

འབྲུག་རྒྱལ་ཁབ་ཀྱི་རྒྱལ་ཁབ་འཕུལ་རྒྱུ་ལྟེང་གི་  
 AND THE MUNICIPAL COMMISSION DISTRICT OF SIKKIM & CENTRAL DISTRICT



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མཚན་མིང་གི་འོག་  
 Subject: **འབྲུག་རྒྱལ་ཁབ་ཀྱི་རྒྱལ་ཁབ་འཕུལ་རྒྱུ་ལྟེང་གི་**  
 1385 & 1329-2019-19 **འབྲུག་རྒྱལ་ཁབ་ཀྱི་རྒྱལ་ཁབ་འཕུལ་རྒྱུ་ལྟེང་གི་**  
 1385 & 1329-2019-19

མཚན་མིང་གི་འོག་གི་མཚན་མིང་གི་འོག་  
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**ENV ENCLUS-000-APP-73-TO-174-2019**

མཚན་མིང་གི་འོག་ **21.06.2019** མཚན་མིང་གི་འོག་ **21.06.2019**  
 21.06.2019 21.06.2019

མཚན་མིང་གི་འོག་གི་མཚན་མིང་གི་འོག་  
 Passed by **Shri Kumar Santosh** Principal Commissioner (Sikkim & Sikkim)

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- 1. **འབྲུག་རྒྱལ་ཁབ་ཀྱི་རྒྱལ་ཁབ་འཕུལ་རྒྱུ་ལྟེང་གི་**
- 2. **འབྲུག་རྒྱལ་ཁབ་ཀྱི་རྒྱལ་ཁབ་འཕུལ་རྒྱུ་ལྟེང་གི་**

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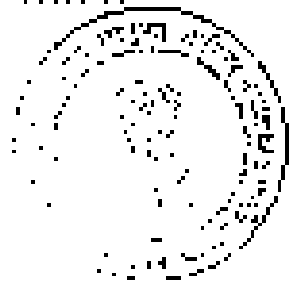
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 Approved by **Shri Kumar Santosh** Principal Commissioner (Sikkim & Sikkim)



10 The Government of India, Ministry of Finance, Department of Public Relations, New Delhi, India, is hereby informed that the Government of India has decided to grant a concession of 10% on the purchase price of the equipment to be supplied under the contract.

11 The concession shall be applicable to the equipment to be supplied under the contract and shall be in addition to the concession of 10% on the purchase price of the equipment to be supplied under the contract.

12 The concession shall be applicable to the equipment to be supplied under the contract and shall be in addition to the concession of 10% on the purchase price of the equipment to be supplied under the contract.

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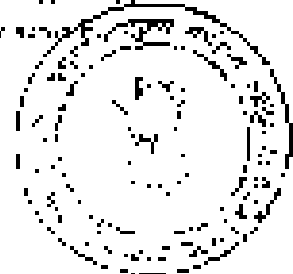
19 The concession shall be applicable to the equipment to be supplied under the contract and shall be in addition to the concession of 10% on the purchase price of the equipment to be supplied under the contract.

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**ORDER IN APPEAL**

The below mentioned appeals have been filed by the Appellants (Appeal after referred to as 'Appellant No. 1 & Appellant No. 2') as detailed in the table below against Order in Original No. 53/Excise/Demand/2015-16 dated 26.08.2015 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, CEST, Division Haveragar - 1, Bhavnagar (hereinafter referred to as 'the lower adjudicating authority'):

Sr. No.	Appeal No.	Appellant No.	Name of the Appellant
1	52/Excise/2015-16	Appellant No. 1	M/s. Salasa Steel Industries, Survey No. 14, Village - Anca, Bhavnagar - Valsadpur Road, Taluka - S. Tal., District - District.
2	53/Excise/2015-16	Appellant No. 2	Sri. Hem Chandra, Partner of M/s. Salasa Steel Industries, Survey No. 47, Village - Nasti, Bhavnagar - Valsadpur Road, Taluka - S. Tal., District - Bhavnagar.

2. The officers of Central Excise Bhavnagar Commissionerate on intelligence that some smuggling units of S. Tal., Bhavnagar were engaged in large scale evasion of Central Excise Duty by removing iron-ore products viz. H. S. Round/TMI Bars etc. clandestinely with active support of few brokers, who procured orders from different buyers and procured 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 coordinated search at the premises of S/Sri. Hiranaka Baidai Jagani, Yogendra Ramakrishna Sanghani, Veer Singh Bhadouriya, makers of Re-rolled products at Bhavnagar and recovered several hundred coils of bars.

