low transactions mentioned in diaries are wrong or incorrect or far from the fact.

5.10.4 In view of above, I have come to believe that that the transactions written & recorded in diaries mentioned by Shri Bharat Shetty, Shri Vinod Patel and Shri Kishore Patel are true and correct. Therefore, the said diaries are very crucial evidence in this case, even if as much as it reveals the manner and methods adopted in respect of transactions effected secretly.

5.10.5 I also strongly believe that investigation conducted at various ends and at different points of time by different sets of officers, which corroborated the transactions recorded in secret diaries of Shri Bharat Shetty, Shri Vinod Patel and Shri Kishore Patel, cannot be denied.

5.10.6 I further find that many transactions mentioned in the said copy - Copy Bharat Shetty, Shri Vinod Patel and Shri Kishore Patel have also they conducted with the record of shop-broking work / selling cars / houses work / business / transactions on other purpose. Therefore, the expediency of account preparation contained in the said diaries have been satisfactorily explained by DCEI in para 10 of Annexure 25-2 of the statement of DDMG (DMMG) transactions, Impugned order is hereby confirmed.
[Emphasis supplied]

5.7 On going through annexure - 25-2 details and annexures were set out. The case of private accounting data recovered from Appellant No. 3, Appellant No. 4 and Shri Bharat Shetty, Drower have been substantiated proving clandestine removal of the goods. I am, therefore, not inclined to take any view. I am upholding order confirming CE copy of Rs. 1,39,60,000/- (Annexure - 25-2) issued Appellant No. 3 for clandestine removal of the DDMG plates and this would be same.

(Signature)

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56. It is so found that the statements recorded during course of investigation are inconsistent inferences and they corroborated, which have not been reported as any thing by the statement makers and therefore, as per the settled legal position, finding of the same cannot be confirmed. As held arguments say, it is further found that the authenticity of the records seized from the premises of Appellant No. 1 have been duly corroborated and filled with the records of Appellant No. 1 as a duty on the accused is clear from the goods and accounts furnished in the name of Appellant No. 1 have been raised. The Punjab CECW in the case of *Lawal Taxila v. State* (1997) 100 P.S.R. 1001 reported as 2018-TQB-1024-PC-NAD-CH has held as under:-

130. The above facts will clearly show that the allegation is one of circumstantial evidence. It may be seen that the burden of proving such an allegation is on the Accused. However, circumstantial removal with an intention to evade payment of duty is a rare case and is a special matter and not as an every day case. In fact, it is necessary to show facts about the same. Therefore, in case of circumstantial removal, which supports finding, there may be some other some circumstantial evidence which may be available. However, based on the above records, if the requirement is that to prove it is established the case of circumstantial removal and the accused is not able to give any plausible explanation for the same, then the allegation of circumstantial removal is to be held to be proved. In other words, the quantity and degree of proof which is required in such cases, may not be the same, as in other cases where there is an allegation of circumstantial removal.

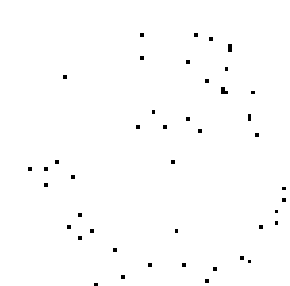
31. As noticed above, the accused has not denied any of the allegations, which are not facts except for sample and filter retention. If the accused had anything to say in relation to their evidence, nothing prevented the Accused to say so while appearing for statement. There was no enough reason by the accused to state they were in custody because of the a statement and thereby say anything. An allegation of parallel smuggling has not been disproved in the manner known to law. Thus, we find that the Adjudicating Authority, the Appellate Authority as well as the Tribunal proceeded on facts and basis of law has given independent reasons for their conclusions.

32. Thus, in the absence of any authority in law finding, the Court cannot interfere with the factual finding recorded by the authorities as well as the Tribunal at the stage of the appeal before this Court under Section 107 of the Customs Act, 1962 in a substantial question of law. The first issue is no question of law, more than a substantial question of law arising for consideration in the instant case. Thus, the appeal filed by the assessee is dismissed.

