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I

ોંગ પ્રતિવિધાર પ્રશ્ના એક મામણ છે. આ પ્રાયં પ્રશ્નિમ કરે આ પ્રાયંથી જે તે પછે છે છે. મુખ્ય પ્રાપ્ય મામણ પ્રાપ્ય મુખ્ય પ્રદેશ તે વિધાર પ્રાપ્ય કરે છે. તે મામણ પ્રાપ્ય માણે તે આ પ્રાપ્ય જેવા પ્રાપ્ય કરે છે. તે પ્રાપ્ય માણે પ્ બુદ્ધ પ્રદેશ તે પ્રાપ્ય કરે છે. તે માણે બધાર પ્રાપ્ય માણે તે આ પ્રાપ્ય કરે છે. તે પ્રાપ્ય પ્રાપ્ય કરે છે. તે માણે પ્રાપ્ય કરે છે. તે માણે પ્રાપ્ય કરે પ્રાપ્ય કરે છે. તે માણે પ્રાપ્ય કરે છે. તે માણે પ્રાપ્ય કરે છે કરે છે. તે માણે પ્રાપ્ય કરે પ્રાપ્ય કરે છે. તે પ્રાપ્ય કરે પ્રાપ્ય કરે છે. તે માણે પ્રાપ્ય કરે છે. તે માણે પ્રાપ્ય કરે છે. તે પ્રાપ્ય કરે પ્રાપ્ય કરે પ્રાપ્ય કરે છે. તે પ્રાપ્ય કરે પ્રાપ્ય કરે છે. તે પ્રાપ્ય કરે છે માણે પ્રાપ્ય કરે પ્રાપ્ય કરે છે. તે પ્રાપ્ય કરે પ્રાપ્ય કરે પ્રાપ્ય કરે છે. તે પ્રાપ્ય કરે છે છે. તે માણે પ્રાપ્ય કરે છે કરે છે પ્રાપ્ય કરે પ્રાપ્ય કરે છે. તે પ્રાપ્ય કરે પ્રાપ્ય કરે છે છે. માણે પ્રાપ્ય કરે છે કરે છે છે. તે માણે પ્રાપ્ય કરે પ્રાપ્ય કરે પ્રાપ્ય કરે પ્રાપ્ય કરે છે. તે માણે પ્રાપ્ય કરે પ્રાપ્ય તે કે પ્રાપ્ય કરે છે કે પ્રાપ્ય કરે છે. તે પ્રાપ્ય કરે પ્રાપ્ય કરે પ્રાપ્ય કરે છે. તે પ્રાપ્ય કરે પ્રાપ્ય કરે પ્રાપ્ય કરે પ્રાપ્ય કરે છે છે. પ્રાપ્ય કરે પ્રાપ્ય કરે છે છે. પ્રાપ્ય કરે પ્રાપ્ય કરે છે પ્રાપ્ય કરે છે કરે પ્રાપ્ય કરે પ્રાપ્ય કરે છે. પ તે પ્રાપ્ય કરે કે પ્રાપ્ય કરે છે. જે પ્રિયંગ્ય માણે પ્રાપ્ય કરે પ્રાપ્ય કરે છે. તે પ્રાપ્ય કરે છે પ્રાપ્ય કરે પ્રાપ્ય કરે છે છે. તે પ્રાપ્ય કરે પ્રાપ્ય કરે જે પ્રાપ્ય કરે છે. પ્રાપ્ય કરે પ્રાપ્ય કરે છે છે. પ્રાપ્ય કરે છે પ્રાપ્ય કરે છે છે છે. પ્રાપ્ય કરે છે પ્રાપ્ય કરે છે છે. પ્રાપ્ય કરે છે પ્રાપ્ય ક પ્રાપ્ય કરે છે કે પ્રાપ્ય કરે બાળે પ્રાપ્ય કરે છે છે. પ્રાપ્ય કરે પ્રાપ્ય કરે પ્રાપ્ય કરે છે છે. પ્રાપ્ય કરે બાળે પ્રાપ્ય કરે જે પ્રાપ્ય કરે પ્રાપ્ય કરે પ્રાપ્ય કરે છે છે. પ્રાપ્ય કરે પ્રાપ્ય કરે પ્રાપ્ય કરે પ્રાપ્ય કરે છે પ્રાપ્ય કરે છે છે. પ્રાપ્ય કરે પ્રાપ્ય કરે છે છે બાળે પ્રાપ્ય કરે જે પ્રાપ્ય પ્રાપ્ય કરે છે છે પ્રાપ્ય કરે બાળે બાળે પ્રાપ્ય કરે પ્રાપ્ય કરે પ્રાપ્ય કરે છે છે. પ્રાપ્ય કરે છે પ્રાપ્ય કરે વિવ પ્રાપ્ય કરે છે પ્રાપ્ય કરે છે છે પ્રાપ્ય કરે છે છે છે પ્રાપ્ય કરે છે છે છે છે છે છે છે છે છે