2.1 Show Cause Notice No. V/15-52/Demand/O/2015-16 dated 26.08.2015, was issued to the Appellants along with annexure:

- (i) Appellant No. 1 clandestinely manufactured and cleared their finished excisable goods, namely, CTD/MS Round Bars attracting Central Excise duty of Rs. 23,93,072/- to various customers without issuing the invoices and without payment of Central Excise duty;
- (ii) Appellant No. 2, Partner of Appellant No. 1, concerned himself in various ways, keeping and removing of the excisable goods which he knew and had reason to believe that the same were taken as contraband, which has made him liable to penalty under Rule 26 of the Central Excise Rules, 2002 (hereinafter referred to as 'the Rules');
- (3) Sri. Hiranaka B. Jagani, Sri. Yogesh K. Sanghani and Sri. Veer Singh


Shahabuddin, brokers concerned themselves in selling the excisable goods on commission basis in clandestine manner, which they knew and had reason to believe that the same were liable to confiscation and hence, they were liable to penalty under Rule 16 of the Rules.

2.2 The said show cause notice was adjudicated by the lower adjudicating authority vide the impugned order, in which (i) Central Excise duty of Rs. 23,59,073/- was confirmed under Section 11A(10) of the Central Excise Act, 1944 (hereinafter referred to as "the Act") along with interest under Section 11A of the Act and penalty of Rs. 25,85,044/- was imposed under Rule 25(1) of the Rules read with Section 11A(10) of the Act upon Appellant No. 1 with benefit of reduced penalty; (ii) Penalty of Rs. 3,00,000/- imposed under Rule 25(1) of the Rules upon Appellant No. 2 and (iii) Penalty of Rs. 20,000/- imposed, under Rule 25(1) of the Rules, on each of Shri Himanshu N. Jagan, Shri Yousaf E. Sarwar and Shri Veer Singh Shahabuddin.

2.3 As per available records of this office, Shri Himanshu Kantlal Jagan, Shri Yousaf E. Sarwar, Shri Veer Singh Shahabuddin, all Brokers have not filed appeal against the impugned order.

3. Being aggrieved with the impugned order, Appellants No. 1 & 2 preferred appeals, Inter alia, on the various grounds as under:-

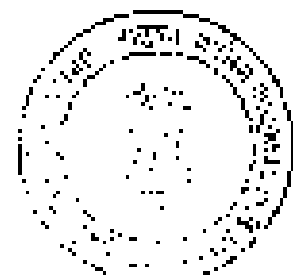
**Appellant No. 1 & 2:**

(i) The impugned order has been passed on the basis of the JHC pane evidence only and without corroborating the statutory central excise records maintained by the appellant. Therefore, the impugned order not sustainable in law.

(ii) The DCB alleged that the appellant removed the excisable goods without payment of duty on the basis of entries found in private records seized from the brokers, but these seized records had not been proved as authenticated documents by the lower adjudicating authority.

(iii) The lower adjudicating authority had provided related usual documents in form of CD instead of hard copies as required to meet with the principle of natural justice and with the provisions of Section 53 of the Act that related usual documents supplied in the form of CD are not found in accordance with the conditions laid down under Section 54B of the Act read with Section 65 of the Indian Evidence Act and such requirement cannot be accepted as the relied upon

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evidences to frame a charge against the appellant. They relied upon case law of M/s. Sona Steel Corporation reported as 2016 (239) ELT 310 (Tilka veta).

(v) The lower adjudicating authority tried to establish clandestinely procured raw materials as well as failed to establish clandestinely manufactured the finished good from the said list procurement of raw material. In absence of proving the charge of list procurement of raw materials and charge of clandestine manufacture of the final product on the so called illicit procurement of raw material, the charge of illicit removal of the goods was not just fact.

(vi) The impugned order based only on assumptions presumptions and conjectures that no message had been carried out at the end of buyer/purchaser; that no entries mentioned in the seized documents were not submitted to customs; that such entries has also not been got prepared before the appellants; that comparison of such entries with sales register of the appellant is not sufficient without any corroborative evidences. The lower adjudicating authority did not prove money flow back with reference to clandestinely removal of finished goods as well as no evidence placed on record regarding payment of freight charges.

(vii) The duty determined on the value shown in the seized invoice records of this party was not genuine and correct as provided under Section 5 of the Act.

