

क्षणानकपुरा (भगाकपुरका कार लिए बहुन ५० वेचा बार भी बेहतीय प्राचान भूको CVO THE PRINCIPAL COMMUNICATION (APPEALS), GRI ACTIVITED IN SCINI

वैद्यार करती एक दी भाषा अभी 1 कर हुए हम 18.00 हुए। का राम किया - (Toxis Camba Bina Japa)

<u> इ.स.च</u>्या प्राप्त - प्रमाणन

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ा<mark>यमीर अमा</mark>धानंत्राह Appeal At to No.

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BUIV-EXCUS-000-APP 176 1(0.179-2019)

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कर्म जन्मे कि नरीय : Participation of

A6 06.2019

श्री कुल र अंद्रीय, प्रहार आयुक्त (सर्वीरम) सारकीर द्वारा व्यक्ति ह

P-жеві by Shri Kanon Santosh, Principal Compaissioner (Appeals), (c_{ij}, c_{ij})

त्री ६० (५ वर्ष १ ६८६ १४) (चर समानुबार सहाराज आहार, के द्वित क्रमान २० महास्थान कृष्य हुन कुर्येष्ट स्थान राजकार (जनसंभार के देश के देश कर महिल्ला है है। इस करेर हैं है जिसे हैं।

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্ন সাও এলা Half শাল্প কৰিছে। বিশ্ব টোৰাজি টোৰাজি টোলেল প্ৰচলা কৰিছে। বিশ্ববিদ্যালয় সমূহ আলো বাল্য লাভিয়াল ক বিশ্ববিদ্যালয়ৰ সমূহ বিশ্ববিদ্যালয় কৰিছে। কৰিছেলো জন্ম Hiden eppendia the eppend আৰু et description for the se

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- ्रीत महत्त्व है। एक महीक वर्षा कारणाम् क्ष्यान कारणाम् सम्बद्धाः एक पत्ने काममीर न मही है। विद्रोधः नार्वाणे कर केशाम स्थिताने कर्षाकरीति विभाव ш

रहते । महिन्दे स्वाप्त का का कर्मा के करण का पात को साहित होंको सहस्त के को अन्य प्रतिकार प्राचित्रकार हैं कि स पाता के तो कि कि कि अब अब की का रामान रहा का प्रतिकार के कि समान कि है है । असे 15 Med Bank of Paper of Masking Expenses of the Appendix of Television of Mills of Mills of Strain and Albert, as a se white 1880 for the Appendix of the Bank of Bank of Bank of Strain of Strain of Mills of Strain and Albert, as a second of the Appendix of Strain of Strain

ंदि । प्रतिकार के अपने अभिकास कर करें के स्वास कर का स्वाद कर है जिस्सी के अभी देश है कि अपने के अपने के स्वाद इन्द्रिकों का सहित्र कर कि अपने के कि अपने के अपने कर के अपने के स्वाद कर के स्वाद के अपने के अपने के अपने के उन्हरंक कर के अपने के अपने का मान के अपने अपने 16, 2004 के अपने अपने अपने के अपने के अपने के अपने अपने हत्त्व में किये किया किया के लिए कार्य करी देवारिक के मुख्य होता किया है जा किया किया है कि अधिकार, कार्य के स जाते कर्म होता के सम्बंध के अधिकार की उन्हों किया है जिसके अदिश के लिए कार्य के अधिकार, कार्य के सम्बंध के स्व जाते करों होता के सम्बंध के अधिकार की उन्हों के लिए के अदिश कि अधिकार माने के अधिकार के अधिकार के अधिकार के स रम् भारते ।े ।े

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को केहन में प्रदेश का सम्बद्ध करीन होता है। इस के नाम १९१९ में अंदिय वैकार (स्टाइस) में स्टाइस को किया है। उस विकास साथ १९९८ कार १९६६ के ने का सोहते के अपने भूग किया पात्रमुख का कार्य की नहीं है। उनके की उस के बैसूब की उसकी के किया

(کے حال الاقتیار (Callery)

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र है । जा एक कर प्रेयन सकता। Marceson of part from in the set in end of India. पर प्रकार को कि 190 कि 194 कि 194 कि 195 के 195 के 195 के 196 के 19 दो के मुक्ता, कि 196 के 196 दे के 196 क j."i en in Organis de Berner (1995) August 1994 : Al general problema, no en carrolla de Arronaux de la Comercia de Berneral Receito de Sindra de Color Bernery de Beneral de Santa de Carrolla de Maria de La Grand De Berneral Berneral (1995), beneral de Color Beneral (1995) de Carrolla (1995)

तीं काम के हिंदा करतान के समान के जानकरात किये पात की किया करावाद है पर पात के कामान के हैं पह के किये पात काम किया का इंकिट की किया किया है के पात के काम, को किये काम कहती में हैं के आप के उसकार के किया के किया किया किया कि कहती में नाम कि कुल की अपने ने कि तो इंकिट पात किया के इंकिट के अपने के किया किया की किया की किया है कि किया किया के किया के अपने की किया किया कि किया किया किया कि अपने कि अपने किया किया किया कि किया की किया की किया है किया किया किया कि किया की किया कि किय अध्यक्त की किया कि किया के अपने किया के किया कि किया की किया की किया के किया है जो कि किया किया की किया कि किया IJ

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ace simality is journed by Menigger signer, நான் காலைவி எடி சிறிப்பில் நடிப்பு. அதனை சிறுவரிக்கு மணியில் சிறியில் நடிப்பு சிறியில் கிறுவருக்கு கிறுவியில் நடிப்பு வழுக்கும். IFII

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v. 电标准 文献标准 我们可以证明,我们可以证明,我们可以通过的。" "阿克克斯 (中国)" "我们的,我们可以证明,阿姆斯斯里尔特定。 Charly Accepted the 17-bids of the company of the compa Air.