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- กร้าวและ รางการ สามารถไม่มาในการทำให้สารที่ได้มากสารสารเป็นการให้เป็นสารีสุขภาพ เมษณณณณ์ของมีสาวฎรถิศาสตร์ สาราสรารไม่เป็นสาราวิทยาที่ ในหน้าสาวีที่มากกรุงหากัดเมษณฑ์ เรื่อง เรื่อง เป็นเป็น .
- ন্টিটিৰ সময়ন মাজ প্ৰদেশ হোৱা দেশ পাল পাল পাল পাল প্ৰথম হৈছে প্ৰদীননা বৰ মাজ প্ৰথম হৈছে বিভাগ নিৰ্ভাগী বাই ই এক প্ বাই বহুৱা নামাৰ, উ বাই বিভাগী বিভাগন হয়, 'এই এই মাজ হৈছে প্ৰটিনামা বৰ মাজে প্ৰথম নামান বিভাগী বাই ই এক প্ৰথম ক উই ইয়া হোৱা কৰে বিভাগী কৰে বিভাগ নাম হয়, 'এই এই মাজ প্ৰথম নামাৰ কৰি বিভাগী কৰে কৰে বিভাগী বিভাগী বছুৱা প্ৰথম ক উই ইয়া হোৱা কৰে বিভাগী বিভাগ বিভাগ নাম হয়, 'এই এই মাজ প্ৰথম নামাৰ কৰে বিভাগী কৰে কৰে বিভাগী বিভাগী বাই ই এক প্ উই ইয়া হোৱা কৰে বিভাগী বিভাগী বিভাগী বিভাগ কৰে বিভাগ কৰে বিভাগী কৰে বিভাগী কৰে বিভাগী বিভাগী বিভাগী বিভাগী বিভাগী বিভাগী কৰে বিভাগী কৰে বিভাগী কৰে বিভাগী কৰে বিভাগী ক উই ইয়া হোৱা বিভাগী বিভাগী বিভাগী বিভাগী বিভাগী বিভাগী কৰে বিভাগী কৰা বিভাগী বিভাগী বিভাগী বিভাগী বিভাগী বিভাগী ক বিভাগী কৰে বিভাগী বিভাগী বিভাগী বিভাগ বিভাগী বিভাগী বিভাগী বিভাগী কৰা বিভাগী বিভাগ বিভাগ বিভাগী বিভাগী বিভাগী কৰা বিভাগী ব বিভাগী ব বিভাগী বি ° 13
- र प्रति स्वाय अन्त्री साथ प्रभागवद्या हुए आहे. वा सामित्रीय संपर्धना अवस्थ तार्वे विकास देवा के प्रेयर की मार्ग कोष्ट्री आग का किसे सामस्थित के प्रति के प्रति की किसे की अन्ते में की किस ही हाय र स्वाय के प्रेयर की मार्ग कोष्ट्री अपने के सुरुष कुछ कुछ का साथ करता है के साथ कर के आसे काल्य संपर्धना ही हाय र स्वाय की जीवी जिस, फिल्मी, यह ने किसी किस साथ प्रति के प्रति के साथ के प्रति के साथ के की की साथ के साथ मुख्य र  $\mathbf{M}$ (4) A substantiation was been to read on application. For the FA C as one fast order by the boundary support behave a Price with the theory of the support of the support of the fast of the boundary support of the support of the support of the support of the opport of the boundary of the boundary of the support of the boundary of the boundary support of the boundary of the boundary of the boundary of the support of the boundary of the boundary pression of the boundary of the boundary of the boundary of the support of the boundary of the support of the boundary of the support of the boundary of the support of the boundary of the support of the boundary of the support of the boundary of the bo
- भारतमा स्थित करने हैं। सिंग के प्रायंत्र कुल्ल की गरावरी का स्थान के हिए। इन्हें के प्रायंत्र के बाद करने के द्वारा भारत के स्थान के स्थान के स्थान के प्रायंत्र के दिल्लास स्थान के स्थान के राष्ट्र के प्रायंत्र के बाद के स्थान के स्थान के स्थान के स्थान के दिल्ला के स्थान के स्थान के स्थान के स्थान कि स्थान के दिल्ला के स्थान के सिंग के स्थान के स्थान के स कि स्थान के सिंग के स्थान के स्थान के स कि स्थान के स्थान के स्थान के स्थान के स्थान के स्थान स्थान स्थान के स्थान के स्थान के सिंग के स्थान के स्थान क के स्थान के स्थान के स्थान के स्थान के स्थान के स्थान स्थान स्थान स्थान के स्थान के स्थान के स्थान के स्थान के स :71
- :"1
- ৰ সমূহ<sup>া</sup> কি নগাঁ উপাৰ্শনৈ প্ৰথি কি প্ৰথম হৈছিল। মৃত্যু বিধান বুজৰ প্ৰথম হৈ প্ৰথম হৈ **প্ৰথম হোৱাই হয় নি**ৰ্ধানিক বিধান কৰে। প্ৰথম কৰা প্ৰথম হৈ প্ৰথম হৈছে বিধান কৰে কি ব্যক্তি বিধান বুজৰ বিধান কৰে। মৃত্যু হয় বিধান কৰে বিধান কৰে। বিধান ক কেন্দ্ৰ কৰে বিধান কৰে। এই এই কেন্দ্ৰৰ হৈছে কৰে বিধান কৰে বাবে বিধান কৰে। বিধান কৰে বিধান কৰে বিধান কৰে। বিধান ক প্ৰথম হাজাৰ প্ৰথম হৈছে এই এই কেন্দ্ৰৰ হৈছে কৰে। বিধান কৰে বাবে বিধান কৰে বিধান কৰে। বিধান কৰে বিধান কৰে বিধান ক ÷ .\*
- ৰীয়ে গোৱা পাই উঠি উঠি হ'ব বিধাৰ সময়ে বিধাৰ বিধায় বিধায় বিধায় বিধায় বিধায় বিধায় বিধায় বিধায় বিধায় বিধ বিধায় American State Interaction (Interaction and American American American), বিধায় বিধায় বিধায় বিধায় বিধায় বিধ American State Interaction (Interaction and American American), বিধায় বিধায় বিধায় বিধায় বিধায় বিধায় বিধায American State Interaction (Interaction American American), বিধায় বিধায় বিধায় বিধায় বিধায় বিধায় বিধায় বি :41
- (21)



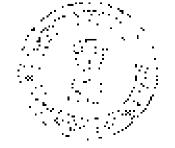
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### :: ORDER-IN-APPEAL ::

The bolow mentioned appeals have been filed by the Appeliants (hereins/ter referred to as "Appeliant No.1 to Appaliant No.4", as detailed in Table bolow) against Order-in-Original No. BHV-EXCUS (00 JC 45 2017 16 dated 29.3.2018 (necessofter referred to as "impagned ander") pessed by the Joint Complication, Central GST and Control Paciso, Fibaypages (necessofter referred to as "inverse blay against interview rows "lewer adjucticating authority") :-

<u>și,</u> <u>No,</u>		Appellents	Name D Address of the Appellant
1.	: " VZ/108/INVR/%019_19 ;	Appellant No. I	M/s Shiv Shipperaking Company Plot No. 26.
	'	<u> </u>	Alang Shiporeaking Yard, <u>Alang Dis</u> , Bhaynagar, Shri baresh Baapar
7.	; <b>92</b> 71077.0VR72048-19	Appellant No.2	Partner, M/s Shiv Shippreaking
	i : : ' V2/151/8VR/2018-19	       Appellant No.3	Company Plot Nn. 36, Alang Shiporeaking Ward. Alang Dist Shavnagar. Shin Kishor Pate. Proprietor of Wars Shree
L		:	Brished Entendrish, BCK, Sikoppers Point. Parimal Chowk. Waghavadi Road, Bhavnagar.
4.	V2/168/BVR/2018-19	Appetiant No.4	Sari Vand Potel, Filot Ku, 122. Iscon Mega City, Opa Vintaria Pask, Bassasgar,