(viii) The appellants relied upon following case laws:

- On Aumman Pvt. Ltd. - 2014 (311) ELT 284 (Tilka veta)
- Order No. N/1033-1104/2012 dated 14/07/2015 of the Excise Officer, Ambedkar in case of Bajrang Casting Pvt. Ltd.
- Aarti Enterprises Ltd. - 2015 (224) LLJ 461 (Mad.)
- Free Trade Ltd. - 2017 (354) ELT 435 (Tilka veta)
- Tara Chand Harsh Chand - 2017 (355) ELT 413 (Tilka veta)
- Gopal Steel Corporation Ltd. - 2017 (244) LLJ 573 (Tilka veta)

4. Personal hearing was granted to the Appellant No. 1 and Appellant No. 2 on 18.03.2019, 28.03/04.19, 30.04.2019 but no one appeared on the given dates. Appellant No. 1 & Appellant No. 2 vide letter dated 27.04.2019 have submitted that the appeals may be decided on the basis of grounds of appeals and they further relied upon following case laws:

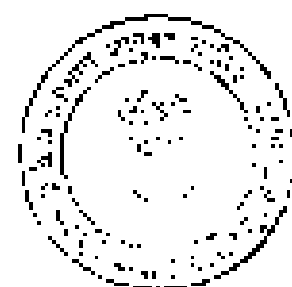
- Kajaria Dyeing, Machine & Inkling Works - 2000 (174) FTR 37 (Tilka veta)
- National Cement Ltd. - 2000 (150) ELT 213 (Tilka veta)

**Findings:**

5. I have carefully gone through the facts of the case, the impugned order and written submissions made by the Appellants. The issues to be decided in these appeals are whether in facts and circumstances of the case:

- (i) whether construction of demand of Central Excise duty of Rs. 23,99,073/-

*(Signature)*



under Section 11A of the Act along with interest under Section 11AA of the Act against Appellant No. 1 is correct or not;

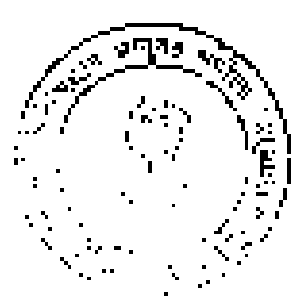
- i) whether imposition of penalty of Rs. 23,98,073/- on Appellant No. 1 under Section 100(1) of the Act is correct or not;
- ii) whether penalty of Rs. 3 lakhs imposed on Appellant No. 2 under Rule 26 of the Rules is correct or not.

6. I find that the officers of Central Excise, Bhavnagar conducted a thorough search at various places including at the premises of Smt. Himanshi K. Jagani, Smt. Yogesh R. Sanghani and Shri Veer Singh Shabariya, all Brokers, and incriminating documents like diaries, notebooks, files, loose papers etc. were recovered from these premises. The statements of Appellant No. 2 (Partner of Appellant No. 1) i.e. Smt. Himanshi K. Jagani, Smt. Yogesh R. Sanghani and Shri Veer Singh Shabariya were recorded by confronting them with the impounded and seized records and the entries recorded in the notebooks/files recovered under Benchmarks proceedings resulting from the manufacture and clearances of M. S. Ramani/TMT Bars to buyers against cash transactions without Central Excise receipts and without payment of Central Excise duty as seen from Para 32 to 46 of the impugned order. Smt. Himanshi K. Jagani in detail manner explained the entries made and the transactions recorded in the said impounded notebooks/files as recorded in Para 41 to 45 of the impugned order.

7. The grounds of appeal state that the lower adjudicating authority, while passing the impugned order, has ignored the evidence made by them, whereas I find that the adjudicating authority has mentioned the defense submissions in detail in the impugned order and has also discussed submissions giving his findings. Thus, this argument put forth by the appellants is devoid of merit.

8. I find that demand of Rs. 23,98,073/- has been computed as per Annexure - B to the Show Cause Notice and before recording statement of Appellant No. 2 all documentary evidences recovered from the premises of Appellant No. 1, Smt. Himanshi K. Jagani, Smt. Yogesh R. Sanghani and Shri Veer Singh Shabariya were placed before him and shown to him. Appellant No. 2 (Partner of Appellant No. 1) in his statements dated 13/03/2013 and dated 04/03/2015 recorded under Section 14 of the Act had gone through Benchmarks drawn at the above said premises and the statements made by the transporters.

