



10 The Commission, after having heard the views of the Government of Karnataka, has concluded that the Government of Karnataka has not provided adequate information regarding the proposed project. The Government of Karnataka is requested to provide the following information within the stipulated time frame:

- 11 (a) Detailed project report (DPR) for the proposed project.
- 12 (b) Environmental Impact Assessment (EIA) report for the proposed project.
- 13 (c) Details of the land acquisition process and the status of the land.
- 14 (d) Details of the financial resources for the proposed project.
- 15 (e) Details of the social impact assessment for the proposed project.

16 The Commission has also noted that the Government of Karnataka has not provided adequate information regarding the proposed project. The Government of Karnataka is requested to provide the following information within the stipulated time frame:

- 17 (a) Details of the land acquisition process and the status of the land.
- 18 (b) Details of the financial resources for the proposed project.
- 19 (c) Details of the social impact assessment for the proposed project.
- 20 (d) Details of the environmental impact assessment for the proposed project.
- 21 (e) Details of the project's contribution to the local economy.

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- 23 (a) Details of the land acquisition process and the status of the land.
- 24 (b) Details of the financial resources for the proposed project.
- 25 (c) Details of the social impact assessment for the proposed project.
- 26 (d) Details of the environmental impact assessment for the proposed project.
- 27 (e) Details of the project's contribution to the local economy.

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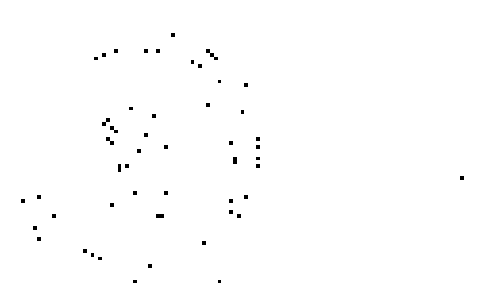
- 29 (a) Details of the land acquisition process and the status of the land.
- 30 (b) Details of the financial resources for the proposed project.
- 31 (c) Details of the social impact assessment for the proposed project.
- 32 (d) Details of the environmental impact assessment for the proposed project.
- 33 (e) Details of the project's contribution to the local economy.

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- 35 (a) Details of the land acquisition process and the status of the land.
- 36 (b) Details of the financial resources for the proposed project.
- 37 (c) Details of the social impact assessment for the proposed project.
- 38 (d) Details of the environmental impact assessment for the proposed project.
- 39 (e) Details of the project's contribution to the local economy.

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- 41 (a) Details of the land acquisition process and the status of the land.
- 42 (b) Details of the financial resources for the proposed project.
- 43 (c) Details of the social impact assessment for the proposed project.
- 44 (d) Details of the environmental impact assessment for the proposed project.
- 45 (e) Details of the project's contribution to the local economy.

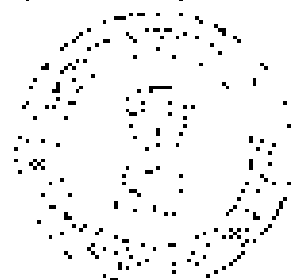


IN ORDER-IN-APPEAL :-

The below mentioned appeals have been filed by the Appellants (hereinafter referred to as "Appellant No.1 to Appellant No.4", as detailed in Table below) against Order-in-Original No. BIV-EXC-15 (00 JC 65 2017) 16 dated 29.3.2018 (hereinafter referred to as "impugned order") passed by the Joint Commissioner, Central GST and Central Excise, Bhavnagar (hereinafter referred to as "lower adjudicating authority") :-

Sr. No.	Appeal No.	Appellants	Name & Address of the Appellant
1.	V2/108/BVR/2018-19	Appellant No.1	M/s Shiv Shipbreaking Company Plot No. 25, Along Shipbreaking Yard, Along, Dist. Bhavnagar.
2.	V2/107/BVR/2018-19	Appellant No.2	Shri Harsh Parmar Partner, M/s Shiv Shipbreaking Company Plot No. 36, Along Shipbreaking Yard, Along, Dist. Bhavnagar.
3.	V2/151/BVR/2018-19	Appellant No.3	Shri Kishor Patel, Proprietor of M/s Shree Krishna Enterprises, 502, Shoppers Point, Kalina, Chokk, Waghavel Road, Bhavnagar.
4.	V2/148/BVR/2018-19	Appellant No.4	Shri Chand Patel, Plot No. 102, Iscon Mega City, Opp Victoria Park, Bhavnagar.