2. The brief facts of the rask get that Appellant No. 1 (holding Central Excise Registration No. AAKFS68 (2004001) was engaged in preaking of ships imported for breaking corpose at their plot at the Ship Breaking Yard. Alang, latelugance gathered by the Directorate Contral of Central Excise intelligence indicated that must of the Shiphreaking units of Alang/Sosiyu of Bhavhagar District were evacing payment of Central Excise duty by resorting to the detailed are investigation corrier out by the officers of DGCEI revealed that Appellant No. 1 evaced between the transfer support of Appellants No. 3, if and Ship Sharat Shoth, all crokers. The investigation also revealed that Appellant No. 1 was included in under valuation of their goods had be 3, if and Ship Sharat Shoth, all crokers. The investigation also revealed that Appellant No. 1 was included in under valuation of their goods nick includes No. 3, if and Ship Sharat Shoth, all crokers. The investigation also revealed that Appellant No. 1 was included in under valuation of their goods nick includes the Appellant No. 1 was included in under valuation of their goods nick includes the Appellant No. 1 was included in under valuation of their goods nick includes that Appellant No. 1 was



 $\langle \langle \cdot,\cdot\rangle \in A^{n-1}$ 

Ng⊷ 1 of 17

Appendist Contrast, CS, 148, SAL187578112-15

of gouss in suclusion with Appellanus No. 0, 14 and Sorf Bharat Sheth, all poskets,

2.1 Show Cause Notice No. DGCED/470/36 46/2013-14 dated 30.5 2013 was issued to Appellant No. 1 calling them to show cause as to why Control Excise only of Rv. 55,06,8607 should not be demanded and recovered from them under provise to Section (14/1) of the Central Excise Act,1944 (*hereinofter referred to*  $m^{-1}Act<sup>20</sup>) along with interest under Section 11AB of the Act and also proposing$ imposition of penalty under Section 11AC of the Act read with Rule 25 of theCentral Excise Rules, 2002 (*Gereinofter referred to av*(Ruley)). To so proposedimposition of cenalty upon Appellant No. 21 under Rule 26(1) and 26(2) of theRules and Imposition of penalty upon Appellants No. 3 (K-4 under Rule 26(1) ofthe Rules.

2.2 The above valid Show Caose Nutice was adjudinated vide the impugned order which continued Central Excise duty or Rs. 55.05.8607- under provisa to Section (1A(1)) along with interest under Section (1AB of the Act and Imposed penalty or Rs. 55.06.8607- under Section (1AC of the Act on Appellant No.1). It is to be ably of Rs. 10.00,(007) under Rule 26(1), and Rs. 34,01.9937- under Rule 26(2)(i) of the Rules upon Appellant No. 2, it also imposed penalty of 3,50,0007, each upon Appellants No. 3 and 4 under Rule 26(1) of the Rules.

3. Being aggrieved with the impugned order, Appellants No. 1 or 4 have breferred appeals on various grounds. *Inter slic*t as below :-

#### Appellants No. 1 🗄 2 :-

(i) The adjudicating authority ontool in bot granting most examination of Appellants No. 3, 4, Shri Bharat Sheth, Transporters and Angacias from whose procession disting/notecucks/registers were seized, which were used for framing charge of clandosche removal; that the impligned order has been passed without following the provisions contained in Soution 9D of the Act and hence, the impligned order is bable to baset associated.

(a) The charge of clandestice removal has been trained on the basis of the entries found in the selfed Private Records selfed from the residential cum office premises of Shit Bharat Sheth, Broken under Panchnama diu, 30.03.2010 and records selfed from the backer Shit Vinod Patel and Shit Ristor Patel. The Adjudicating Authority had enred in holding that these entries have been corroborated with the recorded statements of the Angadias and Transporters etc. But, these all evidences are this: taution' evidences which are far away from the Central Tause records monitainer' by the Appel ant. The quantity of



Barry Care

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the so-called goods has been taken from the said seized domes. But, the stated quantity reported to have been cleaned diandestinely has not been verified from the abste of Bally Production Register maintaised by the Appellant. The third parties' existence are not the rates upon evidence unless and onto the same and not cross examined by the Appellant.

(iii) The charge of clandestore removal is required to be established by the calls of the production and the data of the raw material from which the final products have been manufactured. In the present case, this Adjusticating Autority has folled to establish the clanensting receipt of the raw material and clandestore manufacture of the same time products from the still clangestine useript of the raw materials. Here is also extenses meaned in utilizing the electricity consumption. But he 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 previountion.

(iv) The Adjusticating Automaty has great je sustaining the ellegation of framheimity passes the Canvat Creatil family to the Eure of Rs. 34.01 9637- as the basic of said seized daines served from the said Bharat Shoth broket and Shri Vined Pater. The Adjusticating Automaty has wrongly and without authority of law has tenformed duty of evolve and penaity impased is not proper and legal.

(v) This charge of undervaluation was trained on the basis of investigation hade with Was steel Rates, Was wajor and Miror Exits Pvt Ltd and statements recorded of concerned persons. But, the rates of such limit and Steel products by them are not the direct evidences to sustain the charge of uncer statements that they had declared the genuine transaction volue in each and every consignment in accordance with the provisions of Section 4 of the Central excite Act, 1944 used with the rules framed time under. Not accepting the sale transaction value is notifing but the violation of previsions of Section 4 of the Act, The Adultionaries Actionary failed to establish that they had received extra sale transaction in the each and every transmitiant. No such investigation has been extended in the buyers' end to subtain that the prior diversed in every consignment was less than the rates field and the involues.