*[Signature]* 10/03/2016



books; the Appellant No. 2 was also given opportunity to go through incriminating documents, statements and duty calculator worksheets before giving testimony about the truth and correctness thereof; that he was shown duty calculator Annexures prepared on the basis of incriminating alleged transactions carried out through brokers of Appellant No. 1; that the documentary evidences and statements of the brokers, intermediaries and Appellant No. 2 have been reviewed and deliberated upon in a very elaborate manner in the impugned order and many inaccuracies recorded in the same are also records were found tallying with the statutory records/transactions of Appellant No. 1 which proves authenticity of transactions and details contained in incriminating files upon documents and relevance of those for duty liability of Appellant No. 1.

1.2) 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 34) of the impugned order - Shri Himanshu B. Jagari, Broker explaining order filed in duty and containing removal of the shifted goods without payment of duty and without issuance of invoices:-

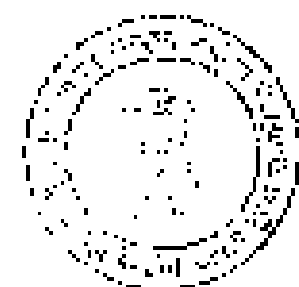
"34) I find that the above details stated therein were confirmed by him through his written statements rendered before me wherein he is broker of firm S. S. & Sons, Aashu, Ashu and the goods used the goods in transit of the customs from the manufacturers, shifted and exports with the consents provided to the Authorities dated 12/09/2012. He further declared that consignment of other goods like Diesel, HSD, Petrol, etc. were loaded and loaded in a container with a bill of lading and were shifted to the factory of his partner in the same way. In the goods loaded in a rolling mill in a vehicle was not attached to any vehicle state place. He confirmed that the details of the goods purchased from a rolling mill etc. in rate and total amount were entered in the duty books. Goods loaded in consignment of S. S. & S. S. of the Appellant to the Andhra Pradesh dated 12/09/2012 and the amount of duty was made in the documents mentioned at S. No. 24, which is contained in the order in the case. He stated that and that on receipt of goods the duty was made in the rate of which payment was made in the rolling mill. He further declared that he stated in his statement dated 26/9/2012, he had purchased goods in a rolling mill in Ashu and in Ashu Ashu. That name was written in the documents seized under Search warrant dated 12/09/2012. He made statement before me that he was asked to write the name of the rolling mill and name of the main person in the person in which he used for producing the goods, but statement provided the consistent names of the rolling mill and the name of the concerned person with whom he used to deal for purchase of goods."

(Emphasis supplied)

(ii) Paras 35.1 & 35.2 of the impugned order explained details noted down in the available records seized from Shri Himanshu B. Jagari, Broker:

"35.1) As per the statement dated 21/09/2012 of the Appellant No. 2, S. S. & Sons, Ashu and Ashu is member of S. S. Ashu and Ashu (Karnataka) and brother

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in the documents before your Commission dated 12/21/72. It refers to 1948 Defense Steel Production, Nevada, a transcript of Notice No. 1 further by giving an example of the transactions of purchase of goods from a supplier and sale to its customers, amount payable to supplier and amount made to selling unit etc. with date of shipment the documents No. 12 and 14 maintained by the Notice No. 2 for recording the details of goods purchased by the units as Date, Description of goods, Name of Seller & Buyer, vehicle etc. Date amount etc. and that the same practice was followed by the Notice No. 2 for purchase of goods from all the other selling units existing. The Notice No. 1 for example, showed that on page No. 171 of its account No. 17 it showed a sale of

192.2 It is further observed that the documents No. 7 & 8 in parts and fragments and supplied to your Commission by the Notice No. 2 in those documents there are separate page for each parties transactions and supplies. On left side of the page is '105577' where the Notice No. 2 used to enter date and amount (P.T. in actual figure) of the goods purchased respectively to the selling unit/customer. While, right side of the page is '105577' where the Notice No. 2 used to enter date and amount (P.T. in actual figure) given respectively from the selling unit/customer. For example, covered page of page No. 62 of document No. 13 is given as 577. These details prove the correct manner and manner in which records of transactions observed were maintained.