:: ORDER-IN-APPEAL ::

The bolow mentioned appeals have been filled by the Appellants (hereinafter referred to as "Aupellant Ruit to Aupellant Ruit", as detailed in Table below) against Order-in Original No. BHV EXCUS-800-JC-67-2017 18 dated 50.3.2018 (Rereinafter referred to as "imposped order") ussued by the Joint Commissioned, Control GST and Coptrol Excist, Phaynagor (hereinafter referred to as "lower adjudicating authority") :-

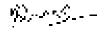
SI. No.		. Appellants	Name & Address of the Appellant
1.	V2/105/BVR/2018/19	Appellant No. 1	. Nas Shiv Corporation (Plat No. 111) (Seriya - Shipbrewking - Yard,
7.	VIZ/106/8VR/5019-19	Appellant No.1	Sosiyo, Dist Basynagar. Shri daresa Pasmar Asthorised Person.
i !			M/s Shiv Corporation Pint No. 101, Sosiyu Shiphronking Mard, 9 Sosiyo Dist Bhavnagar.
a.	V7/062/RVR/2018 19	Appellant No.3	Shri Kishor Patel Prodinator of M/s Shred Enship Enterprise
i			304, Shappers Pelet, Parimat Chewk, Weghayadi Rood, Shaynagar,
			Shri Vinod Pates.
4.	V2/ ₃ /3/8VK/2018-19	Appellant No.4	Plat No. 102, Isoen Mega City, Opp, Victoria Pack, Bhavnagard

The brief facts of the case are that Appellant No. 1 inclding Central Excise Registration No. AAKES7618FXV0(4) was magained to obtain goods by breaking ships imported for breaking purpose at their olds at the Ship Breaking Yard, Sasiyo, Interligence gathered by the Directorate Scharat of Central Excise Intelligence Solicated that meet of the Shipixesking units of Alzog/Sasiyo of Bhavhagar District were evading payment of Central Excise duty by resprting to clandestine removal, and under valuation of their finished gaous via. We plates and scrap, Investigation carried out by the officers of DGCFI revealers that Appellant No. 1 I levader, payment of Central Excise duty by respring to candistine removal of Uneir limitined goods, with active support of Appellants No. 3, 4 and Shri Oharat Shoth, all brokers. The favoratigation also revealed that Appellant No. 1 was indefeed in under valuation of their goods and Thorday dyaded payment of Central Excise outly and Appellant No. 1 desired on traudulent Central Excise to twithout between or goods in collusion with Appellants No. 3, 4 and Central Excise outly and Appellant No. 1 desired on traudulent Central Excise outly and Appellant No. 1 desired on traudulent Central Excise outly and Appellant No. 1 desired on traudulent Central Excise outly and Appellant No. 1 desired on traudulent Central Excise outly and Appellant No. 1 desired on traudulent Central Excise outly and Appellant No. 1 desired on traudulent Central Excise outly and Appellant No. 1 desired on traudulent Central Excise outly and Appellant No. 1 desired on traudulent Central Excise outly and Appellant No. 1 desired on traudulent Central Excise outly and Appellant No. 3, 4 and



Shrufitharat Shear, att cyclions.

- An Show Cause Notice No. 1060; (A71)/36-45/2013-14 dated 30.5.2015 was issued to Appellant No. 1 calling them to show cause as to why Cramul Excise duty of Rs. 1,06,01.3927- should not no demanded and recovered from them under terminal to Section 11A(1) of the Cantrol Excise Act,1941 (Aure/66)&erns/seried to as fact*) along with interest under Section 11AB of the Act and also proposing imposition of cenally under Section 11AC of the Act mod with Rule 25 of the Central Excise Rules, 20(6) (hace/nofter informed to as 'Rules'). It also proposed imposition of penalty upon Appellants No. 2, 6 & 4 poor Rule 26(1) and 26(2) of the Rules.
- The above sate Show Cause Notice was adjudicated vide the impugand order which confirmed Central Extractionty of Ro. 1.06,61,3927- under provise to Section 51A(1), along with interest under Section 11Ad of the Act and imposed penalty of Ro. 1,06,01,3927- under Section 11AC of the Act im Appellant No.1 and penalty of Ro. 10.00.0037- under Rule 26(1), and Ro. 50.36,8277- under Rule 26(2)(1) of the Rules coor Appellant No. 2 and penalty of 1,80,3347- each under Rule 26(1) inf the Rules and Ro. 51,7467- each under Rule 26(2)(1) of the Rules and Appellants No. 3 and 4.
- 3. Boths aggreed with the impugned order, Appellants No. 1 to 4 have preferred appeals on various growins, intervalia, as below : Appellants No. 1 \pm 2.3-
- (f) The adjusticating authority entert in rist granting times examination of Appellants No. 3. 4. Shri Bharat Sheth, Transporters and Angadias from whose possession districts/note/broks/rogisters were served, which were used for framing charge of clancestine removal, that the impugated order has been passed without following time provisions contained in Section 9.) of the Apt and hance, the impugated order is Jable to be set aside.
- The Charge of clancestine removal has been trained on the basis of the solution found in the seized Private Reports seized from the residential graph office premises of Ston Bharat Shoth, Broker under Panchnama etc. 30.03.2000 and records seized from the broker Shri Virus Patel and Sari Kishor Parch. The adjudicating Authority has erred in holding that these entries have been corroborated with the recorded statements of the Angadias and Transporters etc. But, these all existences are third partirel existences which are far away from the Control Excise reports majorained by the Aspetlant. The quantity of the so called goods has been taken from the sold solded goods has been taken from the sold solded diarles. But, the stated



quantity reported to have been Cleared clandestinely has not been verified from the larger of Dody Production Register maintailed by the appellant. The Chircharties' evidence are not the velied upon evidences unless and until the same are not cross examined by the Appellant.