(vf) The Appeliant No. T is not liable to penalty under Section 1.50 of the Actor that the adjustanting authority has facted to disclose the grounds regarding what facts were suppressed by them; that such charges cannot be proved on the basis



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of third party evidences and hence penalty under Section 11AC of the Act %. Visible to be set axis?:

## Appel ant No. 5 :-

Appoliant Ko. S has stated that the impugned order is non-speaking and non-reasoned one inastructures the lower adjudicating authority has not deall with the bisas made by them in their written submission, as well judgments cohored by them were completely ignored: that the diates receivered (non-uninresidence were out relating to clandostice disprante but were often estimates of somplafter requiry with concern ship breakers or relating to cusiness of bis objective for 'Nixed Patel; that onus to prove clandestine removal of goeds is on the Department, nowever the budger was not discharged. The Appellant was in no way concerned in physically dealing with exceeded goods with the knowledge on belief that the goods are Table for confiscation and that the Appellant had not acted with mensived, dende, the Appellant is not table to penalty under Bulk 26(1) of the Bulks.

### Appelliant No. 414

Appellant No. 4 has stated that penalty index Rule 26(1) of the Runs is reprimposable open bing that the order was issued in violation of principles of natural justice meanuon as adjudicating authority old not supply relied upon discumpate; that diary recovered during search carried out by the officers of DGCDL immunited estimates written after making isquiry with concerned stupbreakers; that the Department has not produced any evidence of alleged iRich transactions: that ones to prove clandesting removal of goods is on the Department, however, this bunden was not discharged by the Department. No complicative evidences were produced by the Department; that they had not cleart with excitable goods in any meaner as well as not anter with rews res-

1. Personal Hearing in the matter was attended by Shei N.K. Waru, Consultant and Shei U.H. Quresno, Consultant on debalf of Appellants No. 1  $\pm$  2 and reflecated the grounds of appeals and stated that the cases were not based on evidences but on assumptions and presentations only: that GM3 Register is real columnation establish concesting clearances; that is people may placed be releved.

A.1 Such Mathew Vacodariya, Chartered Accountant appeared on potent of Appetiants No. 3  $\pm$  4 and reterated grounds of appeals.



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# Discussion & Findings:

5. I find that Appellaxes kin. I to 4 have deposited amount (97.5% of duty or penalty in dispute and hence, have complied with the envisions of Section 56F of the Aut I find that Appellants No. 3 E 4 have filed respectaneous applications for condenation of delay for filing appeals listating that they had recreived the impogned order on 16.4.2018 but could file appeals on 13.7.2018. They requested to constone delay of 28 days in filing appeals on the grounds that the'r consultant was busy with work related to according to access of various withorities and work of notices issued by himme Tax Repartment. Considering that delay is within further period of 30 days as prevised under provise to Section 55(1) of the Aut, I condone delay in filing of these lappeals and take up both appeals tot decision or ments.

6. have carefully gure through the facts of the base, the Propagod order, the grounds of appeals detailed in appeal memoranda and written as well as analisabrissions made by the Appellants. The issue to be dediced is whether the impugned order, in the facts of this rate, confirming descard on Appellant No. 1 and impusing penalty on Appellants No. 1 to K is correct, legal and proper or rate.

 find that the Officers of the DGCEI carried out havesagation and powered. ζ. shiphnesisers, including Appellant No.1, brokens including Appellants No. 3, A and Shif Bharat Shoth, market research agencies, Transportors, Angadias, e.e. Su onearch attended evasion or Central Excise buty by way of Candestine removal of grade. Searches carried out at the premises of various transportant resulted in recovery of registers/ documents showing details of transportation of potds from the premixes of Appellant No. 1, viz. date, Truck No., Plat No., broker names, etc. The Fransporters deposed to their statements that as and when ship breaker. or proken contact them for trucks, they used to send trucks at the sofe breaked's. plot after making entry regarding plat up, where the brack was sent to and name of ship breaker/broken etc. The entropy approxing in the registers of the Transporters fallied with the involces (selied by Appoliant No.1 in few cases and it was future that out of 55 entries appearing to trib registers, involves were issued for 4) onthins, however, no involum were feated by Appellant No. 1 in responsible remaining 14 entries. I find that investigation was extended at the check post maintained by Gutarat Manifime Soard(GMW) which revealed that GMB. maintainen rouces of movement of vehicles at the Sele breaking youl and had details like, date, vehicle details, purposed in & out time etc. The details recovered from Transformers and the meands maintained by GMB revealed tools



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most of the entries were found tailying, which suggest that trucks entered ship breaking word and wort in the premises of Appeliant No. 1 for leading Plates/argo, Talke find that ouring search canfed out at the restornes/business premises of Appeliants No. 3, 4 and Shin Bharat Shoth, hinkers, incriminating documents were recovered slowing purchase of Plates/selfap from Appeliant No.1 on penally of their clients for which to corresponding invariant were issues by appellant No. 1.

1.1 I and that substances avagences are available on report in the form of dominionitary invidences recovered from the premises of the Transporters. wokers and orated of the GMN as well as Statements of brokers and transporters. I find that many entries appearing in this registers of Transpurters and ctaries/private records recovered from the promises of Appellants No. 6,4 and . Shri Bharat Sheth were found fallying with the statutory renards/transactions of Appellant No.1, which prove authenticity of details contained in the said trib. registers of transporters as well as diaries/private records of Appellants No. 6,4. and Shri Sharat Sheth. I also find that the substantial evidences in the form of Statements of transporters and Appellants No. 3,4 and Shri Bharat Steen have not been retrained till date, at any stage, and therefore, as per settled legal position, sanchite/validity of the Statements cannot be under minted. I also note that diaries /private meanes recovered from the promises of Appeliants No. 3,4. and Shell Sharal. Sheth contained records of many const stop hreakers and vertarily of the said diamost private records has been a noty proved.

7.7 After analyzing the evidences available in the turn of (1) registers, recovered from the Transporters showing transportation of goods from the premises of appellant both which comoberates with records maintained by Cutarat Maritime Board (ii) iouriminasing documents recovered from the responded business premises of Appellant No. 3. 4 and Shri Bharat Shein solwing goods perchased from Appellant No. 1 on behalt of their clients (iii) Statements of Transporters who transported the Chisbee goods from the premises of Appellant No. 1 on behalt of their clients (iii) Statements of Transporters who transported the Chisbee goods from the premises of Appellant No. 1, I am of the considered who that Appellant No. 1 has included from the premises of Appellant No. 7, I am of the considered who that Appellant No. 7 has included in evaluation of Contral Excise duty.