(Emphasis supplied)

(ii) Para No. 39 and 39.1 to 39.3: Appellant No. 2 and Shri Sri Hiranand Nanda, agent, Broker of Appellant No. 3 accepted declaration made by Appellant No. 1:

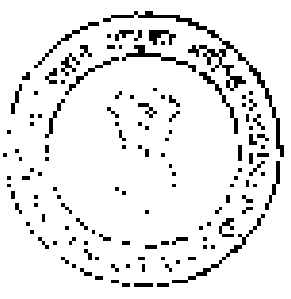
192.1 I find that the witnesses should also get over the evidence that the Notice No. 2 were clandestinely clearing taxable goods without issue of any license from various and various payment of Central Excise duty. A team of officers of Andhra State Excise and Customs Department on 27.07.1972 at the office premises of the Notice No. 1. I find that documents were produced on the basis of documents mentioned in Pt. No. 12 & 14 of the Annexure to the Notice dated 12/21/72 issued at the office premises of Shri Hiranand N. Nanda, Broker, documents mentioned in Pt. No. 10) & 11) of Annexure to the Notice dated 12/21/72 issued at residence of Shri Hiranand N. Nanda, Broker and documents mentioned in Pt. No. 2 of Annexure to the Notice dated 12/21/72 issued at office premises of Shri Hiranand N. Nanda, Broker, documents mentioned in Pt. No. 1 of Annexure to the Notice dated 12/21/72 issued at office premises of Shri Hiranand N. Nanda, Broker. I further find that no invoice or sales bill were issued by Notice No. 1 to the goods mentioned in most of the entries of said Annexure and goods have been received without payment of duty and without issue of licenses.

192.2 I find that a statement of Notice No. 2 viz. Shri Hiranand Nanda, Broker of Notice No. 1 was recorded on 04.04.1972 wherein he averred that the nature of clearance in respect of such no invoice or sales bill issued as per their Sales Network, the goods mentioned in the said account were obtained by them without payment of duty and without issue of central excise license. I find that the Notice No. 2 in the said statement also averred that they had not received the goods mentioned by us from without issuance of license and without payment of duty or cash. Shri Hiranand Nanda, Broker further stated that the goods mentioned in the said account were obtained by them without issue of licenses.

192.3 In view of the above said categorical admission by the partner of Notice No. 1, it is not to say that the Notice No. 1 in compliance with the other Notices have cleared the goods clandestinely without payment of duty and without payment of duty. The Notice No. 2 may assist in the duty evasion or its evasion as calculated and shown in Annexure-E. The Notice No. 1 clearly

Sd/-

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submitted in the defence memorandum dated 26.03.2017 was

"5. Therefore it is requested to conclude that set being a part and not the whole might suggest that the said set itself does not impose a penalty."

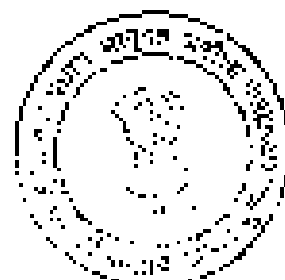
"1212. In view of the above said defence challenging the Notice No. 2 categorically admitted by defence and involvement of the said set and request to consider the same, otherwise there was no need for him to request for non-issuance of penalty. There have been discrepancies in quantity and the number of units that has been stated by the Notice No. 2 with the actual bill of lading No.3. There are the weight and imported quantity as per the statement and defence submission which are contradictory and admitted by them as well as the Notice. These evidences are sufficient itself and needs no further substantiation in the said paragraph. The said evidences have already been related by the Notice No.2, 2 and 3 and being correct being the statement of the defence to the SOI as during the course of reading, as well as because that and to be regarded as contradictory evidence. However, the other evidence have also been collected and corroborated as discussed herein above."

(Emphasis supplied)

7.3 I find that on being confronted with the incriminating documents seized during the searches, Sri Hiranshu N. Jagani, Broker 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 admitted that Appellant No. 1 had cleared goods without Central Excise invoices and without payment of Central Excise duty as per the entries in duty calculation statements, statements of vessel transporters also corroborate the clearance of goods in darkness incurred by Appellant No. 1.

7.4 I further find that these are substantial evidences, duly corroborated, which have not been related at any stage and therefore, as per the settled legal position genuineness of the same cannot be undermined by the arguments only that authenticity of records seized from the premises of Appellant No. 1 and lower have been duly corroborated and related and relied upon records seized from Appellant No. 1 before quantifying Central Excise duty liable to be paid by Appellant No. 1. Appellant No. 2 in his statement dated 25.02.2013 and dated 09.04.2015, as referred to at Para 11.13 and Para 13.2 of the impugned order has clearly accepted Annexures computing duty calculations. While comparing duty calculation entries found to be tallying with the statutory records of Appellant No. 1 and such entries were excluded from the demand.