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- fills. The charge of clandestine relieval is required to be established by the case of the production and the data of the rew material from which the final products have been manufactured. In the present case, the Adjucksling withoutly has failed to establish the clandestine receipt of the row material and clandestine manufacture of the said final products from the said claudestine receipt of the raw materials, there is also expenses incurred in utilizing the electricity consumption. But he such evidences have been placed on record to sustain the charge of clandestine materials. Thus, it is established that the impugned order was passed only on the basis of the assumption presumption basis. Therefore, the impugned order is table to no sotablished.
- (by) The Adjusticating Authority has error in sustaining the allegation of fractitudently passed the Copyac Credit focally to the fund of Rs. 20,36,8277 on the basis of said screed delices seized from the said Bharat Sheth broker 200 510. Visual Patel. The Adjudicating Authority has wrongly and without notherty of law has confirmed duty of excise and penalty imposed is not proper and legal.
- The charge of undervaluation was framed on the basis or investigation made with W/s Stock Rates, M/s Major and Minor Exhib Pvi Cid and stack products by recorded of concentral persons. But, the rates of such concentral stock products by their are not the direct evidences to sustain the charge of under valuation; that they had declared for genuine transaction value in each and every consignment in accordance with the provisions of Soction 4 of the Central Excise Act. 1944, read with the rules fromed there under but accepting the said transaction value is mothing but the violation of provisions of Socion 4 of the Act. The Adjudicating Authority taped to establish that they had received extra sale proceeds than declared in the each and every oral sactions. No such investigation has been extended to the buyers' and to sustain that the procedeclared in every consignities to extended to the buyers' and to sustain that the procedeclared in every consignities that was less than the rates declared in the involves.
- (vi) The Appellant No. 1 is not liable to penalty under Soction 11AC of the Act; if at the adjudicating authority has faited to disclose the grounds regarding what facts were suppressed by Diem; that such charges cannot be proved on the basis of third party evidences and beads penalty under Section 3 iAC of the Act is tiable to be set aside.



Appellant Mg, 3:-

- Operation No. If has stated that the impugned order is non-sueaking and con-reasoned one inaxingchies the lower adjudicating suthority has not ideal; with the pleas made by them in their written submission, as well juggitents retained by force ware completely ignored; that the diaries recovered from their residence were not relating to conceptine dearance but were offer distingtos of scrap after ingular with concent ship breakers or relating to business of his elder brother Sorr Wood Patel; ; that ones to prove clandestine removal of goods is on the Department. however the burden was not discharged. The Appellant was in no way concerned in physically dealing with excisable goods with the knowledge or besief that the goods are liable for confiscation and that the appellant had not based with more sea. Hence, the appellant is not have been penalty under Rule 26(1) of the Rules.
- (ii) The adjut Nating authority has not discussed any bytempo solevant consequence possibly under Rule 26(2) of the Rules. There is no documentary evidences which suggest that they had standardity passed on Convat croott. There is no evidence on record regarding non-transport of goods cleared by the shiptops for the table appellanc's promises.

<u>Appellant</u> No. 4 :-

- On Appellant No. 4 has stated that penalty under Rule 26th Lof the Rules is not impossible upon him; that the pricer was issued in violation of principles of natural justice instructions adjudicating authority did not supply reuon upon decriments; that diary recovered during search canded but by the officers of DGCE, contained estimates written about making angle y with concerned thindredsent; that the Department has put produced any evidence of alleged illigit transactions, that onus to prove clariforation remove, of genes is on the Department, however, this builden was not discharged by the Department. No complication evidences were produced by the Department; that they had not dealt with eachedle goods in any manner as well as not acted with manner.
- (h) The adjudicating authority has erred in imposing penalty trider Rule 26(2) of the Rules. There is no decrimentary evidences which suggest that they had fraudulently bassed on Cerwal credit. There is no evidence on record regarding son-transport of goods bloared by the simplification are appellant's premises; that the injugited owner is bad in law and Hable to he set assist.
- 4. Persons, Pearing in the matter was attended by 5/5 hrl N/3, Macratol 0.46. Quieslig, both Consultants on behalf of Appellants fig. 1 L 2 and reversion the



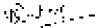


grounds of appeals and stated that the cases were not based on cylchoces but on assumptions and presumptions: that GMB Register is not document to establish clandesting dicarances; that the appeals may please be allowed.

4.1 Shri Machak Madedariya, Chartered Accountant appeared on behalf of Appellants No. 3 () 4 and reiterated the grounds of appeals stated in Appeal Merograndams.

<u>Discussion & Findings:</u>

- 5. And that Appellants No. 1 to 4 have deposited arrain 1 07.5% of duty or penalty in dispute and hence, have compiled with the provisions of Soction 551 of the Act. I find that Appellants No. 3 & 4 have filed applications. (or condonation of delay in filing appeals stating that they had proceived the impurgace order on 20.4.2018 but bould file appeals on 17.7.2019. They requested to condone delay of 28 days in filing appeals on the grounds that these consultant was busy with work related to adjudicating proceedings of Various authorities and in topicy or notices issued by income tax arganization. Considering that delay is within further period of 30 days as provided under provise to seption 35(5) or the Act, incondone delay in filing at these appeals also for decision connection.
- b.1 If have cardinally game through the facts of the case, the impushed order, the grounds of appeals detailed in appeal memorands and written as well as oral submissions made by the Appellants. The tasks to be decided is whether the impugned order, in the facts of this case, confirming demand on Appellant no. 1 and imposing penalty on Appellants No. 1 to 4 is correct, legal and proper or not.
- 6. If find that the Officers of the DGCat carried out investigation and covered shipbreakers, recluding Appellant No. 1, tenvers including Appellants No. 3, 4 and Shirt Sharet Shoth, market research agencies, pransporters etc. to crearth alleged exession of Central Excise duty by way of clandostine removal of gands. Scarches cannot ont at the premises of various Transportation at goods prompting premises of Appellant No. 1, Mz. (late, Truck No., Plot No., broken names atc. The arabase decreased in their statements that as and when ship breaker's plot after making entry regarding plot no, where the truck was sent to and panie of ship preaker/arcken etc. The artitles appearing in this register, of the