8. Appellant No. 1 has contained that the lower adjusisating authority has not allowed cross-examination of Appellants No. 3, 4, Shri Rharat Steph, consportion and Angorias and the principles of natural justice bave been violated. In this regard, i find that the impugned order has held as under a

"59.16 ) I findlet field that there is no prevision in the means. Fix so have  $\ell_{M}$ 



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Sucking orthos extended on. Hor/ble Mindres Hoeld Court in the costs of K. Balan Ver Govit of India reprint call 1982 III.T (0.00) 350 bed held that right to expreextendiations is not discessorily a part of reasonable opportunity and depends upon the facts and disconstances of on Unose. It largely depends open the objectiviting anisotropy who is not guided by the roles of evidence as such rypanust office such opportunity for a party concerned as worth loss as birth proper opportunity to dolling dimited. The case of K. Salah Vis Govit of India courted in 1982 ELT (0.00) 386 was disconguished by Tentitie Telebraid Abmedziver in Arya Piblics Field Ltd. Versus Committee of C. Est, Altmethost-Office another at 2015 (0.1) Tettin US29 (Fieldhind)) wherein Case Ltd as index (5.3). Lt & Balan & case (anpla), the Horffite Medias Fign Commission at the recessity of Cases examination depends upon the facts and afree methods is a recessity of Cases examination depends upon the facts and afree methods as

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recessing of cross examination depends upon the facts and circumstances a cach case. The AC obtaining Authority has to give an opportunity to the party concerned as would assure that proper opportunity to defend tomself. Uportunity of cross examination is give a converted is relevant, justified and genuine and is not for protracting the properties examination cannot be properties (approximation of the protracting the properties commutation cannot be proved by an action of the protracting the properties of the decayed of CTC between cases (approx) is optimized in the protection of the tests of cach ease. This proves examination is not for the selfer of 10 to 2008 are also rook to be relevant the prove of as a datter of require and is to depend the on the tests of cach ease. This is not is not choose a standard procedure to be adopted in all cases. The request should not be dismissed arbitrating Authority may refere to ease the facts of each case. The Adjuditoring Authority may refere to each optimization in protecting the Adjuditoring Authority may refere to each optimization is provide to the adjuditoring Authority may refere

39.10.1 Semilarity, in the case of Shivon Fly N Wood Pet 1nd Vs. Communoff Cost & C.E.A. Avrangabal reported at 2004(177) BLT 1150 (Trit Municip), How's eligibuted, in their order, in graph, pathold as under

"Similar and Their contentions for principles of natural justice set violated in Exactly as crease examination of persons, whose statements are all by apply has to be weighed in the optimeline forts that all the statements relied upon were proced before them. They had all the opportunity to recard of those statements theing the processing statements relied as a update of optimeline proceedings."

39.16.2 Believed for Horible formula in the case of M/s Beauty Dyers Vs CCE, (Coroni reported in 2003), 36) BLT 359 (True), show ) has one weather non-availability of witnesses the most-resonance in the fitted flavy where the findings are based on dominent about which there is no selected to explanation and not may on record reshow statements not versionary or effectively rectacted with a close proximity of the turn the enserted destined.

39.17 A Thirdiew of above facts, 1 Coliff at request for cross-exemication by the Notices does not many consideration and backs cannot be acceled to."

8.1 Find that the documents recovered from the premises of the transporters remained details of transportation or consignments from the premises of shipperdokers, including Appellant No. 1, into date, truck no, smallheaker's plot not, declination, daths of himser etc. and these details were also corroterated with the records maintained by Guparat Maritime Board in the four of permit registers. Thus, evidences gathered from transporter's one were inorported of the statements of transporters has been retracted. The transporters' must was limited to the transportation of goods and they had to measure to deposel. In their



Sec. 2

statements, something which was concrary to the facts. also find that dimiss/private records recover from the precises of Appellants No. 3, 4 and shitt Sharat Sheth, byskers recorded tott, as well as titlet transactions of shippresiving units/ colline muls. Stri Manish Parol, Accountant of Shri Kharat Sheth, who wrote/maintained diarlest explained the modus operandic adopted for removal of goods clandest hely from simplificeaking units of Alang as woll as anding/short forms used to receive transactions in the diaries. I also line that being a broker, Appellants No.0, 4 and Shit Blonat Shoth were required to record. cetalls of all transactions. Both as well as filicis, in pricer to get commission from responsive services. Jalso find that said drames/private records contained records. of many other ship breakers and veracity of the said distries/orivate moonts has been proved. After examining the facts and evidences available on receive, Lami of the considered opinion that non-granting of opportunity of cross matumatigation of Appellants No.3,4, Shift Bharat Sheth, transporters etc. Dv the lower adjustisating automity has not vitilated the adjudication proceedings, [] cherefore, agree with the incogned order that this contention is devoid of merita.

9. Beyonling confirmation of demand of they of 85, 32,11,696/ I on the ground of under valuation, Appellant No, 1 submitted that they had not indulged in unsimpleture of groups and teach not received extra payment is cash from their payers towards the goods sold by them; that they had declared groups towards the goods sold by them; that they had declared groups towards the goods sold by them; that they had declared groups towards the goods sold by them; that they had declared groups towards the goods sold by them; that they had declared groups towards the goods sold by them; that they had declared groups towards the goods sold by them; that they had declared groups towards of Section – of the Act; that not decepting the transaction value is violation of provisions of Section 4 of the Act; I find that the lower adjustizating authority has confirmed the charge of under valuation, *inter alls*, giving findings as under to

125.18. The Show Coute Natice alleged evention of central excise only by way efforce evaluation of the goods obtained out of orcaking to of ships. It is hat in dispute that various Research Agenates circulate the price considering offthe factors of comparel and supply and there is no reason the prices circulated by auch ageneies are unter isrie ener in is in due backduep that even Ship-Brockets/Brockets/Busices also subscribe to such castles research agencies to modion define the values proces as as to should then to will free goods at maximum rate. It is also not in dispute that the re-collable plates ranging from -we 8 and (4 And to 25 m) 14 And fast of so god order i making apply saids and the majority of to collable places unorged of breaking of ships are of 12 mm a zet to more to substantiate this of egation, the DOC functional company with various marketing research accretes including Mrs. Matur & Minor with reference to pricing data which revealed matiday to day price of 12 nm kize or Plates is sumes equivalent to the average price of all size within the range at 8 mm to 35 mm

39.38.2 Comparison of the price manifold in the inverses of M6s Shor-



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Ship wistervis of the proces circulated by M/a Mayer & Minor, it was also a socaled that minimum eases for transmission value declared by the M/s Sub-Ship work for loss flam the actual value provoit up to use market during the reactarive period. The thin meakers have, by not declaring the neural size / dickness of MS firstes chared by them, undered hed MS for collable Plates or no to use de them to rectore only period the value of such gravits in the process and collecthe differential value, over one where the declared involve value, by way to undependent of ask amounts.

