



THE PRINCIPAL COMMISSIONER OF INCOME TAX
AND THE PRINCIPAL COMMISSIONER OF CENTRAL TAXES



विशेष आदेशों का निष्पादन - Special Orders
निष्पादन - Execution

वि. सं. क्र. 195-195/2019-20 - 195/2019-20

आदेश सं. 195/2019

आदेश सं. 195/2019

195/2019-20

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दिनांक

19.06.2019

195/2019

विशेष आदेश सं. 195/2019

BILY EXCUS 195/2019-20-195-2019

आदेश सं. 195/2019

Date of Order: 19.06.2019

आदेश सं. 195/2019

Date of Issue

19.06.2019

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1. J. S. Sarda & Co. (Pvt.) Ltd. (1982) 85 I.T.R. 200 (S.C.)
2. S. S. Sarda & Co. (Pvt.) Ltd. (1982) 85 I.T.R. 200 (S.C.)
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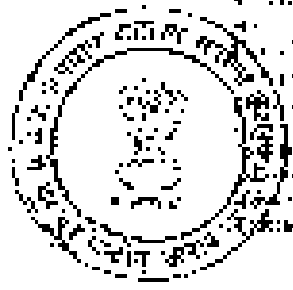
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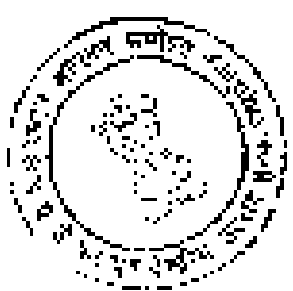
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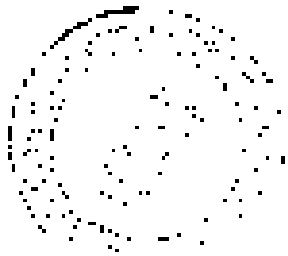
ORDER IN APPEAL :

The lower mentioned appeals have been filed by the Appellants (hereinafter referred to as Appellant No.1 to Appellant No. 8) as detailed in the Table below against Order in Original No. 5199/2023/125/126/141/142/143 dated 28.02.2023 (hereinafter referred to as the impugned order) passed by the Joint Commissioner, Central GST, Chennai (hereinafter referred to as the lower adjudicating authority) :-

Sr. No.	Appeal No.	Appellant No.	Name of the Appellant
1	V2119/DV/2023-19	Appellant No.1	M/s. Shree Ram Steel & Rolling Industries (Jnt-2), Plot No. 3, Alang Ship Repairing Yard, Aung P.O. Maran, Bhanuagar
2	V2174/DV/2023-19	Appellant No.2	Sri. Subhakar S. Patel, Proprietor of M/s. Shree Ram Steel & Rolling Industries (Jnt-2), Plot No. 3, Alang Ship Repairing yard, Aung P.O. Maran Bhanuagar
3	V2135/DV/2023-19	Appellant No.3	Sri. Raviar Amarsubramanian, Partner of M/s. Shree Krishna Enterprises, 304, Shoppers Bldg., Parimal Chowk, Wagazwadi Road, Bhanuagar 304, 307
4	V2128/DV/2023-19	Appellant No.4	Sri. Vinod Anantharaman, Patel, Plot No. 102, Export Mega City, Ship Repairing Yard, Elengudi - 304002
5	V2144/DV/2023-19	Appellant No.5	Sri. Mahendra Ambala Rana, Partner of M/s. Manoj Metal Industries A-305, Lee's Docks, Wagazwadi Road, Bhanuagar 304002
6	V2130/DV/2023-19	Appellant No.6	Sri. Lalla Prasad, Partner of M/s. Manoj Steel Corporation, Mandi Chikindagani, Orjala
7	V2114/DV/2023-19	Appellant No.7	Sri. Saikaran, Proprietor of M/s. John & Maran Overseas, Maran, Orjala, P. Puzhazhi
8	V2098/DV/2023-19	Appellant No.8	Sri. Gander Kumar, Proprietor of M/s. J.A. Jeyaseelan Co. M/s. Khan, Maran, Bhanuagar, Puzhazhi