transporters tailed with the invoices issued by Appellant No. 1 and it, was found that out of 377 entities appearing in trip registers. Invoices were issued for 143 entities. However, no invoices were issued by Appellant No. 1 in respect of remaining 100 common. I find that invostigation was expedded at the check post maintained by Culjarat Maritime Board (CMB), which revealed that GMB maintained records of meroment of volitions at the Shin engaging yard and had details like, date, vehicle details, purpose, in Grout Chie etc. The details recovered that transporters with the monds maintained by GMB revealed that most of the entries were found tallying, which suggest that trucks entered ship broading yard and worth to the promises of Appellant No. 1 for loading Places/scrap, hase find that during search carried out at the residence/business aromales of Appellants No. 3, 4 and 5 or Bharat Shoth, prokers, frontminating documents, were recovered showing purchase of Places/scrap from Appellant No. 1 or Select of the 110 tents for which to corresponding invoices were found by Appellant No. 1.

6.1 Find that substantial dynamics are wealable on record in the form of accumentary evidences recovered from the premises of the Transporters, prokers and office of the field as well as Matemants of brokers and transporters.

find that many entries appealing in trip negisters of Transportors and diartes/private recovered from the premises of Appeliants No. 3,4 and Shri Sherat Shoch were found tallying with the statutory records (transactions of Appellant No.), which prove addrend cuty of transactions and details contained in the said tutp registers of gransporters as well as mortor/private records of Appellants No. 3,4 and Soni Gharat Shedi. I also find that the substantial evidences in the form of Statements of transporters and Appellants No. 3,4 and Smi Bharat Shedi have not been retracted to I date, Atlany stage, and therefore, as per section legal position, sanctity/validity of the Statements cannot be undermined. I also note that mands /private records recovered from the premises of Appellants No. 3,4 and Shri Bharat Shoth contained records of many other ship proceed.

6.2 After analyzing the coldences available in the form of (i) registers recovered from the Transporters showing transportation of goods from the premises of Appellant No.1 which corroborates with records maintained by Gujazar Maritime Board (ir) fredhillrating documents recovered from the residence/business premises of Appellants No. 3, 1 and Shri Bharat Sheth showing goods purposed from Appellants No. 1 on appellant of their charts (in)

 $\sum_{i=1}^{n+1} \frac{a_i(i)}{a_i(i)} \cdot \frac{a_i(i)}{a_i(i)} \cdot \frac{1}{a_i(i)} = 0$

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Statements of Transporters who transported the fireston goods from the promises of Appellant No. 1, Tam of the considered View that Appellant No. 1 has hidulged in evasion of Central Excise duty.

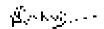
- 6.3 Apartiant No. 1 has contended that the lower adjudicating authority has not allowed pross-examination of Appellants No. 3. 4, Shri Bharat Shoth, transporters and Angacias and the solute, embeddes of natural justice have been violated. In this regard, I find that the imposped order has held as under the
 - 12.1 h.1. If further find motitherd is not yourselve to the Central Picerse Law societing cross-enumination. However Martins High Court in the case of A. Polatic Ws. Court, of India reported in 1982 at 11 years 1986 had held that right to cross-esamination to not necessarily a part of reasonably opportunity and depends upon the Batts and direct meanness of each rose. It largely depends once the adjudicating authority, who is not golded by the rifes of evidence as a characteristic offers, the apparatually to far for yourselved as would assure him properties in 1983 for 7 (019) 385 years display to delight Physics (in the Proposed at 2014 (391) E. F. T. 200 (15 A) is a period of the residual I reposed at 2014 (391) E. F. T. 200 (15 A) is a period it was held as under the
 - This, In A. Kadan z coal (hip o), the Harfilde Modras High Coart states that the necessity of choice equationation depends upon the facts and viroumstances of each case. The Adiroccoming Authority has to give an opportunity to the party concerned as would assure thim cooper procedurity to defend bloosalt. Opportunity of cross examination is given wherever it is the ward ju-156s' had sentime and is not for profracting the proceedings. The decision in CD' inclusives case (supra) is again to the effect that those examination reads to granted as a methor of routine and is to depend therefore back of reducine Historian particular and in the last of Historian cases. This requisit should be taken the dismoscal advitor type of without examples as a discount of the facts of each relationary of each relationary and discount of the facts of each relationary of each relationary and decreases and modified to the dismoscal advitor type of without examples are discounted for justification relations. It
 - 3.11.2 Similarly, to the case of Suprom Par N Wood Lvt Ltd Vs. Commonfields $\delta \in C(E_h)$ Accompanied reported at 2004(177) PLT 1.50 fTri. Mumbrilly. Health to be coal, in the product, in parts δ , has help as in the
 - "for the first contenteres that principles of colors is its are similated chase such as cross examination of persons, we see that clearly active and agent, has to be weighted in the light of the rack that all the attendents rolled upon wormplanes below than. They had all the opportunity to demolical these stronger of the fluoristics. Cours assumination cannot be claimed as a latter of high in departmental proportings."
 - \$11.3 Further, the Roc'ble Tribonal, in the case of M/s Deputy Dyars Vs COE, Cheensi reported in 2000 (186) GUI 305 (Tri Chemai) by observed that too-2-outlib lity of economics of a consecution in the role in all flaw when the findings are based on cocument about which there is not real ble explication and nothing on record to a row statements not voluntary or effectively reliabled within class too ximity of the time there were demined.
 - $NDA = R_{\rm L}$ know all above thets, I find that request for cross examination by the National december neal, consolutation and hones cannot be accorded to."
- 6.4 I find that the documents recovered from the premises of the transpertors.