2. The brief facts of the case are that Appellant No. 1 (holding Central Excise Registration No. AAKFS68/20X4001) was engaged in breaking of ships imported for breaking purpose at their plant at the Ship Breaking Yard, Along. Intelligence gathered by the Directorate General of Central Excise intelligence indicates that most of the Shipbreaking units of Along/Sosiga of Bhavnagar District were evading payment of Central Excise duty by resorting to clandestine removal and under valuation of their finished goods viz. MS plates and scrap. Investigation carried out by the officers of DGCEI revealed that Appellant No. 1 evaded payment of Central Excise duty by resorting to clandestine removal of their finished goods, with active support of Appellants No. 3, 4 and Shri Bharat Shetty, all brokers. The investigation also revealed that Appellant No. 1 was indulged in under valuation of their goods and thereby evaded payment of Central Excise duty and also passed on benefit of Credit credit without delivery



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of goods in exclusion with Appellants No. 3, 4 and Sri Bharat Sheth, all brokers,

2.1 Show Cause Notice No. DGCEI/A711/3646/2013-14 dated 30.5.2013 was issued to Appellant No. 1 calling them to show cause as to why Central Excise duty of Rs. 55,06,860/- should not be demanded and recovered from them under proviso to Section 11A(1) of the Central Excise Act, 1944 (hereinafter referred to as "Act") along with interest under Section 11AB of the Act and also proposing imposition of penalty under Section 11AC of the Act read with Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as "Rules"). It also proposed imposition of penalty upon Appellant No. 2 under Rule 26(1) and 26(2) of the Rules and imposition of penalty upon Appellants No. 3 & 4 under Rule 26(1) of the Rules.

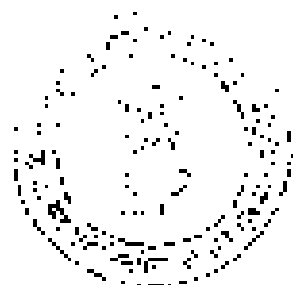
2.2 The above said Show Cause Notice was adjudicated with the impugned order which confirmed Central Excise duty of Rs. 55,06,860/- under proviso to Section 11A(1) along with interest under Section 11AB of the Act and imposed penalty of Rs. 55,06,860/- under Section 11AC of the Act on Appellant No. 1. It imposed penalty of Rs. 10,00,000/- under Rule 26(1) and Rs. 34,06,960/- under Rule 26(2)(i) of the Rules upon Appellant No. 2. It also imposed penalty of 5,00,000/- each upon Appellants No. 3 and 4 under Rule 26(1) of the Rules.

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

Appellants No. 1 & 2 :-

(i) The adjudicating authority erred in not granting cross examination of Appellants No. 3, 4, Sri Bharat Sheth, Transporters and Angadias from whose possession diaries/notebooks/registers were seized, which were used for framing charge of clandestine removal; that the impugned order has been passed without following the provisions contained in Section 9D of the Act and hence, the impugned order is liable to be set aside.

(ii) The charge of clandestine removal has been framed on the basis of the entries found in the seized Private Records seized from the residential cum office premises of Sri Bharat Sheth, Broker under Panchnama dt. 30.03.2013 and records seized from the broker Sri Vinod Patel and Sri Kishor Patel. The Adjudicating Authority had erred in holding that these entries have been corroborated with the recorded statements of the Angadias and Transporters etc. but, these al. evidences are direct material evidences which are far away from the Central Excise records maintained by the Appellant. The quantity of



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the so called goods has been taken from the said seized drums. But, the stated quantity reported to have been cleared clandestinely has not been verified from the angle of Daily Production Register maintained by the Appellant. The third parties' evidence are not relied upon evidences unless and until the same are not cross examined by the Appellant.

(iii) The charge of clandestine removal is required to be established by the date of the production and the date of the raw material from which the final products have been manufactured. In the present case, the Adjudicating Authority has failed to establish the clandestine receipt of the raw material and clandestine manufacture of the said final products from the said clandestine receipt of the raw materials. There is also expenses incurred in utilizing the electricity consumption. But no such evidences have been placed on record to sustain the charge of clandestine removal. Thus, it is established that the impugned order was passed only on the basis of the assumption presumption basis. Therefore, the impugned order is liable to be set aside.

(iv) The Adjudicating Authority has erred in sustaining the allegation of fraudulently passing the Central Credit facility to the tune of Rs. 31,01,563/- on the basis of said seized daines seized from the said Bharat Sethi broker and Shri Vinod Patel. The Adjudicating Authority has wrongly and without authority of law has confirmed duty of excise and penalty imposed is not proper and legal.