32. 9 Under alice, find the substance in the singletion of under valuation in the areas r show cause notice particularly when disclosive wellights that Blank. Mathurial Sheth already containing details of each transactions with values between Subally Anagaines. That the efforts of all spatial of under valuation been not context, they would use have been involvement of transfer of hope amount of each which includes to the the undervalued cost of ship breaking the large spatial.

It view of the above, fing no with the contractory of the DGCEU (bat 10.26 taillor variation in price is obvious considering various factors, like nervnenn With, Quality & Quality of the goods, relation with buyers, demand and supply situation, therefore, 365 d. Governments on since sole sub-contrast sectors shave, Budders / Ship Breakers / Paryers take the reference of the price geored by market research agencies like M/s. Major and Minor 1, therefore, find and Justified the electric sources and that provide the More March More is actual one variation of ( / 254) it elimates of Places and Setup 254 lesser than the rate of Mrs. Major and Minor is considerable a token local bly ag eo with the was sugging by DGI (F) that only short prid on account of vertains of proc more than 2% is on according of undervaluation of the boods and optify recoverable from MA Shis Ship Funder, a also and that store of ship bolaking junits, the cash one Along and brokers were member of Mrs Stochastis and wave receiving duy to day update on the daily becount as of alop blenking. materials through SMS about any one a 1-19 is also reveal ed that Wes Steelrands way stay top the most scientific and copropriate and subject of the catalogical by them. The Ship breakers were cuby aware of the rates of the sorap generated. from ship breaking a lith that anniby undervalued the goods with attact to space. pay near of formal Presise duty, ..., Thus, having a the presided by WC. References that Ma Shiv's up has provided their cause the profit with entent to assume programming Central Excise data with the possible to fae parameter one by DC CEN. 7 Ford that Mys Stars Ship have evaded County. Fueise cirty of Rs [32.11,898/47]

5.1 In Find that the prices of WS Place/Scrate circulated by morbot research agencies like M/s Stool Ratio info and M/s Major and Minor Exins Pot Ltd word considence to ascertain waether the transaction value coolaron by the Appellant was reasonable or not. Trind that said Market Research Agencies cotermined the price of WS Place/ Scrap after taking into account various factors the certaind and supply, prices providing in different parts of country etuland than circulate the price. The first that large number of Ship breakers, prokent and dealers from Alang and Shavhagar have subscribed to their services itself give sandoty to the services rendered by the said agencies and there is no reason to discend the price as unreasonable or unrealistic. It therefore, hold that the immigred order base rendered by unrealistic. It therefore, hold that the immigred order base rendered at value, when

 $\mathcal{L}^{(n,k,n)}(\mathcal{M}) \rightarrow \mathcal{L}^{(n,k,n)}(\mathcal{M})$ 

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was keyer than the prevating market price.

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Appel ant Avail 1 has argued that classes the recruivatings to be proved by 11... the Department and carnut be exhibitshed based upon some startes seized from the process of Appel ants No. 3,4 and part Bharat Sheth, in this regard, 1 find, that the promises of Appellants No. 3.4 and Shri Bharat Shett recorded Faiul as well as illigit transactions of Appellant load 1 and only three entries for which corresponding sale ( woides, were dot issues by Appellar Livo. If were taken into account for the compose of comanding outy. I also find that transactions reflected in the said private records were further controburated by Statements of the transporters, when accepted to have transported the goods from the premises of Appellant No. 1. The registery maintained by the Transporters contained details of transportation. of goods from the premises of Appellant No. 1 which were further comoborated. with the records maintained at GWB check post. Therefore, demand cannot be and to be based only on third party deductors bed duly combinated by host of evidences recovered ouring investigation. Further, Appellants No. 3,4, and Shri Rhasht Shorp being prokers, they were required to record details of all transactions, tight as well as rubgit, in order to get commission from respective. carties. So, there is no compulsion for them to recard something in their ciaries/notebooks witch is contrary to facts. I also find that said diarles/private recents nonthined records of many other ship breakers and verscity of the said. ciartes/private records has been proved. Adart from that, evidences of clanaesting removal have been gathered by the investigating officers. concessfully from many places and therefore, these documents cannot be called. this party securents but completized and suspecting evidences. Usely upon the Order of the Honfble CESTAT in the case of Om Prakash Agarwat reported as  $22^{\circ}$  / (346) EU = 12.5 (Cri Bell), wherein strikes been held tast :

(5. I must that is look the proceedings almost electron was of facts was a two-had. The allegation was that based on avidences collected from the suppliers' size, among a way and from the manifestary of datable data by the appellost was singlet to be suppliered. Additively, the case is not two-off two-off

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<u>vande sin</u>nerdom, is <u>to surroup</u>, that the s<u>ayorithan h</u>os taken a <u>pica dan dae d</u>epartment. his and established the domin of payers and the seven of the further grand many b <u>barneya. Itua mwa alao ina majaonda makanai bi kwa sumplikana umini kwana alifanasi.</u> by the constitution of charge connect be priviled ashie it is see the case of the spectrum that the requiring antipitation study or a range party to fair dy subjects the appendix the In fact, the tapply of measurabled rate methodals has been non-abertarial by the performed the appellant's firm to such situation, it is too periode for the appellant to now in the appear mage make the point by requirements of conversioning too. ele, s<sup>i</sup>dmeti<u>vity, nong o</u>f the private r<u>eported of the p</u>utements given have been <u>extension</u>l or lass cons<u>erved for their station</u>tiesty. In the <u>majorit before the</u> Tribunal, th<u>e norwithant is made</u>ing a beliated<u> as wellion (by) the statement</u> by the <u>provide of the</u> appellents f<u>orm is not welden a</u>nd. Kereens eant laws within your by the oppositions as a iter of any suggest in the present case. In the cares revoluting manifolds adomplocities, the existence of each state are to be appreciated for concentration. As com<u>ed allowed a test theirst p</u>usite is recorden at the en<u>peties of which as addressed top via</u> person of charge and further considerated by the appriant connection discoupled unity on the ground of further woldeness. The true contained mercips of morehip not been proved. In a cloudering manufacture and character, such shore of contrained counted for established york erecticion. On careful consideration of the grounds of appear and the flathous in the impagrame order, I flat an ensure of laterjare with the findings recorded by the lower authority. Accordingly, the naposta ao sidira iza d'''