(Further copies)

57. Appellant No. 1 has argued that demand of duty cannot be confirmed on the basis of such reasons and third party statements without support of other evidence

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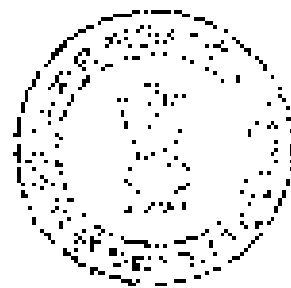


like production statement of buyers, transportation, etc. In this regard, I find the brokers / transporters / agents / CDF records have categorically admitted and identified the buyers in the private incriminating records. Further, brokers have admitted to have sold goods belonging to Appellant No. 1 without CDF tickets and without payment of duty. I also find that the demand has been computed on the basis of Annexures prepared during investigation based on private incriminating remarks / details recovered during searches carried out at the premises of Appellant No. 1, Appellant No. 3 and Appellant No. 4 and all other firms involved in the case, i.e. brokers, transporters, agents, etc. have corroborated the evidences gathered during investigation and therefore, doubts cannot be said to be confirmed as final concrete evidence and third party statements.

3.3 Some of the statements have been rejected and hence, those statements have sufficient evidentiary value. I find that all evidences in the case are real and have excellent and are self-sufficiently proving the case against the appellants. In this regard, I rely upon the decision of the Hon'ble CESTAT in the case of Shri Prakash Agrawal reported as 2017 (146) ELT 125 (ITD-De) wherein it has been held as under:-

"5. I note that in both the proceedings against Shri Prakash Agrawal & Co. were involved. The allegation was that based on evidence gathered from the records of the respondent's firm and further examination of 200000 items by the appellant was sought to be returned. Accordingly, the case was filed on the material submitted against him for supply of and also an investigation by the respective persons of the supply of and. The receipt and use of such unaccounted raw materials for further manufacture has apparently been admitted by the appellants and also duty short paid has also been admitted during the course of investigation itself. The appellants great emphasis on non-availability of the further corroborative by way of details of transport, market receipt, etc. in the process was the machinery conducted from the supply of raw material and goods is rejected. The source records of the respondent have been discovered and identified in the statements of the witnesses by the persons who were in possession of the respondent's goods. When such evidence was brought before the partner of the respondent's firm, he categorically admitted manufacturing of such goods, however, he did not deny the duty to which such goods were subjected in such situation. It is strange that the appellant is arguing that the department has not established the details of buyers and transport of the market goods to such buyers. It is seen that the quantity purchased by the appellant, which was ordered by the persons in charge of the business firm, is not the case of the appellant. The appellant submitted such records only to identify equipment for opening. 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 possible for the appellant to raise a dispute merely over the

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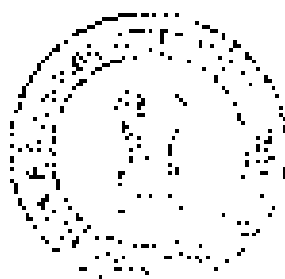
made by respondents of their own volition, etc. Admittedly, none of the goods, amount of the respondents given, have been returned in their entirety for their authenticity in the market before the Tribunal, the extent of a material related question in the amount of the number of the respondents is not material. Various case laws relied upon by the respondents are not of any support in the present case. In the course involving respondents' manufacturers, the maximum of cases can give to be applicable for conclusion, as stated already, the third party's goods in the respondents' unit is obtained by the person concerned and further generated by the respondent cannot be presumed only on the ground of failure evidence. The respondents' and receipt of goods has not been proved. In a clandestine way, before and clearance, such a type of operation cannot be established with any case. An explicit consideration of all grounds of appeal and the findings in the impugned order, I find no reason to interfere with the findings recorded in the impugned order. Accordingly, the appeals are dismissed.

(English supplied)

6.11 In a settled line of precedents of classification removal, the Department is not required to prove its case with mathematical precision. By this view is duly supported by judgments of the Hon'ble Supreme Court in the cases of the State of Karnataka reported as 1983 (1) ELT 189, (SC) & Ashok Textiles (I) Ltd. reported as 2009 (255) ELT 587 (SC).