2. The bare facts of these appeals are that Appellant No.1 was engaged in the process of obtaining goods and materials by breaking ships, boxes and other floating structures which amounted to manufacture in terms of Note 9 of Section XXV of the first Schedule to the Central Excise Tariff Act 1985 (hereinafter referred to as 'CETA') and was registered with the Central Excise Department and has been availing Central Credit under the provisions of Central Credit Rules, 2004 (hereinafter referred to as the 'CCR'). Appellant No. 2 (Proprietor of Appellant No. 1) was alleged to have clandestinely cleared the excessive goods and cleared against nil Central Excise duty. Appellants No. 3 & 4 were brokers through whom clandestinely goods were allegedly cleared by Appellant No. 1 and Appellant No. 2. Appellants No. 5 to 8 were buyers who had allegedly purchased the clandestinely cleared goods from Appellant No. 1.

2.1 The shores of the Directorate General of Central Excise Intelligence (hereinafter referred to as 'DIGCEI') gathered intelligence indicating that some ship breaking units of Alang/Saniya were engaged in large scale evasion of Central Excise duty by way of clandestine removal of plates to the Rolling Mills, conversion of goods into wastage or goods etc. and that most of such illicit activities were being carried out by the Ship Breakers with the support of some carters. These breakers were obtaining orders from certain Rolling Mills and Fabricators and many times were getting the material



(Signature)

supplied through some Transporters without Central Excise invoices and without payment of Central Excise duty. These brokers were also procuring goods from Furnace Units and Registered Dealers on supply of Central invoices without any physical supply of goods. JOCCH conducted coordinated search at the premises of brokers at Bhavnagar and recovered several incriminating documents substantiating the intelligence. Another round of search operation was conducted at transporters whose documents were available on the records of various furnace units, premises of various Ship Breaking Units and Rolling Mills. A search operation was also conducted at the residence cum office premises of Appellant No. 3 & Appellant No. 4 and incriminating documents were recovered.

2.2 The above investigation led to issuance of Show Cause Notice No. DGCEWZU/66-67/2012-14 dated 01/07/2012 demanding recovery of Central Excise duty of Rs. 52,92,934/- from Appellant No. 1 under proviso to Section 11A(1) of the Central Excise Act, 1944 (hereinafter referred to as the Act) along with interest under Section 11A & Section 11AA of the Act and imposition of penalty under Section 11A(2)/Section 11AC(1)(a) of the Act read with Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as the Rules), imposition of personal penalty under Rule 25(1) of the Rules on each of Appellant No. 2 to Appellant No. 3 & Shri Bharat Sheet Broker, Padmakumar Surebhai Gupta (Proprietor of M/s. Surya Steel Rolling Mills, Survey No. 160/61, Becharji Road, Mahesana, Mahesana J.M. Teral (Director of M/s. Surya Steel Industries Pvt. Ltd., Surya Steel Cross Road, 5G Highway, Sarkhej, Ahmedabad - 382 210); imposition of personal penalty under Rule 26(2) of the Rules on each of Appellant No. 2 and Shri Sheel Sheet Broker. The said SGN was adjudicated by the lower adjudicating authority vide impugned order containing Central Excise duty of Rs. 52,92,934/- along with interest and imposed penalties on Appellant No. 1 to Appellant No. 3 as mentioned in the SGN.

2.3 As per available records of this office, Shri (i) Bharat Sheet Broker (ii) Padmakumar Surebhai Gupta (Proprietor of M/s. Surya Steel Rolling Mills, Survey No. 160/61, Becharji Road, Mahesana) and (iii) Manoharabhai M. Patel (Director of M/s. Surya Steel Industries Pvt. Ltd., Surya Steel Cross Road, 5G Highway, Sarkhej, Ahmedabad - 382 210) have not filed appeal against the impugned order.