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## [Emphasis supplied]

Appeliant No. 1 has contended that the Department has not discharged. 11. barden of evolt for alleged illight transactions and that evidences regarding usage of raw material and excess consumption or electricity, which are nonexistent. In this regard, I have alteracy discussed in Paras supra that the Department has arkland sufficient evidences in the form of incidentialing dominishing recovered from the prentses of Appellants No. 3,4 and 5hm Bhatati Sheth, which contained details of goods purchased by them on peholi of crein citents from Appellant Nn. 1 without cover of Central Excise Involtes and These evidences which further without payment of Central Excise duty. comburated by the statements of transporters, who deposed that they had transported the goods from the promises of Appellant No.1 and tansis Statements. have not seen retracted. Considering substantial aviacous in the form of these sucumentary evidences on record, ... can of the considered opinion that the Department has discharged instances of proof for damaestine foracyal of souds by Aspellant No.1. In cases of clandesting renoval, Department is not resurred. to prove the case with mathematical precision. Wy virws are supported by the other passed by the Hendble Tribunal in the case of IA.N. Gunt & CO. reported st 1996 (86) F.(.T. 333(Tr).), wherein it has been held that,

"In all such cases of capabal nonemoval, it is not possible for the Deperturent to grow the same with mothematical proofs on. The Department is descend to have discharged to an forder fill they prove to rough at overence which, prior facil, show that there was a condestine removal to such evidence to address the technology of the proof there was a condestine removal to such evidence to address the Department. Then the one glifts on to the Appella to to prove that for a way to be the Department.



<u> <u>A</u>lender</u>

clandestine terraval".

10.1 The Konfolm CFSTAR in the case of Kamachandra Rextri Pvt Ltd reported as 2013 (295) E.C.T. 116 (Tr). - Bang.) has held as underta-

 $^{97.3}$  the closer of clarecestice evolving involving suppression all production are clancestine reproval, it is not expected if or such overally like to us strong equipped Departments in a mathematical precision. After all, a person indulging miclandestine as only takes sufficient proceation to midelestrow the evidence. This emidence available shall be these left of spins of the test care taken by the persents metabolic emission and the test care taken by the persents metabolic emission and the test care taken by the persents metabolic emission of the test bare taken by the persents metabolic emission of the test bare taken by the persents metabolic emission of the test bare taken by the persents metabolic emission of the test bare taken by the persents metabolic emission of the test bare taken by the persents metabolic emission of the test bare taken by the persents metabolic emission of the test bare taken by the persents metabolic emission of the test bare taken by the persents metabolic emission of the test bare taken by the persents metabolic emission of the test bare taken by the persents of the test bare taken by the persents metabolic emission of the test bare taken by the persents of the test bare taken by the persents metabolic emission of the test bare taken by the persents of the test bare taken by the t

10.1.1 The Han'ble Subreme Court as reported in 2014(302) ELT A63(SC) has uphold the above order of the CESTAT.

11.2 If I also rely on the order bassed by the Honible CESTAT, Almedabad in the case of Aburya Alternitium Consorration reported at 1995 (261) Filler. Id. (1997) Alteraid, wherein at Para 5.1 of the order. The Tribunal held that,

TO not grain the terms of provine that they have accounted for the field graduated whether the open limits and they have failed to discharge this borten. They want the department to show challantwise double of gradic transported or too transport at the second second of Han' de Supreme Court and High terms where a transport at the bort held that in such clandestine activities, only the person who includes in tach activities does all the details and it wonth not be pessible for any a viso proof officier for uncerthe of the aviances required and move with mathematical precision, are passible of the other inlegal activities".

The Hamilde CESTAT in the case of W/s. NR Sponge Piltd reported as 7010 + 376, E(0) + 453, initially bas also held that when preparameters of probability was against the Appellant, pleadings of no statements recorded from taylers, no excess electricity consumption froms, no raw material cumbase found enactaunted for and no experioutput ratio prescribed by law etc, are of railined. The kindle light Court in the case of international Cylinders PVL Ltd-reported at 2000(256) E 068(H.P.) held that show the department proves that something illegal had been done by the manufacturer which prime facte shows that ill egal activities were being corried, one borden would show a there is a basic common sense that no person will maintain authoritie records of the illegal activities to manufacture being done by it. Therefore, contention of the illegal activities to manufacture being done by it. Therefore, workshow of the Appeliant is devoid of mentain by the input of the positive evidences available in this case as discussed above and in the inpugated order.

17. In view of above, the various unstentions raised by the Appelland are of no lifete to them since the Department has adouted sufficient oral and documentary correspondive evacances to semionarate that Appellant No.1 has



<u>for the second </u>

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superior of ATT 12.104. We charge reactions

evaded payment of Central Excise cuty by moorths, to clandestine removation the finished goods and undervaluation of goods. , therefore, hold that confirmation of demand of Central Excise cuty of Rs. 55,06,860/- by the lower adjudination authority is correct, legal and propert.

12.1 Since domand is confirmed, it is natural consequence that the confirmed demand is required to be paid along with interest at applicable rast chose. Section 11AA of the Actual, therefore, uphold ergen to pay interest or confirmed company.

(2.2 This is a case of clardestine removal of the finished goods as held in above Paras and therefore, the implighed under has exceeding (access relia) and maniphory penalty of Rs. 55,06,960/- on Appellab. No, 1, under Section (1AC(1Ha) of the Act. The inclugied order has correctly given puttion of reduced penalty of 25% to Appellant No.1 as presentated under provise to Vertico 111AC of the Act, hance, incorder with his derivation of penalty on Appellant No.1.