6.12 The statements, if not returned, etc. right to sell in the eyes of law and have to be considered as corroborative evidence, as held in the case of Harman L. Gulhakar, reported as 1995 (9) ELT 240 (SC) and Kulkarni Kumar Gang reported as 2013 (331) ELT 321 HC Delh. In the respondents' regarding clearance of goods without receipt of General Formality and without issuing invoices are in culpable and specific and not reported and hence, amounts as held in the case of M/s. L. T. & Associates Ltd. reported as 2017 (390) ELT 106 (SC Delh.)

114. On careful consideration of the facts and circumstances as outlined above, I find that the statement of Director in the letter for the removal, the evidence is material and is specific. The Director clearly admitted that the documents/records, records recovered by the officers concerned details of movement of raw materials, without clearance of finished goods with and without delivery of duty. This fact is further corroborated by the evidence in the way of entries in the books of accounts and records by the manner issue of the proceeds on the date bills are paid. The Director has clearly admitted the fact of the party as well as clearance clearance of goods covered by the entries in the books of accounts, which are not covered by the manner. Such statement is admission of evidence as per facts held by the law that in the case of Shreeya & Co. v. Commissioner of Income Tax. The burden of establishing a case is required to be proved by sufficient positive evidence. However, the facts presented in each individual case are reviewed



to be considered and evaluated independently). The documents in question has never been used as the evidential statement of the Director which is also supported by the numerous entries in the flight records. There is no document that the statement has been taken under oath.

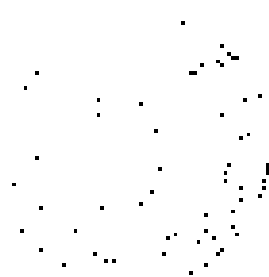
25. As far as the foregoing, I am of the view that the Director has acted in taking the view that there is not enough evidence of constructive removal of goods from the statements of Sri Ranjiv Reddy, who is said to be the author of the private records mentioned above, have received, a view is exhibited by Sri Technical Director about the truth or the contents of the private records. Consequently, I am of the view that this piece of evidence is

[Emphas's Supp 01]

5.12 I also rely on the decision in the case of *M/s. Laryana Diesel & Motors Ltd* reported as 2017 (255) EIT 451 (T1, 02) where it has been held that private records seized from the possession of appellant's employees at the time of search s/w/c, entries for excise duty as well as unexcised goods which have been explained in detail and declared by one of the factory lady with invoices, gate pass, etc. containing the statement of employee running into several pages and containing detailed knowledge to be considered reliable. I also rely on the decision in the case of *M/s. Kunal Lucha Reddy & Co. Ltd* reported as 2014 (222) EIT 661 (T1, 02) where in similar view has been taken by the Hon'ble Supreme Court.

5.13 I am of the view that since that the admitted fact, that the goods seized has been laid by the Hon'ble CESTAT in the case of *M/s. Pharsika* reported as 2008 (230) EIT 1073 (T1-Mumbai) and *M/s. Dyma Solutions* reported as 2000 (200) EIT 37, 109 (T1-Chennai); Hon'ble CESTAT in the case of *M/s. Karri Engg. Works* reported as 2011 (36) EIT 373 (T1, De.) has also held that Admission (Confession) is a sufficient proof of offence, which can be used against the trader. Therefore, the Appellate's reliance on various case laws are not applicable in light of the practice laid down in the case as discussed above and in the impugned order. Hence, *QUITA* in the case of *M/s. M R Sponge F Ltd* reported as 2011 (278) EIT 111 (T1, 02) has also held that when preponderance of probability was against the Appellate, clearing of no statements received from buyers, no return obviously constructed from, no two material witnesses found unimpeached and no participation was established by law is of no use.

[Signature]



6.15 In view of above, I find that the contentions raised by Appellant No. 1 are not valid and the Department has adduced sufficient and documentary conclusive evidence to demonstrate that the Appellants were engaged in clandestine removal of the goods. Therefore, find that the confirmation of demand of Central Excise duty of Rs. 36,25,137/- (Annexure-TR 3), Pw. 24, 26, 28 &c. (Annexure - 9 & 10 A) and Rs. 1,29,208/- (Annexure - 35-3) leading to Rs. 35,92, 147/- on the ground of clandestine removal of the goods by the lower adjudicating authority is correct, legal and proper.