7.5 Appellant No. 1 has contended that demand of duty cannot be confirmed on the basis of diaries and records recovered from the third party firm owner, Sri Hiranshu N. Jagani and hence, demand made on the basis of third party



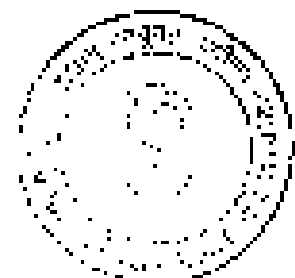
documents in question. In the regard, I find that the entries maintained by the broker regarding, as well as, IIT transactions of Appellant No. 1; other entry transactions recorded in private records called with invoices were actually issued by Appellant No. 1. Thus, truthfulness of diaries/troubleds and other private records recovered from the broker during search is clearly established, also because broker and Appellant No. 2 have admitted to have dealt with the goods belonging to Appellant No. 1 without Central Excise invoices and also sold such goods without Central Excise Invoices. I also find that demand has been computed on the basis of duty computation Annexure 98 obtained on the basis of private records recovered from the broker and Appellant No. 1; that all this is recorded in the case, as losses/transporters Appellant No. 1, Appellant No. 2, etc. have corroborated evidence gathered during summons and therefore, demand cannot be said to be based upon third party evidences only. The case in fact, is not based only on third party statements but duly corroborated by fact of other evidence say; that multiplicity of party negates the content of the third party. In the instant case, the evidence of defendants remain more well gathered by the Investigating officers substantially from many places and therefore, it cannot be said that party evidences are corroborative and supporting evidences against Appellant No. 1.

7.6 Further, Appellant No. 2 (Partner of Appellant No. 1) in his statements dated 23.03.2013 and dated 09.01.2015 recorded during investigation, on being confronted with vital documentary and other evidences along with duty calculation Annexure, has admitted that they moved operative goods without payment of duty and no Central Excise Invoices issued for such transactions. These statements dated 23.03.2013 and dated 09.01.2015 of Appellant No. 2 have never been refuted as found by the lower adjudicating authority at Para 39.5 of the impugned order, hence, the statements have sufficient evidentiary value, which cannot be held to be only by arguments.

7.7 Therefore, in view of the facts and circumstances of the case and the combined effect of all concrete and corroborative evidences available on records reflect that Central Excise duty evasion has indeed taken place and Appellant No. 1 has indulged in it. I, therefore, find that all these are required to be considered as oral and hard evidences and are sufficient to prove the case against the appellants. I also rely upon the decision of the Hon'ble CESTAT in the case of Shri Prakash Agarwal reported as 2017 (111) ITR 121 (1-15) wherein it



Date: 13/01/14



has been held as under :

"3. I find that in both the proceedings above identical set of facts were involved. The allegations are that based on evidence collected from the supplier's own unaccounted material and further manufacture of dynamite from the supplier was sought to be sustained. Accordingly the case is not only based on the material evidence collected from the supplier but also on statements by the respondent persons of the supplier and the transfer and use of the said unaccounted raw materials to further manufacture has apparently been admitted by the appellant and also they have not been discharged during the course of investigation itself. The appellant great emphasis on unreliability of the further manufacturing by way of taking of transport money receipt, etc. In the present case the evidence collected from the supplier and is substantial and cannot be doubted. The police records of the supplier have been considered and admitted for the consideration of their accounts by the persons who were in charge of the supplier's units. When such evidence was brought before the parties or the court's only an unconvincingly doubtful unaccounted evidence of credible being admitted. In fact the appellant has taken a plea that the observations, for not establishing the details of buyers and transport of the finished goods in such manner. It is seen that the records maintained by the supplier, even when obtained by the persons before court, is limited only. It is not the case of the appellant that the supplier maintained such records only to fool the court. In fact the supply of unaccounted raw materials has been considered by the person of the supplier's firm. In such situation it is not tenable for the appellant to say in the appeal stage that the audit by respondent of their companies are defective, since of the nature depends on the statements given and been obtained is not considered by this authority. In the appeal before the court, the appellant is making a similar averment that the statements by the person of the respondent firm is not reliable. Similar case laws cited cited by the appellant are not of any support in the present case. In the cases involving unaccounted manufacture, the existence of such case are to be established by evidence. In other words, the plea of such person of the supplier can be admitted by the person in charge and further corroborated by the evidence given by respondent only on the ground of better evidence. The investigation conducted of money has not been proved. In a similar circumstances and situation, such stage of money should be established with evidence. The credit consideration of the growth of appeal and the finding in the respondent side; I find no reason to interfere with the findings recorded by the lower authority accordingly, the appeal is dismissed."