(v) The charge of undervaluation was framed on the basis of investigation made with M/s steel Rates, M/s major and Minor Ex'ns Pvt Ltd and statements recorded of concerned persons. But, the rates of such Iron and Steel products by them are not the direct evidences to sustain the charge of undervaluation; that they had declared the genuine transaction value in each and every consignment in accordance with the provisions of Section 4 of the Central Excise Act, 1944 read with the rules framed there under. Not accepting the said transaction value is nothing but the violation of provisions of Section 4 of the Act. The Adjudicating Authority failed to establish that they had received extra sale proceeds than declared in the each and every transaction. No such investigation has been extended to the buyers' end to sustain that the price declared in every consignment was less than the rates declared to the invoices.

(vi) The Appellant No. 1 is not liable to penalty under Section 16A of the Act; that the adjudicating authority has failed to disclose the grounds regarding what facts were suppressed by them; that such charges cannot be proved on the basis





of third party evidences and hence penalty under Section 11AB of the Act is liable to be set aside.

Appellant No. 3 :-

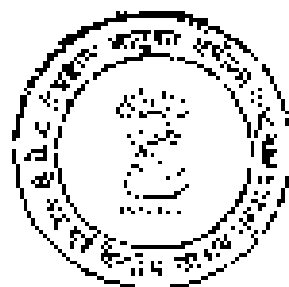
Appellant No. 3 has stated that the impugned order is non-speaking and non-reasoned one inasmuch as the lower adjudicating authority has not dealt with the issues raised by them in their written submission, as well, judgments rendered by them were completely ignored; that the diaries recovered from their residence were not relating to clandestine clearance but were either estimates of scrap after inquiry with concern ship breakers or relating to business of his elder brother Shri Vinod Patel; that onus 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 belief that the goods are liable for confiscation and that the Appellant had not acted with mens rea. Hence, the Appellant is not liable to penalty under Rule 26(1) of the Rules.

Appellant No. 4 :-

Appellant No. 4 has stated that penalty under Rule 26(1) of the Rules is not imposing upon him; that the order was issued in violation of principles of natural justice inasmuch as adjudicating authority did not supply relied upon documents; that diary recovered during search carried out by the officers of DGCEI contained estimates written after making inquiry with concerned shipbreakers; that the Department has not produced any evidence of alleged illicit transactions; that onus to prove clandestine removal of goods is on the Department, however, this burden was not discharged by the Department. No corroborative evidences were produced by the Department; that they had not dealt with excisable goods in any manner as well as not acted with mens rea.

1. Personal hearing in the matter was attended by Shri N.K. Venu, Consultant and Shri H.H. Qureshi, Consultant on behalf of Appellants No. 1 & 2 and reiterated the grounds of appeals and stated that the cases were not based on evidences but on assumptions and presumptions only; that GMS Register is not document to establish clandestine clearances; that appeals may please be allowed.

4.1 Shri Mahesh Vasudhanra, Chartered Accountant appeared on behalf of Appellants No. 3 & 4 and reiterated grounds of appeals.



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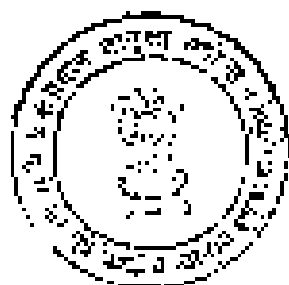
most of the entries were found tallying, which suggest that trucks entered ship breaking yard and went to the premises of Appellant No. 1 for loading Plates/engines. I also find that during search carried out at the residence/business premises of Appellants No. 3, 4 and Sri Bharat Sheth, brokers, incriminating documents were recovered showing purchase of Plates/Scrap from Appellant No.1 on behalf of their clients for which 10 corresponding invoices were issued by Appellant No. 1.

7.1 I find that substantial evidences are available on record in the form of documentary evidences recovered from the premises of the Transporters, brokers and office of the Grah as well as statements of brokers and transporters. I find that many entries appearing in ship registers of Transporters and diaries/private records recovered from the premises of Appellants No. 3,4 and Sri Bharat Sheth were found tallying with the statutory records/transactions of Appellant No.1, which prove authenticity of details contained in the said ship registers of transporters as well as diaries/private records of Appellants No. 3,4 and Sri Bharat Sheth. I also find that the substantial evidences in the form of statements of transporters and Appellants No. 3,4 and Sri Bharat Sheth have not been retracted till date, at any stage, and therefore, as per settled legal position, sanctity/validity of the statements cannot be undermined. I also note that diaries/private records recovered from the premises of Appellants No. 3,4 and Sri Bharat Sheth contained records of many other ship breakers and veracity of the said diaries/private records has been amply proved.