3 Being aggrieved with the impugned order, Appellant No.1 to Appellant No. 3 preferred appeals against the same on the following grounds:

Appellant No. 1:-

(i) The impugned order has not dealt with the pleas made in written copy of the appellant and the judgments referred to and ratio non have been ignored in the impugned order. Hence, the impugned order is not speaking and non reasoned order; that the impugned order is the lower adjudicating authority is lawless and self-serving in



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rather, the impugned order has failed to specify ratio and principle laid down in the judicial pronouncements relied upon by the appellants; the aspects adopted and rebutted the pleas made by them in their reply to SUN and other submissions filed before the lower educating authority.

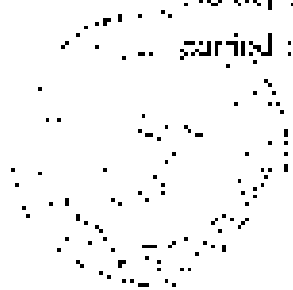
(ii) The role of cross-examination of transporters, Sri Dhruv Sheth and Sri Kishore Patel was not undertaken and thereby the lower educating authority has not observed the principles of natural justice.

(iii) No penalty was proposed on transporters which implies that the statements of transporters were recorded under threat, duress and with negotiation in unfair manner. Therefore, cross-examination of transporters is required and their statements cannot be relied upon and cannot be used for corroborating evidence not being genuine and true. The appellate orders or decisions in the case of similar Agencies reported as 2000 (120) EIT 189 (Tri - Cal.) Chandrasekar reported as 1999 (48) EIT 209 (Tri - Lakshik Srinivas reported as 2001 (121) EIT 539 (Tri - Del.) Shama Chemicals reported as 2001 (130) EIT 271 (Tri - Kol.).

(iv) The charges of clandestine removal are serious charges and cannot be established on the basis of some irregularities of unproved nature. Apart from receipts of the transporters which did not carry evidentiary value, there is no evidence on record to establish clandestine activities of the appellant. The appellant raised an objection in the case of Tewa Dyestuff Industries reported as 2001 (218) EIT 319 (Tri - Ahmed) affirmed by the Hon'ble Gujarat High Court reported as 2006 (254) EIT 242 (Guj.). No statements of vehicle owners or their Drivers and drivers of the goods were recorded by the investigation and no corroborative evidence available on record to rebuttal of such statement of the appellant. Therefore, penalty imposed duty of Rs. 15,01,277/- confirmed on the basis of trucking registers is wrong.

(v) The documents and diaries seized from Sri Sheel Surti Broker are thin and feeble evidences. Ifal SUN did not provide any list or relied upon documents of SUN, which has thousands large number of consignor names and names appearing in the porter and notebooks seized from the brokers; that no evidence has been produced by the department of alleged illegal transaction. The appellants deny all the charges levelled against them, but the appellant pleaded these goods clandestinely have not been admitted by them nor there any documentary documents been submitted suggesting that the appellant was involved in clandestine removal of any such goods. There is no evidence for transport of so-called illicitly cleared goods from the appellant's premises. The allegations of clandestine removal cannot be sustained only on the basis of statements of some corroborative required. No evidence regarding goods cleared by the appellant was found to be received by the Buyer without proper invoice. No inquiry carried out at buyers. No corroborative evidence available about receipt of cash by the





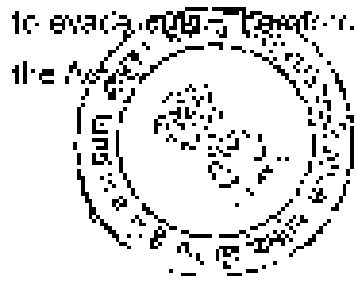
appellant. The impugned order issued on the basis of clarifications available etc. recovered from Shri Dhawal Sheth and objection advanced based on assumptions & 13 presumptions; that the impugned order not disclosed any material evidence and it is well established fact that demand based on assumptions and presumptions cannot sustainable, that the onus to prove clandestine removal of the goods is on the department, who alleged that the appellant took the goods illicitly; that they relied upon decision of the Hon'ble Supreme Court in case of Ansa Lal reported as 1989 (13) 417 (324 163)