6.16 The confirmed demand of Rs. 66,92,573/- is required to be paid along with interest at applicable rate under Section 11AA of the Act. Therefore, uphold the demand of the Impugned order.

6.17 I find that this is a case of clandestine removal of the goods which has been established. The ingredient for invoking the extended period and imposing penalty under section 11AC(1) of the Act are also available in the case as held by the Hon'ble ITAT in the case of Sun Microsystems India P. Ltd. reported as 2016 (339) E.T. 475 (Mumbai) and hence, the impugned order has correctly imposed penalty of Rs. 10,40,190/- for clandestine removal under Section 11AC(1) of the Act or Appellant No. 1. The lower adjudicating authority has correctly granted option of return remedy of 2% &c, which has not been asked by Appellant No. 1 for reason known to them.

6.18 Regarding confirmation of demand of duty of Rs. 34,79,866/- on the ground of undervaluation, Appellant No. 1 has submitted that the duty on this amount charge can be set aside on the basis of the paper obtained from market research agencies which are known that the rates declared by Appellant No. 1 in its Central Excise invoices. Since as per Section 4 of the Act, price prevailing at the time and place of removal is relevant for the purpose of assessment of duty and the transaction value the got by Appellant no. 1 from customers for assessment purposes must be accepted unless it can be proved that the information received by buyers and sellers are related in such a way that the amount raised by the department by rejecting the transaction value of the goods obtained from market research agencies is liable to be set aside.

7.1 The lower adjudicating authority has confirmed the charge of undervaluation on Impeller, giving findings as under:-

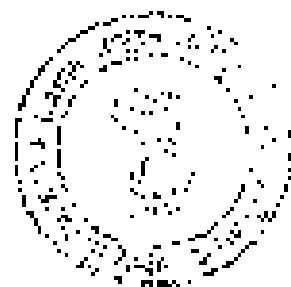


2.14 The above Cause alleges evasion of Central Bank duty by way of under-invoicing of the goods obtained out of Australia or abroad. It is not in dispute that various Research Agencies conduct the trade considering all the factors of demand and supply and also from various other sources obtained by such agencies are available and it is in this backdrop that even the instrument of Bank of India was also intended to some extent research agencies to have an idea or preliminary price as to enable them to sell their goods at maximum rate. It is also not in dispute that the availability of the cargo from New York (1/10) to 25th 1958 was estimated out of breaking up of sub- and the average or an estimate of the average of breaking of ship are of 12 days in order to substantiate this assertion, the 1957 commodity report, 1958 Commodity Statistical Research Agency published 1957-58 in their work reference to pricing time of 120 days which revealed that day to day order of 120000000 of cargo is against availability to the average price of 120000000 the range of 2000 to 25000.

2.15 In comparison of the price mentioned in the invoices of 1958 1959 five months of the prices indicated by 1958 Major & Minor & that also covering that in many cases the transaction value declared by the 1958 Price Book which far less than the actual value prevailing in the market during the respective period. The sub-structure being, by not declaring the price cost of the invoice for 1958 declared by 1958, and comparing the available prices as to enable them to sell on only cost of the cost of such goods in the invoices and subject the difference duty, cost and other the various factors payed by way of under-invoiced and evasion.