7.2 After analyzing the evidences available in the form of (i) registers recovered from the Transporters showing transportation of goods from the premises of Appellant No.1 which corroborated with records maintained by Gujarat Maritime Board (ii) incriminating documents recovered from the residence/business premises of Appellants No. 3, 4 and Sri Bharat Sheth showing goods purchased from Appellant No. 1 on behalf of their clients (iii) statements of transporters who transported the finished goods from the premises of Appellant No. 1, I am of the unanimous view that Appellant No.1 has indulged in evasion of Central Excise duty.

8. Appellant No. 1 has contended that the lower adjudicating authority has not allowed cross-examination of Appellants No. 3, 4, Sri Bharat Sheth, transporters and Angadias and the practices of natural justice have been violated. In this regard, I find that the impugned order has held as under :

"39.16 I further find that there is no provision in the Central Excise Law for



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cross-examination. Hon'ble Madras High Court, in the case of *K. Balan Vs. Govt. of India* reported at 1982 (1) 136 JEC held that right to cross-examination is not necessarily a part of reasonable opportunity and depends upon the facts and circumstances of each case. It largely depends upon the adjudicating authority, who is not guided by the rules of evidence as such but must offer such opportunity to a party concerned as would best serve his proper opportunity to defend himself. The case of *K. Balan Vs. Govt. of India* reported at 1982 (1) 136 JEC was distinguished by Hon'ble National Appellate Tribunal in *Arya Pithas Pvt. Ltd. Versus Food Inspector of C. Dist. Ahmednagar-II* reported at 201 (3) (1) T.L.F. 529 (File-Ahmedn.) wherein it was held as under:

"54. In *K. Balan's* case (supra), the Hon'ble Madras High Court states 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 as would assure him proper opportunity to defend himself. Opportunity of cross-examination is given whenever it is relevant, justified and genuine and is not for protracting the proceedings. The decision in *UTC Indore* case (supra) is applicable to the effect that cross-examination cannot be granted as a matter of routine and is to depend upon the facts of each case. This Tribunal's decisions cited in the letter of 18.10.2008 are also to the effect that cross-examination is not always a mandatory procedure to be adopted in all cases. The request should not be dismissed arbitrarily or without examining the circumstances of the facts of each case. The Adjudicating Authority may refuse cross-examination for justifiable reasons. ..."

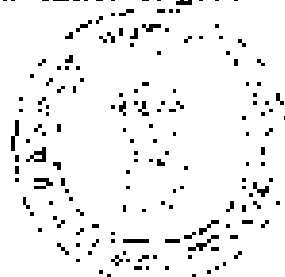
29.16.1 Similarly, in the case of *Shivani Fly K Wood Pvt Ltd Vs. Comptroller of Gov. & C.E.A. Awarangabad* reported at 2004(177) BLT 1150 (File-Muzung), Hon'ble Tribunal, in their order, in para 6, has held as under:

"6. ... Their contentions for principles of natural justice are violated inasmuch as cross-examination of persons, whose statements would be relied upon, has to be withheld in the light of the facts that all the statements relied upon were placed before them. They had all the opportunity to contradict these statements during the proceedings. Cross-examination cannot be claimed as a matter of right in departmental proceedings."

29.16.2 Further, the Hon'ble Tribunal, in the case of *M/S Beauty Dyers Vs. CCE, Chennai* reported in 2004(136) BLT 179 (File-Chennai) has observed that non-availability of witnesses for cross-examination not a fatal flaw when the findings are based on document which there is no credible explanation and nothing on record to show statements not voluntary or effectively retracted with a close proximity of the truth had been determined.

29.16.3 In view of above law, I find that request for cross-examination by the Necessaries dealer, Local Commission and hence cannot be considered."