(Prison reported)

7.8 It is settled law that in cases of charitable removal, the Department is not required to prove the case with mathematical precision. By this view is fully supported by judgments of the Honble Supreme Court in the case of Shan Gauri Mal reported as 1953 (13) ELT 1631 (SC) & Ameer - Khair ( ) P. Ltd. reported as 2009 (235) ELT 507 (SC).

7.9 The statements, if not retracted, are legal and valid evidence in the eyes of law and have to be considered as corroborative evidence as held in the cases of (i) Kunal J. Sushawari reported as 1996 (32) ELT 258 (SC); (ii) Shree Kumar Singh reported as 2016 (331) ELT 32, FC Delhi. I find that the findings of

*Pr. No. 1000*



Appellant No. 2 admitting possession of goods without payment of Central Excise duty and without having invoices with mandatory and specific and have not been stamped and bonded, are admissible as held in the case of *Hi Tech Aerobics Ltd.* reported as 2017 (346) ELT 606 (Tri-Del.);

14. On careful examination of the facts and circumstances of the case, I find that the statement of Director is the basis for the demand and statement of Respondent is not a party. The Comptroller of Customs stated that the manufacturer's records maintained by the various registered units at government of raw materials as well as clearance of finished goods with and without payment of duty. This fact is further strengthened by the observation that every entry in the export documents are covered by the invoice issued by the exporter or other duly authorised party. The Director has clearly admitted the fact that the goods as well as clearance documents of goods, covered by the invoices of the private enterprise, which are not covered by the invoices. Such statement is admissible as evidence as has been held by the Apex Court in the case of Systems & Components Pvt. Ltd. (supra). The burden of substantive nature is required to be proved by sufficient positive evidence. However, the facts admitted in each individual case are required to be scrutinized and examined independently. The department in this case has relied upon the affidavit of statement of the Director and it is supported by the numerous entries in the computer records. There is no statement that the statement has been taken under oath. The person who made the affidavit has not taken an oath and declaration during the process of affidavit.

15. In view of the foregoing, I find that the Comptroller (supra) has failed to satisfy the law that there is no average process of identification removal of goods. Even though the statement of the Director is not said to be the source of the private records maintained for tax duty purposes, it cannot be relied upon by the Director. Hence, as per the facts of the present case, the Comptroller (supra) is liable to be treated as a piece of evidence.

16. The evidence of statements submitted has not brought up concern only as a result of investigation conducted by the department. The evidence submitted by the appellant are not statutory documents and would have gone undisputed but for the investigation. Therefore, this is a clear case of suppression of facts from the department and thereby, the demand period of limitation is inoperative in this case and hence the demand cannot be held to be unlawful.

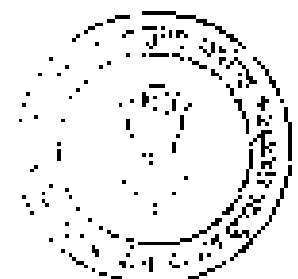
(Apparatus supplied)

7.15 I rely on the order in the case of *M/s. Mangala Steel & Alloys Ltd.* reported as 2017 (363) ELT 630 (Tri-Del.), which held that notebooks (diaries) seized from the possession of appellant's employees at the time of search showing entries by handwritten as well as pre-printed words which have been exhibited in detail and destroyed by GSI of the factory fully with incriminating passage is trustworthy; the statement of employees running into several pages and containing detailed knowledge as to contractual relations. I also rely on the order in the case of *Manchandra Karmas Pvt. Ltd.* reported as 2014 (302) ELT 847 (S.C.) wherein similar view has been taken by the Hon'ble Apex Court.

7.16 I am of the considered view that the admitted facts need not be proved

*(Signature)*

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It has been held by the Hon'ble CESTAT in the cases of Azeem Industries reported as 2008 (230) E.L.T. 6975 (Tri-Mumbai) and Devim Solutions reported as 2008 (205) E.L.T. 1005 (Tri-Chennai). Hon'ble QESIA- In the case of Sridh Eaco. Works reported as 2011 (166) E.L.T. 373 (Tri-Del) has also held that Admissibility/allowance is a substantial piece of evidence, which can be used against the assesee. Therefore, the Appellant's reliance on various case laws are not applicable in light of the positive evidences available in this case as discussed above and in the impugned order. The Hon'ble CESTAT in the case of K. R. Sponges P. Ltd. reported as 2011 (329) E.L.T. 411 (Tri-Del) has also held that when reassessment of profitability was against the Appellant, proving of no statements received from buyers, no excess electricity consumption, no raw material purchase found unaccounted and no input/output ratio prescribed by law's of no use.