(v) The appellant submitted that the arguments in respect of the demand confirmed on the base of the investigations carried out with San Kishor Patel and Vinay Patel, may considered as what is stated in the above Para (v)

(vi) The appellant had not indulged in undervaluation of the excisable goods and has not evaded central excise duty and not received differential payment in cash from their buyers as mentioned in Annexure DVI to the SO. If the rates quoted by M/s. Major and Minor as well as other agencies are actual rates prevailing during that period as held at Para 3.2 of the impugned order then the department should take those prices for each and every invoice issued by the appellant during that period. The department has taken only those invoices in which the transaction value is lower than the price stipulated by the market research agencies. It has not been considered that the appellant has sold their goods at either equal or higher price than the price stipulated by the market research agencies.

(vii) As regard to issuing on their debit receipt and by issuing only invoices. It is submitted that there is no evidence or record to show that the appellant did not receive the payments regarding sale of goods in question through proper banking channel. There is no evidence or record to show that the appellant was connive with the purchaser through Shri Dhawal Sheth by issuing duty paying documents only. The entire alleged action of issuing impugned order is being conducted in an arbitrary manner and the same is illegal, void and without authority of law rendering the impugned order null and void.

(viii) Penally imposed under Section 7 AC of the Act is illegal in absence of any evidence that excisable goods manufactured by the appellant had in fact been cleared without proper invoices by the appellant and allegation of clandestine removal and undervaluation of the excisable goods did not justify. No evidence was adduced in the SO to establish that the alleged act of omission had been committed by the appellant deliberately or continuously or in flagrant violation of provisions of law or with intent to evade duty. Therefore, the appellant is not liable for penalty under Section 7 (A) of the Act.



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Appellant No. 7:

(i) The impugned order has not dealt with their plea made in written reply and the judgments referred to and relied upon by them have been ignored by the lower adjudicating authority and therefore the impugned order is a non-speaking and non-reasoned order. That no findings have been recorded on the arguments raised before the lower adjudicating authority and it has been cursorily and mechanically dealt with the pleas of the appellants; that the findings are baseless and self-serving in nature. That the order of the adjudicating authority has shown judicial indiscipline in not abiding by the various judicial pronouncements relied upon by the appellants in support of their submissions; the appellants accept and refer to the verbal pleas made by them in reply to SDR and written submission filed before the adjudicating authority. The request of cross-examination of transporters, Shri Bharat Sheth and Shri Kishore Patil was not entertained and thereby the lower adjudicating authority has compromised the principles of natural justice. No penalty was imposed on Unacademy which in press that the statements of transporters were recorded in proper, direct, direct and with regulation in a fair manner. Therefore, cross-examination of transporters is required and their statements cannot be relied upon and cannot be used for corroborating evidence not being genuine and true. The appellant relied on decisions in the case of Shalimar Agencies reported as 2020 (120) EIL 136 (Tri); L. Chandrasekar reported as 1990 (18) EIL 781 (Tri); Lakshmi Spinning reported as 2001 (131) EIL 652 (Tri - Del.), Shama Chemicals reported as 2001 (130) EIL 611 (Tri - Cal).

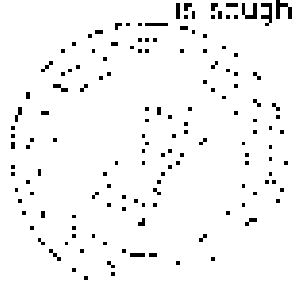
(ii) The appellant's profile of the firm, Proprietor and proprietor concern are legally one and the same person has not been with any personal notice or benefit and thereby question of personal liability question is not proper. Penalty could be imposed on a person who acquired possession of or otherwise physically dealt with, any movable goods which, according to his best or knowledge, was liable to confiscation. The department has no case that the appellant had belief or knowledge that the goods were liable to confiscation. Hence, Rule 28 was not enforceable against him. It is settled law that personal liability is proper in addition to the firm not imposable. The appeal is allowed upon following basis:

- Geeta Sankar Carpet - 2008 (19) EIL 40 (Tri - Del)
- Rajesh Sanyal Industries - 2006 (257) EIL 310 (Tri - Del)
- Vajray Metal Industries - 2006 (201) EIL 420 (Tri - Mumbai)

Appellant No. 3 & 4:

(i) The appellants made requests for cross-examination of Shri Manojkumar Anand's Bank, Bank of India 'Metal Metal' witnesses, Pharrager which were not entertained and order has been passed imposing penalty on the appellant and thereby compromised the principles of natural justice. That it is an elementary principle of natural justice that person who is sought to be proceeded against and penalized in adjudication on the basis of third party

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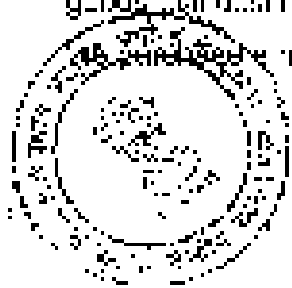


statements should be afforded sufficient opportunity to challenge the correctness of the findings as per law by cross-examination. Ifal. Ver. of cross-examination of the person implicated that charge of clandestine removal of the excisable goods based on the statement of that person did not stand proved and reliance on the following cases law:

- Anilmar Agencies - 2000 (120) ELT 193 (H.W.)
- Charanashker - 1990 (43) ELT 259 (H.W.)
- Shanti Chemical - 2001 (150) ELT 171 (Tribunal)

(ii) The impugned order has not dealt with the pleas made in written reply and the findings referred to and relied upon by them have been ignored by the lower adjudicating authority and therefore, the impugned order is a non-speaking and non-reasoned order that no findings have been recorded on the arguments raised before the lower adjudicating authority and it has cursorily and mechanically dealt with the plea of the appellants; that the findings are hasty and unbecoming in nature; that the lower adjudicating authority has shown a total indifference in not relying on the various judicial pronouncements relied upon by the appellants in support of their submissions; that the appellants adopt and reiterates the various pleas made by them in reply to SCN and written submission filed before the adjudicating authority.

(iii) Regarding findings recorded at Para 5.17 & Para 7.2 of the impugned order the appellants submitted that the entries made in the diary recovered from the residence of the appellants are estimates written by Revenue No. 4 after inquiry with the concerned ship broker; that regarding the facts recorded at Para 7.1 of the impugned order, the appellants submitted that the department neither provided any list nor filed a SCN in which they have listed excisable large number of crossed entries and entries appearing in the pocket diaries/stockbooks seized from the brokers; that there is no evidence produced by the department of alleged illicit transaction; that the burden of proof is laying on the department. With regarding findings recorded at Para 7.2 & Para 7.4 of the impugned order, the appellants submitted that the allegation that the ship broker has cleared the excisable goods clandestinely through the appellants is not correct as the appellants have not admitted with a fact nor any documentary evidence even remotely suggesting that the appellants were involved in clandestine removal of any such goods involving duty of Rs. 12,58,321/- as mentioned in Annexure VKP to the SCN. Also there had to be an evidence regarding sale of so called illicitly cleared goods through the appellants to some persons; that the appellants have neither promised nor entered the excisable goods clandestinely cleared from the premises of the said area and also the authorized signatory of the ship broker has never stated that they have sold the goods clandestinely; that the statement made by different persons in their statements are not relevant; that none of the transporters have confessed that the goods clandestinely cleared by the appellant had been transported by them and none of the persons have confessed that the said goods were purchased by them or none of



the appellants confesses that amount has been paid to the appellant.

(ii) The appellants are not covered under Rule 25(i) of the Rules as the appellants have not dealt with the excisable goods in the manner that the law provides for a penalty under this rule & that the person who requires possession of any excisable goods without knowledge or belief that the goods are liable for confiscation under the Appellate Rules or he has been in any way concerned in selling or purchasing or any other manner dealt with the excisable goods, then the appellants taken on reasons in the case of *Godrey Boyce & Mfg. Co. (supra)* led to 2002 (148) ELT 161 (T) and *Ravi Nath Singh (supra)* led to 2005 (114) ELT 481 (T) - 161.