8.1 I find that the documents procured from the premises of the transporters contained details of transportation or consignments from the premises of shipper/consignor, including Appellant No. 1, i.e. date, truck no, vehicle/owner's plot no., destination, name of driver etc. and these details were also corroborated with the records maintained by Gujarat Maritime Board in the form of permit registers. Thus, evidences gathered from transporters and were independently corroborated with the evidences gathered from GMB. I also find that none of the statements of transporters has been retracted. The transporters' role was limited to the transportation of goods and they had no reason to depose. In their



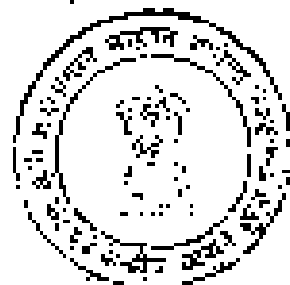
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statements, something which was contrary to the facts. I also find that clandestine removals removed from the premises of Appellants No. 3, 4 and Shri Bharat Sheth, brokers recorded both as well as illicit transactions of ship breaking units/selling units. Shri Manish Patel, Accountant of Shri Bharat Sheth, who who maintained diaries, explained the modus operandi adopted for removal of goods clandestinely from ship breaking units of Alang as well as recording them forms used to record transactions in the diaries. I also find that being a broker, Appellants No.3, 4 and Shri Bharat Sheth were required to record details of all transactions, illicit as well as licit, in order to get commission from respective parties. I also find that said diaries/private records contained records of many other ship breakers and veracity of the said diaries/private records has been proved. After examining the facts and evidences available on record, I am of the considered opinion that non-granting of opportunity of cross examination of Appellants No.3,4 and Shri Bharat Sheth, transporters etc. by the lower adjudicating authority has not vitiated the adjudication proceedings. I, therefore, agree with the impugned order that this contention is devoid of merits.

9. Regarding confirmation of demand of duty of Rs. 32,11,696/- on the ground of under valuation, Appellant No. 1 submitted that they had not indulged in undervaluation of goods and had not received extra payment in cash from their buyers towards the goods sold by them; that they had declared genuine transaction value in each and every consignment in accordance with the provisions of Section 4 of the Act; that not accepting the transaction value is violation of provisions of Section 4 of the Act. I find that the lower adjudicating authority has confirmed the charge of under valuation, *inter alia*, giving findings as under :-

39.18. The Show Cause Notice alleged evasion of cement Excise duty by way of undervaluation of the goods obtained out of breaking up of ships. It is not in dispute that various Research Agencies circulate the prices concerning all the factors of demand and supply and there is no reason why prices circulated by such agencies are unrealistic and untrue in the backdrop that even Ship-Brokers/Brokers/Dealers also subscribe to such market research agencies to ascertain the correct market prices as to quantity and quality of goods of maximum rate. It is also not in dispute that the recyclable plates ranging from size 8 mm (4.5mm to 25 mm) 14.5mm to a plate of 60 mm, up to ships and the majority of recyclable plates concerned of breaking up ships are of 12 mm size. In order to substantiate this allegation, the DDOs concerned comply with various marketing research agencies including Mr. Major & Minor with reference to pricing data which revealed that day to day price of 12mm size of Plates is almost equivalent to the average price of all size within the range of 8mm to 25mm.

39.18.2 On comparison of the price mentioned in the invoices of M/s. Shri



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was lower than the prevailing market price.

16. Appellant No. 1 has argued that clandestine removal has to be proved by the Department and cannot be established based upon some diaries seized from the premises of Appellants No. 3,4 and Shri Bharat Sheth. In this regard, I find that the diaries/private records recovered from the premises of Appellants No. 3,4 and Shri Bharat Sheth, records PCIT as well as illicit transactions of Appellant No. 1 and only those entries for which corresponding sale invoices were not issued by Appellant No. 1 were taken into account for the purpose of demanding duty. I also find that transactions reflected in the said private records were further corroborated by Statements of the Transporters, who accepted to have transported the goods from the premises of Appellant No. 1. The registers maintained by the Transporters contained details of transportation of goods from the premises of Appellant No. 1 which were further corroborated with the records maintained at GMB check post. Therefore, demand cannot be said to be based only on third party documents but duly corroborated by host of evidences recovered during investigation. Further, Appellants No. 3,4, and Shri Bharat Sheth being brokers, they were required to record details of all transactions, that as well as their, in order to get commission from respective parties. So, there is no compulsion for them to record something in their diaries/notebooks which is contrary to facts. I also find that said diaries/private records contained records of many other ship brokers and veracity of the said diaries/private records has been proved. Apart from that, evidences of clandestine removal have been gathered by the investigating officers unceasingly from many places and therefore, these documents cannot be called third party documents but corroborative and supporting evidences. I rely upon the Order of the Hon'ble CESTAT in the case of Om Prakash Agarwal reported as 227 (146) el - 12 (Tri Del), wherein it has been held that :