7.12 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 oral and documentary corroborative evidences to demonstrate that the Appellants were engaged in illegal removal of the goods. Therefore, I find that the confirmation of demand of Central Excise duty of Rs. 23,35,075/- by the lower adjudicating authority is correct, legal and proper.

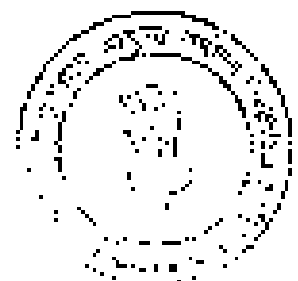
8. Since demand of duty is confirmed, the Interest is also required to be paid as applicable rate under Section 114A of the Act. I, therefore, upheld the impugned order for recovery of interest.

8.1 I find that this is a case of clandestine dispatch of the goods without Central Excise invoice and without payment of Central Excise duty and hence, the impugned order has correctly imposed penalty equal to duty i.e. Rs. 23,35,075/- on Appellant No. 1 under Section 114C(i) of the Act with option to pay reduced penalty @ 25% of duty confirmed as per provisions of Section 114C of the Act and as per judgments passed by the Hon'ble Supreme Court in the case of Rajashree Spinning and Weaving Mills reported as 2000 (238) E.L.T. 3 (S.C.) and CBEC Circulars No. 698/10/2009-CX., dated 15-9-2009 and No. 699/09/2009-CX., dated 21-5-2009.

8.2 Appellant No. 2 (Partner of Appellant No. 1) has contended that the lower adjudicating authority has failed to establish as to how he has abetted the so-called evasion of Central Excise duty and thus penalty on him has been wrongly



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imposed under rule 46(1) of the Rules. I find that the facts of this case very clearly establish that he was the key person of Appellant No.1 and was responsible for clandestine removal of the goods manufactured by Appellant No. 1. He, as partner, was having authority to the officers of Appellant No. 1 and has concerned himself in various illegal activities related to excisable goods including manufacture, storage, removal, transportation, etc. of such goods, which he knew and had reason to believe that they were liable to confiscation under the Act and the rules made thereunder. I find that imposition of penalty upon him as partner under Rule 25(1) of the Rules in addition to imposition of penalty on his partners his firm is legally correct and proper. Simultaneous imposition of penalty upon partner's firm and partner is also appropriate in light of the judgment of Hon'ble Bombay High Court in the case of Shri Jankhadi Prabhakar Wankar reported as 2018 (305) EIT 225 (Bom.).

9. In view of above, I uphold the impugned order and reject both appeals.

10. आपिले को/आपिले को की गई अपील को निम्नलिखित कारणों से खारिज किया है।  
10. The appeals filed by the Appellants are disposed of in above terms.

*(Signature)*  
उपरोक्त आधुनिक (आधील):

By SP/AD  
To:

1. श्री. Ashwar Steel Industries, Survey No. 4-7, Village - Masra, Bhavnagar - Vallabhnagar Road, Taluka - Sirpur, District - Bhavnagar.	श्री. अश्वर स्टील इंडस्ट्रीज, सर्वे नं. 4-7, गांव-मसरा, भवनगर - गोलनगर रोड, अ.क. गज-वेल'मि/ए रोड, ता.सिरपुर-सी.डी.ओ. भवनगर-महाराष्ट्र.
2. Shri Hiten Harnadar, Partner of M/s. Savani Steel Industries, Survey No. 4-7, Village - Masra, Bhavnagar - Vallabhnagar Road, Taluka - Sirpur, District - Bhavnagar.	श्री. हिटेंद्र हार्नदार, पार्टनर ऑफ म.स. सवनी स्टील इंडस्ट्रीज, सर्वे नं. 4-7, गांव-मसरा, अ.क. गज-वेल'मि/ए रोड, ता.सिरपुर-सी.डी.ओ. भवनगर-महाराष्ट्र.

नों:

- (1) अश्वर स्टील इंडस्ट्रीज, केन्द्रीय अस्तु = सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भवनगर, महाराष्ट्र को नकारा है।
- (2) सावनी, केन्द्रीय अस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भवनगर, महाराष्ट्र को नकारा है।
- (3) सावनी आधुनिक, केन्द्रीय अस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भवनगर, महाराष्ट्र को नकारा है।
- (4) गार्ड ऑफिस

(5) F. No. VZ/66/AM/2018-19.