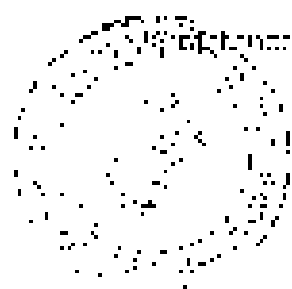
(iii) Without prejudice to the above, these appellants submitted that the penalty imposed on the proprietor of the firm is Rs. 6,20,000/- for the alleged duty evasion of Rs. 1,00,000/- means about 61.83% of the duty evaded and penalty imposed on each of them (para) is Rs. 12,40,000/- means 100% of the alleged duty evaded. That this is travesty of justice and clear case of pre-determined and prejudiced attitude of quasi-judicial authority.

Appellant No. 5:

(i) The impugned order has not dealt with their plea made in written reply and the judgments referred to and relied upon by them have been ignored by the lower adjudicating authority and therefore, the impugned order is a non-speaking and non-reasoned order. That no findings have been recorded on the arguments raised before the lower adjudicating authority and he has cursorily and mechanically dealt with the pleas of the appellants. And the findings are baseless and erroneous in nature; that the lower adjudicating authority has shown gross negligence in not acting by the various judicial pronouncements relied upon by the appellants in support of their submissions. The appellants admit and concede that various pleas made by them in reply to SCN and written submission filed before the adjudicating authority.

(ii) During adjudication, the appellant made request for supply of copy of Annexures and copy of relied upon documents mentioned in Annexure R to the SCN, which was not entertained. Therefore, the impugned order has contravened the principles of natural justice thereby rendering the impugned order as ultra vires.

(iii) The findings recorded at Para 5/2 of the impugned order are vague as required Shri V.K. Raju for the petitioner/ the proprietor of the ship breaker nor their authorized signatory has confessed that the finished excisable goods are alleged to have been sold clandestinely to the appellant. The appellants have never admitted the facts that they have received the excisable goods belonging to the ship breaker through brokers in clandestine manner. The fact of non-admission was to be proved and is not a matter of conjecture. The findings cannot be based on mere surmise and conjectures and on



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assumptions and change of concession number and their purchase is required to be proved by production of affirmative written and tangible evidence. The imposition of penalty under Rule 21 of the Rules, the person must have dealt with the excisable goods with knowledge that the excisable goods are liable to confiscation. In the present case there being no material in the SCN nor in the impugned order that the appellant had any intention to conceal excise duty and indulge himself by adjusting it all way as alleged in the SCN and as such no legal action under law can be taken against the appellant.

Appellant No. 6 to Appellant No. 9:

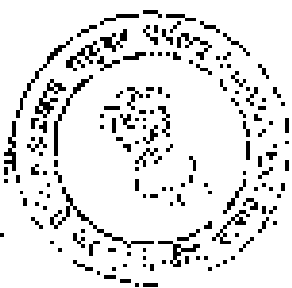
(i) The impugned order has been passed in a mechanical way without applying mind and without considering or carrying on exams. without supplying related book documents even without supplying the copy of statement. The impugned order is liable to be quashed on this ground alone.

(ii) Same format of statement got signed from all these appellants through copy and paste in the computer file. That alleged mode of issue of cheques by these appellants were made on no bank record is contradicted by the investigation showing issue of cheques, cheque numbers, date of issue, date of evaluation, amount of cheque etc. and no bank record was found from the appellants from where the said cheques were found to have been issued. That the facts stated in the statements cannot be believed by no person after 45 years can record statement and can identify the trust number, name of seller, name of broker, weight, exact date of purchase, name of transporter without verifying the records.

(iii) The appellants had sworn affidavits, cleared the position about the surrounding circumstances to which the statements were signed by them will not be held liable to read. All the facts and circumstances narrated in the statements are not consistent with the textual position. Six persons visited DGCEI office on same day to record the statements. Statements of six persons could be recorded within hour.