 $\sqrt{k} e^{-k \sqrt{k} \epsilon_{n+1}}$

contained notally of transportation of consignments from the premises of shipbreskers, melucung Appellam, No. 1, Incolosse, truck no, stuporcakon's pasti now destination, harmalist broken and allese details were also complocated. with the records maintained by Gujaret Maritime Grand in the form of permitregisters. Thus, evidences gathered from transporter's end were independently. compagneted with the evidences gathered from SM3. I also find that none of the statements of transportors has been retracted. The transporters' role was limited to the transportation of goods and they can no reason to depose, in their Statements, something which was contrary to the facis. I also find that diames/provate recently receivered from the premises of Appellants No. 3, 4 and Smil Bharat Shedh, brokers recorded rigit, as well as Illibit transactions of ship. tomorgan units / rothing mills. Shir Manish Patell, Accountable of Shiri Bharat, Sheth. who wrote/ naimalined idiatios, explained the incous operand in adopted for nominable of gancs clandestinely from slow breaking units of Alzne, as well as coding/short forms used to netood transactions to the diadas. It also find that homs, a broker. Appedants No.0, 4 and Sink Bharat Shedt were required to record $4e(a)_{N}$ of $e(a)_{N}$ spections, Both as well as which, in proof to get commutation from sespective danties. If also find that said diaries/private records collabines records. of many other solp breakers and veragiby of the sale distins/helyate recents has acen ergued, after examining the faces and evidences available on record, I amil of the considered opinion frot not granting of apportunity of cross examination. or Appollants Na.3,4, Shri Bharat Snesh, classporters exc. by the lawer $\mathfrak{g}([\omega][\mathfrak{g}_{\mathfrak{g}}])$ authority has not satisfied the adjunctation proceedings. I, therefore, agree with the impagned order that this contention is devoid of marits.

- 7. Regarding confincation of demand of duty of Rs. 34,17,342/- on the ground of unconvolution, Appellant No. 1 submitted that they had not incuiped in undervaluation of goods and find not received differential hayment in math from their intyers towards the goods sold by the not that they had sold goods either equal or higher than the prices disculated by the market research agencies are not acceptable as transaction value of the perces sold by them.
- 7.3 In rind that the lower adjudicating authority has confirmed the unarge of under voluntion, *later als*, giving findings as under :
 - 13.14. The Show Caust Nocice of type consists of omital Estrice 3, by by way of progressive stigm of progress and an affirmation up of ships. It is not in dispute that some as descends A profes or coaste the price providering and the factors of same in a registry and there is no reason start prices circulated by



Page 13 of 17



ench approper not more highered. It is in this backfree the revent Ship Break tradecast Buyers also subscribe to such morket records appropriate to have an idea of prevailing prices so us to enable them to call their goods of maximum rate. It is also not in discone that the re-reliable plant running from size 3 mm (1 Ami) to 25 mm (14 Anii) are enversed out of irreaking up of ships and the implority of re-rollable platts emerged of breaking of ships are of 1.5 mm size in reduct to substantiate this alterpatent, the BGCO conducted impring which serious marketing presearch appropriate including Mrs. Major 13 Major 14 to retirence to pricing data which rescaled that day to day prior a 117 mm size of Plattas is almost equivalent to the average price of all size within the congoint Summ to 25 mm.

3.15 On comparison of the price mentioned the two established (grps) wassers of the price virials of by M6. Major 8. We say it the price virials of by M6. Major 8. We say it the M6 Slow Corpo were for two floor districted with preceding the market change the respective period of the market change the respective period of the slop through have, by not been ring the actual size (in charses of M8 Plates are as by them, underwaited M5 Re rollable Plates so as in enable them to because only period the value of such goods in the invocus and respect the dual cancel value, over and obove the declared invoice value, by way of proceduring each amounts.

2. 6.—1, therefore, find the substance in the allogation of the lower is attent in the present show cause notice particularly when district social form Shri Planet Sheth, Shri Vimed Patel & Shri Kishor Patel abroady containing do a subfract transactions with various Brokers/Shrollis/Anapadies. Find the a knowled allogation of under valuation been not correct. Just, would not have some involvement of transfer of bage amount of cosh which perhabs partial to undervalues cast of ship breaking mountain.

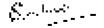
In extendition asset, I again with the content of the DOI of that practis are easierable ignorant factors like payment. terms. Quantity & Greatly of the grady relation 4.15 bayes, denote and supply significat, dietefore. 255 difference in price in considerable one. As stated above, Umkers : whip is reakers : Buyers in relate reference of one price quoted. by market research agencies like M/s. Major and Minor. . , therefore, find and hold that there is no reason to doubt tratigrice guided by Min. Major and Minor is ration) only variation of (0.722) i. e. rates of Objects and Scrup 2% bases from the cate of Mrs. Major and Mixer is considerable 1 therefore (.11) agree with the sizes in a jited by 10000E), that didy sizest political second of second or prior. others then the issues acreams of nucleavaluation of the goods and rightly. consecutable force Mis Blois Corpo. Further, I also find that a large conduct of Alty formally to is, so lives those Alling and brokers were member of Mis-Scoolfolds and were made up day or day in plate on the daily production of ship. breaking materials through SMS rikes, and anoity it is sign rescaled $\hat{\omega}_{2}(M)$ Steelrates were adopting that may bound find a disappropriate scaling of the third gathered, without if to Ahip II colors we do fully award of the $lpha_{ij}$ $lpha_{ij}$ $lpha_{ij}$ $lpha_{ij}$ generated from any lateneous and into the ally make valued the goods with present on evade payment of Contral Ecolar Patrix. Thus, then the investigation conducted and evidence collected from various agreeds, and posters ignored Ξ the business of any breaking materials has some of the energy χ_{ij} (iii) χ_{ij} Ship Corpo has undervained the next initio pools=0 initial increasing payment. of Cutteral Excise cory. I for the raind that for an outation of that y assign $g_{{
m cough}}$ color volunties, by M/s Shiv Corpo. ()4(CFI adopted the multiple of djectored. allows remidering the price idealered by NM Major & Minor as strown in Annason - (Shiy Corp A-UVII), As per the said Annexora. Mix Shiy Corpy by coevaced the find Hariso dury of Ba. 51,20,3427, and 5 million, some the Sec.