*"It was found that in both the proceedings almost identical set of facts were involved. The allegation was that based on evidences collected from the supplier's side, unexplained receipt and further transportation of dutiable goods by the appellants was sought to be sustained. Admittedly, the case is not well based on the uncorroborated evidence from the suppliers and not also, as corroborated by the responsible persons of the supplier's end. The receipt and use of the such unexplained raw materials for further transportation has explained, have admitted by the appellants and the same have not only been discharged during the course of investigation itself. The appellants' prior emphasis on non-availability of the further corroborative material in form of details of transport, motor receipts, etc. in the manner that the evidence collected from the supplier's side is corroborated and cannot be disputed. The pri are records of the suppliers have been corroborated and admitted in the conception of their accounts by the persons who were in charge of the supplier's units. When such evidence was brought before the partner of the appellants' unit, he categorically admitted unexplained clearance of dutiable goods. However, he did not want the duty on them such products were sold. In*

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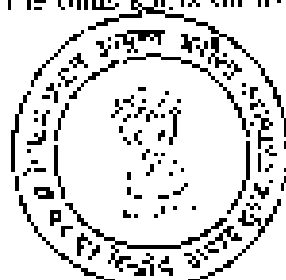
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such situation, it is enough that the department has taken a plea that the department has not established the details of buyers and transport of the finished goods in such papers. It is noted that the records maintained by the supplier, which were submitted to the customs in compliance, be treated as valid in the case of the appellant that the records maintained such records will be fairly available to the appellant. In fact, the supply of overconsumed raw materials has been corroborated by the nature of the appellant's plea. In such situation, it is not feasible for the appellant to raise the issue since there is no requirement of a cross-examination, etc. Ultimately, some of the points raised in the statements given have been accepted or have been considered for their authenticity. In the appeal before the Tribunal, the appellant is raising a belated objection that the statements by the nature of the appellant's plea is not admissible. Various case laws relied upon by the appellant are not of any support in the present case. In the cases involving such kind of overconsumption, the evidence of such cases are to be appreciated for comparison. At some instances, the appellant's records of the supplies & stock as obtained by the person in charge and further corroborated by the appellant cannot be disregarded only on the ground of further evidence like transportation and receipt of goods, has not been proved. In a clandestine manufacture and clearance, such stage of activities cannot be established with evidence. On careful consideration of the grounds of appeal and the findings in the impugned order, I find no reason to interfere with the findings recorded by the lower authority. Accordingly, the appeal is dismissed."

[Emphasis supplied]

11. Appellant No. 1 has contended that the Department has not discharged burden of proof for alleged illicit transactions and that evidence regarding usage of raw material and excess consumption of electricity, which are non-existent. In this regard, I have already discussed in Paras supra that the Department has adduced sufficient evidences in the form of incriminating documents recovered from the premises of Appellants No. 3/4 and 5/6 Bhat Sheth, which contained details of goods purchased by them on behalf of their clients from Appellant No. 1 without cover of Central Excise invoices and without payment of Central Excise duty. These evidences were further corroborated by the statements of transporters, who deposed that they had transported the goods from the premises of Appellant No. 1 and their statements have not been retracted. Considering substantial evidences in the form of these documentary evidences on record, I am of the considered opinion that the Department has discharged its burden of proof for clandestine removal of goods by Appellant No.1. In cases of clandestine removal, Department is not required to prove the case with mathematical precision. My views are supported by the order passed by the Hon'ble Tribunal in the case of A.N. Gura & Co. reported in 1995 (156) F.T.R. 335(T.R.), wherein it has been held that,

"In all such cases of clandestine removal, it is not possible for the Department to prove the case with mathematical precision. The Department is deemed to have discharged their burden if they prove so much evidence which, on face, shows that there was a clandestine removal of such evidence is produced by the Department. Then the onus shifts on to the Appellant to prove that there was no



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clandestine removal".

11.1 The Hon'ble CESTAT in the case of Kamachandra Rosh Pvt Ltd reported as 2013 (295) E.L.T. 116 (Til.) - Bangalore has held as under:-

"7.3 In a case of clandestine activity involving suppression of production and clandestine removal, it is not expected that such certain facts can be established by the Department in a mathematical precision. After all, a person indulging in clandestine activity takes sufficient precaution to misdirect the evidence. The evidence available shall be those left in spite of the best care taken by the persons involved in such clandestine activity. In such a situation, the entire facts and circumstances of the case have to be looked into and a decision has to be arrived at on the yardstick of 'preponderance of probability' and not on the yardstick of 'beyond reasonable doubt'."