2.16 In view of the above, I agree with the contention of the IACC that some variation in price is obvious considering various factors like payment terms, quantity & quality of the goods, relation with banks, demand and supply situation, therefore, the difference is reasonable and considerable one. As stated above, Factors / Price Breakers / Report give the reference of the price quoted by market research agencies like 1958 Major and Minor of, therefore, that cost that cost to be, it is not in dispute that price reported by Mrs. Fisher and Price is actual and valued at 120000000, the rates of 2000 and 25000 lower than the rate of 1958 Major and Minor is maintaining, I, therefore, fully agree with the view asserted by IACC that duty shall paid on account of variation of price more than 20% is on account of under-invoicing of the goods and rightly recoverable from 1958 Major & Minor. Further, I also find that a large number of sub-invoicing were done by 1958 Major and Minor were conducted by 1958 Major and Minor and were receiving day to day updated on the cost price rates of sub-invoicing accounts through 1958 Major and Minor. It is also stated that 1958 Major and Minor were receiving the cost accounts and quarterly reports of the data submitted by them for 1958 Major and Minor Price Book of the cost of the goods obtained from the breaking and subsequently under-invoiced the goods with intent to evade payment of Central Bank duty. Thus 1958 Major and Minor were aware that 1958 Major and Minor were aware of the evasion of Central Bank duty & they acted on the calculation done by IACC that the 1958 Major and Minor reported Central Bank duty of 1958 1958 Major and Minor.

(Signature)



7.3 I find that record of Rs. 27,30,665/- has been confirmed on the ground that the appellant has shown description of the excisable goods in relevant invoices, bill, receipt and Stamp on Form No. 01(A) / Old and Used Paper. The lower appellate court summary has set aside the addition as per value ascertained from the reputed market as emergency. The contention that transaction value declared in the invoices under section 11 of the Act cannot be rejected does not have force, as invoices of appellant No. 1 is apparent from the fact that they did not show the specific description of the excisable goods in the invoices.

7.4 Investigation and recording statements under Section 14 of the Act and results of unaccounted cash transactions were recovered and corroborated with the details found in the sales diaries, receipts, etc.

7.4 In view of above, I find that the confirmation of duty in the impugned order is proper and valid. Hence, uphold confirmation of duty of Rs. 34,30,845/- along with interest and imposition of penalty under Section 11A of the Act having upon the case laws as under:-

(i) 2008 (Mumbai) 1 T. L. 3017 (350) F. T. 306 (All)

16. *It was found that the issuance of extended period is justified. The provisions of Section 11A of the Act do not require to be invoked and hence penalty should not be levied on appellant who physically had exercised due care to be charged. In favour of the appellant, an order pronounced from the High Court by the Hon'ble Justices in the landmark judgment of CIT v. Maharashtra State Paper Mills - 2008 (24) 317 S. T. C. and the subsequent judgment in CIT v. Maharashtra State Paper Mills - 2009 (33) 311 S. T. C. Accordingly, we find that appellant's 10% cost should be disallowed since under the proviso of Sec. 11A(2)(b) imposed on goods under Section 11A of the Customs Act, 1962 as entered by the administrative authority. The said penalty is therefore upheld.*

(ii) 2011 (11) T. L. 3017 (31) GET, 250 (Tri-Mand)

17. *The Hon'ble High Court of Madras had an occasion to decide the issues relating discharge of duty before issuance of show cause notice and was accordingly held validly under Section 11A of Central Excise Act, 1944, in the case of CIT v. Madras Paper Mills Co. Ltd., 2014 (303) F. T. 301 (Mad). It is held that the proviso is substantiated by an actual payment of duty by the appellant and the amount is deposited accordingly 10% of the import duty under Section 11A of the Central Excise Act, 1944. The facts and circumstances of the case as well as the merits*

questioned further by the appellants in the present case. It is held that they had acted abetment to evade duty without purchase of valid sale document in the exercise of their rights. The appellants have not shown any subject matter of exemption. Therefore, the appellants have not exercised any jurisdiction of lawfully. Therefore, penalty imposed under Section 26A, is not correct.

7. Regarding imposition of penalty of Rs. 15 lakhs on Appellant No. 2 under Rule 25(1) of the CTR. I find that charges of evasion of CE duty against Appellant No. 1 stand proved. Appellant No. 2 and others, brokers, transporters, godowns, etc. have admitted their involvement in CE duty evasion with their respective statements. Under Rule 25(1) of the Central Excise Rules, 2002 reads as follows:-

'Rule 25. Penalty for certain offences:-

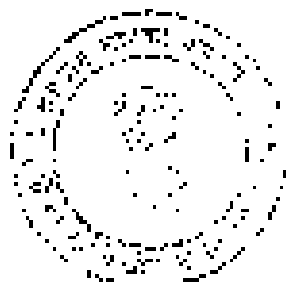
(1) Any person who acquires possession of or is in any way concerned in transporting, conveying, delivering, loading, unloading, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to excise duty under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or the assessed value, whichever is higher.