 $\operatorname{den}(\operatorname{re} L^n$

- A2 find that the prices of Wa Plate/Scrap circulated by malket research agencies the M/s Specificate info and W/s Major and Minor dxims Pvt util word considered to especially worther the transaction value declared by the Aspel,and was reasonable or not. I find that said Market Research Agencies determined the price of MS Plate/ Scrap after taking into account various factors like demand and supply, orders provailing in different points of country etcland then disculate the price. The fact that large number of Ship breakers, brokers and dealers from Mangland Kharbagar power subscribed to themse wheels itself give sancetly to the services rendered by the said agencies and there is no reason to discard the price as unreasonable or unrealistic, it, the price, hold that the imprigned order has rightly confirming declared on the ground of gades cleared at value, which was lower than the prevailing market price.
- Amprélant No. I has arguen that clandration removal has to be proved by the Department and cannot be established based upon some dialnes solved from ing μερήθερε of Appellants No. 3,4 and Ann Bharat Shoth. In this regard, i find that the chargest private records recovered from the premises of Appellants No. 3.4 and Sin' Brighet Shelly recorded yield has well as illitable transactions of Apopt and No. 1 and only mase entries for which corresponding sale involves. were not issued by appellant No. 1 word taken into agrount for the purpose at nomanding dicty. It also find that transactions reflected in the Said OriVate. records were further comoborated by Matamants of the transporters, was annighted to have transported the goods from the premises of Appellant No. 1.. The registers manifulned by the Transporters contribed octails or transportation. of speck from the premises of Appellant Na. 1 which were further comborated with the records majorained at SBT check past, incomfore, demand cannot be and to be based only on third party documents but duly combinished by bost of evidences recovered during investigation. Further, appellarizable, 3.4, and 5hm. Whatst Snesh desirg i brokers, they were required to second details of all. uppreactions, light as well as Olivin, to order to get commission from respective. partities. Sat unere re ma compalision for them to tecoral something in their cieries/ notebooks which is contrary to facts. I also find faat sale maries/patvate. records contained records of many other ship breakers and veracity of the said. diaries/pitvare records has been proved. Apart from that, evicences of classestine relieval have been gathered by the investigating officers. successfully from many places and therefore, those documents cannot be called third party continents but compto ration and supporting modernes. If they upon





The Order of the Pointile CESTAT in the rask of Ora Prakash Against, reported as 2017 (146) EL1 125 (TH-9e1), wherein it has been noted that \dot{t}

 $^{\prime\prime}$ 2. If Sufficient in from the prescriptings almost issociant set of fixers agon applicat. The Alignains can clear twent on entities to collected from the copyling state. რჩებებ სამის ობინებ დამ წვენები თვევნებზება დენების დანახან მაგია გიენება დეგანეთა დეგ. straget to be excluded <u>Admittediy, the east</u> in the unit, b<u>ineed on the instanc</u>i thistoring po<u>tterned from the supplication</u> that and also an engr<u>edictional by the</u> corresponded to the transfer of the transfer and the contract of the south unaccommend from materials for further manufacture has appeared, two, with their he the appellment and due their short pend has tiled been exchanged ranke, see amos ϵ of investigation $2m_0^2$. The appellants great emphasis an m_0 are $2m_0$ by 1The fields m contains which D_{ij} and of delays of frame p_{ij} p_{ij} and p_{ij} and p_{ij} p_{ij} p_{ij} Januaria mana ilika kalikenter<u> malle aled Janua tem papahente sale ke patenarasak and</u> Cannot no disputari. The property requests of the purpolary base began corrections of Cost with 2011 for the gazendress of their continue by the persons may have me rings of the paperies is <u>units</u>. Here were existency as a drought define the counter of the equation is table the categorisally estimates the constrained eigenful of during the theory. House seen, the 1909 and makes the temperations from the periods are not been really the and, equation it is strongly that the appellant has a own a plan that the department had and extended the details of Lagran and appeared in its finished greats to some $harmon_{i}B$ $harmon_{i}Bart_{i}Bart_{i}$, which is a $harmon_{i}Bart_{i}Ba$ <u>kar the personne in advanga compact</u> he transferd suitable to be not the commot the appetrant that the compliance that appetrant that the compliance that appetrant In fig.). By supplying interestimated over materials for more consultations $\delta \theta/\theta c$ parties of the appellance flam. In each althought, it is not benefit fat the appellant. for excession that appears single, makes the probability magains meant of attack-conditional bits. oto $2dm^2matty$ gaze of the potentic contain on the determinal girth $\delta a \approx 3 c a$ g_{max} and g_{max} leader consist and finite his constructions. In the appears, before the \mathcal{D} (\mathfrak{p}_{max}), కైగల బ్యాంకింటాకి ఈ జాయ్లిస్స్లు ఆ రిజుకుంటా యాగా కేసుకి 1991 కి.మీ కడిపెటికి ప్రాక్టిస్తున్ని ప్రాక్షిణ <u>కాట్ లో కేస్త</u>ి appellum-lime is not not used in the rate case into relical appelluments one was all any support of the present case. In the cases amplifying processions magnifications the evidence of each case are in the approximation contribution. On gares atready, the third party's records of the supplied is right or officered by the <u> garger at about and further correlegated by the appellant partial be albertable</u> <u>gult om the transmit of freiher middinger hag transport</u>ation met mengt by Nation. <u>kas not been proved. In a claudictive immediature and</u> attraction contributes of goeranan correct for established unit quarished. The correct autobish of the groups of gapted and the fleelings in the impropert and t_{i} if that the relation t_{i} magajene mjila nise jihalinga menastral kajalika kansar ezitlereksi. Automilingia, hita appeals are distributed."