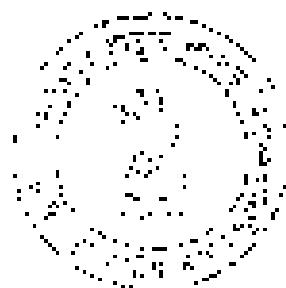
11.1.1 The Hon'ble Supreme Court as reported in 2014(302) ELT 461(SC) has upheld the above order of the CESTAT.

11.2 I also rely on the order passed by the Hon'ble CESTAT, Ahmedabad in the case of Anura Aluminium Corporation reported at 1999 (247) E.L.T. 514 (Til.) Ahmedabad, wherein at Para 5.1 of the order, the Tribunal held that,

"Once again the duty of proving that they have accounted for all the goods produced shifts to the appellants and they have failed to discharge this burden. They want the department to show chainwise doubt of goods transported or not transported. There are several decisions of Hon'ble Supreme Court and High Courts where it has been held that in such clandestine activities, only the person who indulges in such activities knows all the details and it would not be possible for any investigating officer to unearth all the evidences required and prove with mathematical precision the basis of the other illegal activities".

11.3 The Hon'ble CESTAT in the case of M/s. N R Sponges P Ltd reported as 2015 (326) E.L.T. 453 (Til.) Delhi has also held that when preponderance of probability was against the Appellant, pleadings of no statements recorded from buyers, no excess electricity consumption found, no raw material purchase found unaccounted for and no input-output ratio prescribed by law etc. are of no use. The Hon'ble High Court in the case of International Cylinders Pvt Ltd reported at 2010(254) E.T. 768(H.P.) held that once the department proves that something illegal had been done by the manufacturer which prima facie shows that illegal activities were being carried, the burden would shift to the manufacturer. It is a basic common sense that no person will maintain authentic records of the illegal activities or manufacture being done by it. Therefore, contention of the Appellant is devoid of merit in light of the positive evidences available in this case as discussed above and in the impugned order.

12. In view of above, the various contentions raised by the Appellants are not to be held in their favour since the Department has adduced sufficient oral and documentary corroborative evidence to demonstrate that Appellant No.1 has



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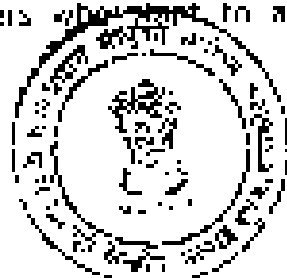
evaded payment of Central Excise duty by resorting to clandestine removal of the finished goods and undervaluation of goods. Therefore, hold that confirmation of demand of Central Excise duty of Rs. 55,06,960/- by the lower adjudicating authority is correct, legal and proper.

12.1 Since demand is confirmed, it is natural consequence that the confirmed demand is required to be paid along with interest at applicable rate under Section 114A of the Act. Therefore, uphold order to pay interest on confirmed demand.

12.2 This is a case of clandestine removal of the finished goods as held in above Paras and therefore, the impugned order has correctly imposed penal and mandatory penalty of Rs. 55,06,960/- on Appellant No. 1 under Section 114C(1)(a) of the Act. The impugned order has correctly given option of reduced penalty of 25% to Appellant No.1 as prescribed under provision to Section 114C of the Act, hence, concur with his decision on penalty on Appellant No.1.

13. Regarding penalty imposed upon Appellant No. 2 under Rule 26(1) of the Rules, I find from records that Appellant No. 2 was Partner of Appellant No. 1 and supervising day to day transactions of Appellant No.1 and had continued himself in manufacturing, removing and selling excisable goods on which excise duty was not paid and hence, he had reason to believe that goods removed clandestinely or goods undervalued by them were liable for confiscation. I, therefore, hold that penalty of Rs. 10,00,000/- imposed under Rule 26(1) upon Appellant No. 2 in the impugned order is correct and proper and I uphold the same.