8.1. Appellant No. 2 has concerned himself with the goods for marketing including the bonded goods, which were liable to excise duty and transport. There is no objection to the fact that penalty of Rs. 15 lakhs imposed on him under Rule 25(1) is justified and I uphold this penalty as legal and proper.

9. Regarding imposition of penalty equal to Central Credit of Rs. 49,57,512/- (Amount - INR. (A) - Rs. 2,87,832/-) + Amount - (B) (IN) - Rs. 48,70,000/- and Amount - (C) - Rs. 26,21,512/-) under Rule 26(2) of CTR on Appellant No. 2 for fraudulent wrongfully raising an Central credit. Appellant No. 2 contended that sale of M/S. S. S. was made by Appellant No. 1 ex-factory gate and bill of lading was given at factory gate. Appellant No. 2 also submitted that the consignment of the goods has subsequently cleared, it is not responsibility of Appellant No. 1 as they had handed over delivery of the goods to trucks at factory gate.

9.1. Para 2(a) of the Impugned order has held as under:-

'2.46. Further, I find that Shri. Anjay Lal, Manager, Managing Director of M/S. S. S. has issued false invoices without delivery of goods and secured fraudulent C&A/T credit. According to Rule 26(2) of Central Excise Rules, 2002, any person who issues (i) an invoice, with invoice without delivery of goods specified therein or which is existing on a



THE SOCIETY OF MEMBERS OF THE SOCIETY

Sl. No.	Name of Member	Address	City	State
1	Mr. A. K. Gupta	12, Park Road	Delhi	Delhi
2	Mr. B. D. Sharma	45, Connaught Place	Delhi	Delhi
3	Mr. C. S. Singh	78, Ansari Road	Delhi	Delhi
4	Mr. D. E. Verma	23, Preet Vihar	Delhi	Delhi
5	Mr. E. F. Khanna	56, Okhla	Delhi	Delhi
6	Mr. F. G. Joshi	89, Connaught Place	Delhi	Delhi
7	Mr. G. H. Mehta	34, Park Road	Delhi	Delhi
8	Mr. H. I. Patil	67, Okhla	Delhi	Delhi
9	Mr. J. K. Rao	90, Connaught Place	Delhi	Delhi
10	Mr. K. L. Saxena	15, Park Road	Delhi	Delhi

Page No. 11

Sl. No.	Name of Member	Address	City	State
11	Mr. L. M. Gupta	12, Park Road	Delhi	Delhi
12	Mr. N. O. Sharma	45, Connaught Place	Delhi	Delhi
13	Mr. P. Q. Singh	78, Ansari Road	Delhi	Delhi
14	Mr. R. S. Verma	23, Preet Vihar	Delhi	Delhi
15	Mr. T. U. Khanna	56, Okhla	Delhi	Delhi
16	Mr. V. W. Joshi	89, Connaught Place	Delhi	Delhi
17	Mr. X. Y. Mehta	34, Park Road	Delhi	Delhi
18	Mr. Z. A. Patil	67, Okhla	Delhi	Delhi
19	Mr. B. C. Rao	90, Connaught Place	Delhi	Delhi
20	Mr. D. E. Saxena	15, Park Road	Delhi	Delhi

30-1-10

19-1-10

On account of the said members pages 11 is shown that Mr. ...

and selling in the port city said goods, which were liable to confiscation and hence, I imposed penalty imposed on Appellant No. 5 (Shri Vikas Patel) and on Appellant No. 6 (Shri Kishore Patel) under Rule 26(1) and also under Rule 26(2) of the CE Act.