(Emphasts supplied)

Appoillant No. 1 has contained that the Department has not discharged busiden of proof for alleged filicit transactions and that dynamics regarding usage of raw material and excess consumption of electricity are non-existent. In this regard, it have already discussed in Partis square that the Department has additional sufficient evidences in the form of invariational documents recovered from the premises of Appellancs No. 3,4 and Shri Bhavet Shoth, which contained dentits at goods prochased by them on behalf of their clients from Appellant No. 1 wild sout cover of Central Exciso Invotors and without hayment of Central Exciso myt. — base dyidences were further correspondently. Dy the statements of



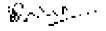
transporters, who deposed that they had managerized the good from the promises of Appeliant No.1 and these Statements have not been retracted Considering schafantial evidences in the commit' these documentary evidences of motord. I are of the considered opin'on that the Deportment has discharged its bubble of proof for clandestine removal or goods by Appellant No.1. In case, of clandestine removal, department is not required to prove the case with motherspical precision. My views are supported by the order passed by the fluother tributed to the case of A.N. Subs & CO. reported in 1995 (86) EL.T. 333(Fri.), where or it has been lend that.

The all such cases of clandestine restricts, it is not provide for the Propertion) to prove the same with transcratical precision. The Depthement is defined to have discharged their burden of they place an much of evidence obtain, prime taking shows that there was a clandestine removal of such evidence is products. By the Department. Then the caus shifts to be the Appel ands to prove the tile of example and eximple removal?

- A.7 The Hemible CHSTAR in the case of Ramachandra Raxin Pvt Ltd reported to 2010 (295) (i.b.), 116 (Yri. Dang.) has noted as under:
 - *7.2 In a case of classestine activity invalving suppression of production and almost who renvival, in a not expected that such evaluations to be established by the Reportment in a mathematical precursor. After all, a person including in classestine activity takes social entipresantion to bide destroy the evidence. The evidence available that he lituse within spite of the best care taken by the parameters which are the case have to be legality. In such a solution, the solution is some of the case have to be legality by the parameters of the parameters of a classicity of the case have to be legality and retained by the parameters of a classicity of preparameters of a classicity of and not not us, ye debox on they are reasonable doubt? "
- 8.3 Inc. Her big Supreme Court as reported in 7914(507) FLT A61(50) has uphald the above order of the CESTAT.
- 5.4 Jabo poly on the order passed by the Hamilton CESTAT, Alimedehad in the case on America Alaminium Corporation reported at 1996 (261) E.L.T. 515(Tri. Alaminium), wherein at Para 5.4 of the order, the Tribunal nebt that,

"Once ago in the walk or proving that they have section at large this burden, produced, this to the appellants and they have fails to disk arge this burden. They want the department to show challenges whole of goods to experts to not assept on it, it was one several factorious of the field suprame throughout and light Cours wherein it has been hald that in such about their activities, only the person who is diagen in such acceptable for any other and acceptable for any investigating political to morning at 1 the entitlences required and provide with mathematical publisher, the entities of the illegal politicism.

The Pontale CESTAT in the case of M/s. N R Sponge P Lid reported as 2015 (308) Full 450 (Tri-Deri) has also held that when proporderance of ordinability was against the appointed, pleasings of no statements recorded from hillyons, no excess electricity concumption found. In raw material purchase

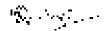


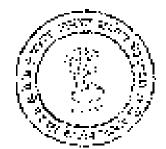
Page 14 ch 17



found sinancounted for and no input output ratio prescribed by law etc. and of no use. The Sanible Light Court in the case of International Cylinders Byt Endirectured at 2010(255) ELTSS/H.P.) held that once the department proves that something illegal had been done by the markithaturer which police pade shows that illegal activities were using pairtied, the burden would shift to the manufacturer. It is a basic common sense that no person will maleran authoritic recents of the illegal activities or manufacture being done by it. Therefore, contention of the appealant is devoid of mortuin light of the hostitic evidences available in this case as escaused above and in the impagned order.

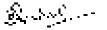
- In view of above, the various consentions raised by the Apprliants are of nor help to them since the Department has addicted sufficient oral, and documentary combonative evidences to demonstrate that Approximations No.4 has evaded payment of Control Exceptional duty by respiring to dandestine remove: of the finished goods and undervaluation of goods. It discretions, I and that confining to demand of Central Exceptions (196,01,350), by the lower asjudinating authority is correct, legal and proper.
- 9.1 Since semand is confirmed, it is natural consequence that the confirmed company is required to be hard along with interest at applicable rate under Section 11AA of the Act. I. Therefore, uphold order to pay interest on confirmed (or rapid.)
- First is a case of clandestyre remove, of the finished goods as held if showe Paras and therefore, the corpurated profer has correctly impostic equal and manifoldary penalty of Rs. 1,06,01,392/ on Appollant No. 1 maker Section 1.4CH(18) of the Act. The Imposted order has correctly given aption of reduced penalty of 25% to Appellant No.1 as prescribed under grows to Section 1.1AC of the Act, hence, I concurred his decision on penalty on Appellant No.1.
- 40. Beginding penalty imposed upon Appellants No. 2 to Klusder Rule 26(2)(j) of the Rules for infaudulently passing of Convet predit. I find that Appellant No. 3 was involved in sale of phony invoices without perivery of corresponding goods through Appellants No. 3,4 and Sam Charat Sheth. The IDGCR (meantled die mattis normalit accepted by Appellant No. 1 by deciphering the enthos accorded in dialities and penaltive recovered puring sparch from the residence prehilises of Appellants No. 3, 4 and Shift Rharat Sheth as elaborated in petall in isonal Cause Notice. Thus, it is beyond could that Appellant No. 1, 1, it collaison with Appellants No. 3,4 and Shift Bharat Sheth, issued invoices without physical





derivery of the costsatus godes and fraudulently passed on Cervat credit. I find that Appellant No. 1, is involved and its responsible for this act of traudulent passing of Cervat credit being authorized person of Appellant No. 1. further, Appellants No. 3 and 4 focultated Appellant No. 1 by finding buyers who want to avail only fraudient Cervat credit without receipt of goods as well as buyers who want to purchase godes without involve and also managed cash (hypived in such transactions) derived, persony imposed open Appellants No. 2 to 3, under No. 2 (0.5%) of the Rules is correct and Euphord the same.