13. Regarding penalty imposed upon Appeilant No. 2 under Rule 26(1) of the Sules, I find frum records that Appellant No. 2 was Partner of Appellant No. 1 and supervising day to day transactions of Appellant No.1 and harf communed mitisely in manufacturing, removing and setting excisable goods on which excise duty was not paid and hence, he harf reason to bedder that goods contexted clandestinely of goods undervalued by them were Kable for confiscation. It therefore, hold that penalty of No. 10,00,000/- imposed under Rule 26(1) upon Appellant No. 2 in the impugate more is correct and proper and 1 uphald the same.

13.1 Regarding penalty imposed upon Appellant No. 2 under Run 26(2)() of the Rules for traudulently bassing of Convel predict Find that Appellant No. 3 was involved in sole of phony involces without oblivery of corresponding goods through Smill Bharat Sheth, proker. The DGCD unearCred the modus operands acopted by Appellant No. 1 by dociphening the entries recorded in diaries and beer drive menomored puring search from the residence preparation doubt that Appellant No. 1 by dociphening the entries recorded in diaries and beer drive menomored puring search from the residence preparation of Shiri Bharat Shorh as elaborated in dotted in Sanw Cause Notice. Thus, if is payond doubt that Appellant No. 1, in collesion with Shiri Bharat Shorh, issued involves without physical dollwary of the excisable goods and fraudulently passed on Cencel credit. This that Appellant No. 2, is involved and is reparable for this art of traudulent passing of Cenvel period being authorized before of Appellant No. 1. Formany, Appellant No. 2 tools help of Shiri Bharat Shorh, proker who factoted by finding buyers served being authorized before who factoted by finding buyers server, to avail only trauculant Conval uredit without



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receipt of goods as well as buyers who want to purchase goods without involve and also managed cash involved in such transactions. Hence, generuly of Rec 34,01,9607- imposed upon Appellant No. 2 under Role 95(2)(i) of the Rules te correct and Luchold the same.

14. Regarding imposition of penalty under Rule 26(1) of the Robes, Appollants, No. 3.6.4 have contained that diames recovered curring search carried out by the officers of SGCEI contained estimates written after making induity work the concerned ship breakers; that the Repartment has not produced any evidence of allegad if fait transactions; that onus to prove clandescare removal of goods is on the Department, which was not discharged by the Department. find thet Appellants No. 5  $\dot{\alpha}$  4 have acted as brokers who purchased goods on behall or their clients from Appellant No. 1. Search carried out by DGCM at the residence/puschess premises of Appellants No. 3 & 4 resulted in recovery of incriminating documents in the form of pocket diaries and pon-drive, which contained details of transactions entered with ship breakers. Including Adpelland No. I and complete buyers. I find that the DGCEI deciphered the codes and admiviated name used in the said documents which revealed that Appellants. e.e. 3 & 4 had purchased groots from Appeilant No.1 for which no corresponding invoices when issuen by Appellant No. 1. I also find that the said documents contained details of cash transaction between Appellants No. 3 at 4 and Appellant No. 1 for sale proceeds of rouris comoved by Appellant Ko. 1 without Central Excise involces. I find that Appellants No. 3 & 4 played important role in the classestice removal of grade by Appellant No. 1, and hence, imposition of penalty of Rs. 3,55,0307-moon each of Appeliant Not 3 E K lighter Rule 26(1) of the Rules by the inwestedjudinating authority its correct and Lupbeld the same.

15. In view of above, in their the impligned proof and reject the appeals of Appellants No. 1 to 4.

- 1511 अमीलकर्नाओं तयास उर्ज की गई अर्पाओं का जिल्हास उपसेक्त तरीके से किन्न जाता है ।
- 15.1. The appeals filed by the Appellants are disposed off as above.

मुरः। हिंस , (कुमार ततीष) पंचान आगृक्त (अपोल्स) हि,्न शत∎ ्रीय है (उन्हें कि

<u>By 3.P.A.D.</u>

Lo. 14. W/s Shiv Shippheaking Company 1 Pint No. 36. Alang Shipberaking Yard, Alang, District Bhavmagar.	की सिव संभवनिंग केंगर्सर प्लॉट बन 35, अलग संशासीकेंग थाल, आसंग, सितल भावनगरण
<ul> <li>2. Shii libursh Panttar Partner, M/S SAW Shipbreaking Company Plot No. 36. Alang Shitbreaking Yard. Alang, Dish of Thawnaght.</li> <li>3. Shii Kishov Patel Progrietor of M/S Shree</li> </ul>	श्री हरेश परतार, , फटेलर, रोग शिपग्रेकिंग कंपन्नी , क्योंस ल., 36, अलंग शिवग्रेकिंग यार्ड, अलंग, जिल्ला भावलगर। अने किशोर परेश,
Anshaal Enterprise,	मालिक, श्री कृष्ण उंदरप्राइल,
PG4, Shappers Point,	301, शॉपर्स वॉइंट अरिमाट चौत .
Parimal Crowk,	
Waghawasi Road,	वाधावाडी सेड. मानजगर
Ehavhagan,	
4. Shri Vined Patei.	भी ।वेगोर, पटेल.
Publinks: 102.	्लॉट तम 102,
Iscon Mega Urty,	इल्लॉन मेंगा सिंहि, जिन्होरिया सके के
Dga Yistoria Park,	सामने के बन्दर्भ
Chaynngar.	

### <u> इंग्ले</u>

- 1) प्रधास मुख्य अधुवता. वस्तु घट सेवा कर एवं केनझेथ उत्पाद शुरुष, गुलराज क्षेत्र,अहमदागाद को उत्तरकरी हैंगु]
- 2) उत्तयुक्त, दरस्तु एवं सेव: ३८ उने केवलीय उत्तय शुक्था अल्लगर अख्यतवालय. भाषणगर को आवश्यक कार्थवाले हेल्ल
- ३) सञ्चलत आयुल्ल, इस्तु ७४ सता कर ६४ केन्द्रीय उत्पाद शुल्क, ३ काणिर आयुक्तकर. भाषनगर को आवश्यक के वैवाही हेंदु।

्र 🍂 माई प्राइल