11. I find that Appellant No. 5 was charged to have purchased goods clandestinely cleared by Appellant No. 1 without payment of Central Excise duty and without issuance of CE licences and the lower adjudicating authority has imposed penalty of Rs. 55,950/- upon him under Rule 26(1) of the Act, whereas Appellant No. 5 has contended that he cannot be penalized on the basis of third party evidence. His records indicate that he has filed affidavit regarding deposition made by him in his statement recorded on 28.3.2012. (para 6.1.1 of the Show Cause Notice) that the taxable goods alleged to have been purchased by him has been received in Form No. 8140-66-6677 (Group) Assam Taxila Roadlines from Jayanti Ship Detention (P) Ltd., under the Invoice No. D66776 dated 27.3.2010. I find that vide order dated 16.12.2010 as reply to Show Cause Notice Appellant No. 5 had drawn attention of the lower adjudicating authority to these facts, however, the impugned order has not been deleted or appreciated by the JCRC.

11.1. I, therefore, find that Appellant No. 5 has sufficiently discharged his burden of having purchased goods under Central Excise licence. There is no credible evidence available in the JCRC impugned order establishing involvement of Appellant No. 5 in this case.

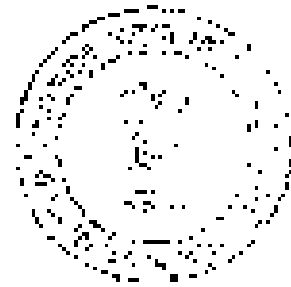
However, there are no sufficient evidence to hold that Appellant No. 5 has absconded clandestine clearance of the goods and/or he was concerned in purchase of clandestinely cleared goods by Appellant No. 1 in this case. Hence, I find that this is not a fit case to impose penalty of Rs. 55,950/- upon him. Accordingly, I set aside penalty of Rs. 55,950/- imposed upon Appellant No. 5 under Rule 26(1) of the Rules.

12. In view of above, I quash the impugned order, except possibly imposed upon Appellant No. 5 and accordingly request appeals filed by Appellant No. 5 to Appellate No. 1 and also appeal filed by Appellant No. 6.

12.1 अपीलकर्ता द्वारा दलित की गई अपील का निष्पत्तः आदेश निम्नके तौर पर दिया जा रहा है।
12.1 Appeals filed by the appellants are disposed of in accordance with above.

(Handwritten signature)

(Handwritten signature)
ब्रजना आर्यभक्त (अधीक्षक)



22.3.2013.

To,

1. Mr. M. G. H. D. Patil, 20
 Plot No. 14-1
 Swaha Strip, Mangyong Yardi,
 Sanyal,
 Dist. Bhandara.

2. Mr. Sangey S. Manta, Director of
 M/s. Erida Das Pvt. Ltd.,
 Plot No. 14-1, Sanyolch a Mangyong Yardi,
 Sanyal, Dist. Bhandara.

3. Mr. Vinod Amarsingh Patil,
 Plot No. 20, Sanyal Park Society,
 Suthachangan,
 Bhandara.

4. Mr. Mahendra Anandhidas Patel, Proprietor,
 M/s. Laxmi Kashiha Enterprises,
 104, Anandnagar Colony, Bhandara District,
 Mangyong, Bhandara.

5. Mr. Anand Kumar, Proprietor of
 M/s. J. K. Thidal & Sons
 Yashwantrao,
 Yashwantrao,
 Dist. Mangyong Yardi,
 Bhandara.

उत्तरे

- 1) मूळ मालकांनी केलेल्या केंद्रीय मसुदा सेवा कर, पहात व वाढ देणे, अशा प्रकारची कार्यवाही होई.
- 2) मूळ मालकांनी केलेल्या मसुदा सेवा कर, पहात व वाढ देणे आवश्यक कार्यवाही होई.
- 3) अग्रकालीन मसुदा, केंद्रीय मसुदा व सेवा कर, पहात व वाढ देणे आवश्यक कार्यवाही होई.
- 4) मूळ मालकांनी केलेल्या मसुदा व सेवा कर मसुदा, पहात व वाढ देणे आवश्यक कार्यवाही होई.

दि. 02/01/2013

- 1) मसुदा नं. 02/01/2013/02013-09
- 2) मसुदा नं. 02/01/2013/02013-09
- 3) मसुदा नं. 02/01/2013/02013-09
- 4) मसुदा नं. 02/01/2013/02013-09