- 11. Regarding penalty imposed upon Appellant No. 2 under Sule 26(1) of the Rules. If find from records that Appellant No. 2 was authorized person of Appellant No. 3 and supervising day to day transactions of Appellant No.1 and had concerned honself in manufacturing, removing and selling excisable goods on which excise duty was not paid and hance he had moson to behave that goods removed clasicestimely or goods undervalued by Pienr were liable for confiscation. It therefore, hold that penalty of Fs. 10,98,9887, imposed under 80% 75(1) upon Appellant No. 2 in the impugated order is correct and proper and Tuboold the same.
- Regarding imposition of penalty under Rule 26(1) of the Rules. Apuellants No. 3 E. 4 have conceased that diaries recovered during search carried out by the officers of DALLI contained estimates written after making inquiry with the concerned ship breakers; that the Department has not produced any extrems of പ്രശ്നൂർ (flort transportions; than artis to prove plandestine removal of goods is on the Department, which was not discharged by the Department. I find that $\Lambda
 m postgarts \, syn, \, 3
 m pprox \, 4$ have acted as arekers who purchased godes on behalf of m actedthem objects from Appellant (for it. Search Carried out by DSUF) at the residence/husiness promises at Appellants No. 3 & 4 sesulted in recovery of incomminating postuments in the form of pocket diaries and non-drive, which $ar{q}_0 \gtrsim ar{q}_0 ar{q}_0$ defalls of transactions entered with strip breakers, including Appellant. No. It and rec/dient buyers. I find that the DOCFI dadipharac the coors and aboreviated name rises in the said documents which revealed that Aupellants. Not $2 \times n$ had pure lessed goods from Appellant No.1 for which ac corresponding theorems were assed by Appeliant No. 1. I also find that the said cocuments. contained dotals of cash transaction between Appeliants No. .1 μ A and Appellant No.1 for sale proceeds of goods removed by Appellant No. 1 without Cangrat, Explay Invokes. I than that Aphellants No. 3 C. 4. both played important. role in the claridesche removal of the goods by appoint No. 1, and bards, $p_{C}(s)(i)$ in at penalty of Rs. 1,80,2347: case upon Appellancs No. 3 lpha 4, under



 $same 18.0^{\circ} 17.$



Rule 26): For the Rules by the lower adjuctaating authority. A correct and Laphald the same,

- 12. In view of above, I uphold the impugned order and reject the appeals of Appellants No. 1 to 4.
- 12.1 अभीक्षकतीओं द्वारा दर्ज की अई अभीकों का निषदात् उपरोक्त तरीकेश 'केशा जाता है
- 12.1 The appeals filled by the Appellants are exposed off as above.

सत्मा<u>णि</u>सः ४०५,

्षिक्षा (१८८८) है। १८५६ |कुमार सन्तेत्र] प्रधान आकृतन (अगीन्द्रा)

<u>By R.P. A.B.</u>

चिगुरू ११५ अधीरक (अधीरत

%धगरमः (३१५ म्स)		
In,		
10 M/s Shivi Corporation Plot No. 111 . Sosiya Shippreaking Yard. Sosiya. Dist Ishawilayan.	्रोतिक क्यांदिशत रबांट के भाग सोदीको शिपहेकिक यार्ड. सोदिको, जिल्ला आयलगर।	
2. Smi Maresh Panna: Authorised Person, MVs Shiv Corporation Plot No. 111, Sosiyo Shipbreaking Yard, Sosiyo, Urst Bhavnogar,	की इरेश परनार, अधिकृत क्योंकेन, में दिन क्यपेरियन प्रतिद न, 111, सीसिनी विपरोक्तिंस बाहे, सोलियो, जिल्ला में बहुगर।	
 Shri Kisker Patet Proprietor of MAs Shree Krishnal Enterprise 304, Shoppers Point Partma, Chowk Waghavadi Road Shavragaa Shri Virod Patet Plat No. 102 Upp Mounia Pars Opp Mounia Pars Otherwager 	श्री निशीर प्रदेत. ग्राहिन्य, श्री कृष्ण एंटरप्राइन्द्र. 304. श्रीपरी पहिंद, परिनात वींग . वाधादांशी सीट, स्वानगर। वी विशोद संदन, वाशंद के 102. इस्कींक से मा दिस्ति, विक्टोंदिय दिसी के	

- n) प्रधान गुरुष आयुरुत, बस्तु एवं रोता कर ५व केन्द्रींग उन्याद शुक्क, गुडाराज ोप.এ.ক্রয়েলার को আনকারী हेतु।
- 2) आयुक्त, उस्तु एवं सेवा वय ऐवं फेस्ट्रीक उसक्ष गुरुक, क्यानवर आयुक्तीकार. भारतागर को आवस्त्रक क्यांकाई, हेतु।
- इंग्लूंकत ५.युवात, यसनु पतं तेत. तल एव केल्क्सेण उत्पाद शुल्ल, काराजनर आयुवातल्य.
 आराजनस्य ८) अध्वरणक कार्यवाही हेत्.
- ਼_{ੁਲ}਼ ਅਤੇ ਗ਼ਰੂਗ। ਪੁਲ