13.1 Regarding penalty imposed upon Appellant No. 2 under Rule 26(2)(i) of the Rules for fraudulently passing of Central credit, I find that Appellant No. 1 was involved in sale of phony invoices without delivery of corresponding goods through Shri Bharat Sheel, broker. The DCEO searched the modus operandi adopted by Appellant No. 1 by deciphering the entries recorded in diaries and per drive removed during search from the residence premises of Shri Bharat Sheel as elaborated in detail in Same Cause Notice. Thus, it is beyond doubt that Appellant No. 1, in collusion with Shri Bharat Sheel, issued invoices without physical delivery of the excisable goods and fraudulently passed on Central credit. I find that Appellant No. 2, is involved and is responsible for this act of fraudulent passing of Central credit being authorized person of Appellant No. 1. Further, Appellant No. 2 took help of Shri Bharat Sheel, broker who facilitated by finding buyers who want to avail only fraudulent Central credit without



10/06/2015

receipt of goods as well as buyers who want to purchase goods without invoice and also managed cash involved in such transactions. Hence, penalty of Rs. 34,01,562/- imposed upon Appellant No. 2 under Rule 25(2)(i) of the Rules is correct and I uphold the same.

14. Regarding imposition of penalty under Rule 26(1) of the Rules, Appellants No. 3 & 4 have contended that charges recovered during search carried out by the officers of DGCEI contained estimates written after making inquiry with the concerned shop breakers; that the Department has not produced any evidence of alleged illegal transactions; that onus to prove clandestine removal of goods is on the Department, which was not discharged by the Department. I find that Appellants No. 3 & 4 have acted as brokers who purchased goods on behalf of their clients from Appellant No. 1. Search carried out by DGCEI at the residence/business premises of Appellants No. 3 & 4 resulted in recovery of incriminating documents in the form of pocket diaries and pen drive, which contained details of transactions entered with shop breakers, including Appellant No. 1 and recipient buyers. I find that the DGCEI deciphered the codes and abbreviated name used in the said documents which revealed that Appellants No. 3 & 4 had purchased goods from Appellant No. 1 for which no corresponding invoices were issued by Appellant No. 1. I also find that the said documents contained details of cash transaction between Appellants No. 3 & 4 and Appellant No. 1 for sale proceeds of goods removed by Appellant No. 1 without Central Excise Invoices. I find that Appellants No. 3 & 4 played important role in the clandestine removal of goods by Appellant No. 1 and hence, imposition of penalty of Rs. 3,50,000/- upon each of Appellant No. 3 & 4 under Rule 26(1) of the Rules by the lower adjudicating authority is correct and I uphold the same.

15. In view of above, I uphold the impugned order and reject the appeals of Appellants No. 1 to 4.

16. अपीलकर्तों का अपील खारिज करने के लिए सर्वोच्च न्यायालय को लिखित आदेशों में निर्णय ले लिया जाता है।

17. The appeals filed by the Appellants are disposed off as above.



सुभा सिंह,  
 (कुमार संतोष)  
 नि.स.स. पदाध्याय, आयुक्त (अपीला):  
 2019/107/19



Ex 3.P.A.D.

10.

1. M/s Shri Shipbreaking Company Plot No. 36, Along Shipbreaking Yard, Along, District Bhavnagar.	श्री. शिव शिपब्रेकिंग कंपनी प्लॉट नं- 36, अलग शिपब्रेकिंग यार्ड, अलग, जिला भावनगर
2. Shri Hitesh Parthar Partner, M/s Sree Shipbreaking Company Plot No. 36, Along Shipbreaking Yard, Along, Dist of Bhavnagar.	श्री हितेश परदार, पार्टनर, श्री शिव शिपब्रेकिंग कंपनी प्लॉट नं. 36, अलग शिपब्रेकिंग यार्ड, अलग, जिला भावनगर।
3. Shri Kishor Patel Proprietor of M/s Sree Anshad Enterprise, 304, Shoppers Point, Patina, Crossk, Waghavasi Road, Bhavnagar.	श्री किशोर पटेल, मालिक, श्री सूर्य एंटरप्राइज, 304, शॉपर्स पॉइंट परिसर पैना, वाघवासी रोड, भावनगर
4. Shri Vinod Patel. Plot No. 102, Iscon Mega City, Opp Victoria Park, Bhavnagar.	श्री विनोद पटेल, प्लॉट नं- 102, इस्कॉन मेगा सिटी, विक्टोरिया पार्क के सामने, भावनगर

होने :

- 1) प्रधान मुख्य अयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को आवेदन है।
  - 2) उपरोक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क अंतर्गत 11/2023-24 का भावनगर को आवेदन कार्यवाही है।
  - 3) सशुद्ध आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अंतर्गत आयुक्तालय, भावनगर को आवेदन के संबंध में।
- गाई प्रकृत।