(iv) No document was supplied to the appellants including statement of tickets, statements of manufacturer's broker, statement of transporters, statements of Marine Board showing that the disclosed goods were removed by them without issue of INVO 083.

(v) The scanned copy of record of the transporter incorporated in SCN do not contain the particulars of the goods in dispute to have been received by the appellants. The department fails to supply evidences available with them from the record of Marine Board. It has been mentioned in SCN that some record of Marine Board is not available, entries of truck having registration of Dhemagar District are not made as entry permit is issued on monthly basis. The appellants failed to understand the



investigation at the end of Merit Board as no documents have been supplied to the appellants showing alleged clandestine purchases. Without any evidence on record, statements got signed that the appellants purchased scrap illicitly without payment of Central Excise duty & to establish such purchases paid payments in cheque and against payment of cheques the appellants received cash like cash from broker/ship breakers through angas a main broker and sale created jointly. The statements will be any such evidence got signed through pressure tactics in the same manner and same style by copying and pasting the para content which shows that whole of the investigation is false and the case cannot be taken up.

(v) Truckload also cannot carry goods without valid documents as trucks/vehicles from Awaraj Bhavnagar had to cross State Tax Check posts of States of Gujarat, Rajasthan, Madhya Pradesh and Punjab so as to reach appellants premises. The investigation failed to discharge onus as it had not checked the records of State Government Barriers situated at the entry and exit point of territory of Gujarat, Rajasthan, Madhya Pradesh and Punjab. The department has not summoned the truck owner/truck driver involved in these transactions.

(vi) Onus is placed upon the dealer/consignor and the dealer/consignor will be same to appellants without discharging its onus as held in following cases:-

- Pate News & Paper S.L.I - 2008 (731) E.L.T. 4075
- Chandan Tobacco Co. - 2014 (311) E.L.T. 693 (Tri. - Ahmed)
- Shree International Ltd. - 2014 (310) E.L.T. 307 (Tri. - Delhi)

(vii) The department relied on the basis of presumptions and assumptions that the appellants relied on decision in the case of Nabeen Polymers - reported as 2004 (175) E.L.T. 385 (Tri. - Delhi) to contend that department cannot frame allegation merely on the basis of assumptions and presumptions that it is well settled law that statement of co-appellant without any corroborative evidence cannot be made the basis for impugning legality of other co-appellants as held in the case of Vikram Singh Dahiya reported as 2014 (225) E.L.T. 611.

(viii) Rule 28 is applied where there is confiscation of goods and hence penalty on consignor can be imposed since no goods confiscated as held in the case of Shyam Traders reported as 2012 (378) E.L.T. 478 (Tri. - Delhi) that some transporters who have agreed in the statements to have supplied the trucks for clandestine removal of goods and some dealers who have agreed in the statements to have supplied trucks for clandestine removal of goods, but the SCNs were not issued to such transporters and brokers, therefore imposition of penalty under Rule 28 of the Rules is not sustainable; that no investigation has been done at the premises of the appellants. The Hon'ble High Court of Gujarat in the case of Mithani Iron and Steel Industries reported as 2015

(246) E.L.T. 374 (Del.) has quashed the demand and penalty based only on the



statement of transporter third party and the premises of the assessed was not visited by the investigating agency.

(xi) Appellants had requested for cross examination of Appellant No. 1, Engineer of Appellant No. 1, Eker Shri Sateh Chaudhired Bandar, transporter Mrs. Kashi Shankar Transport Co./Smt. Nares Transport Co. and concerned officers of TDCR Ahmedabad; that the submissions made in written reply were not discussed, contradicted in the impugned order. Hence cross examination was provided for any reason was given in the impugned order denying cross examination and therefore the impugned order is liable to be quashed. The appellants relied upon following judgments in this regard.

- *Sunder Elywell* - 2009 (145) F.T.R. 67
- *Dupa Synthetics Ltd.* - 2014 (312) F.T.R. 100 (Gand.)
- *Awa Fibres Pvt. Ltd.* - 2014 (111) E.L.T. 625 (M. Ahmed.)
- *Swadesh Poltex Ltd.* - 2009 (242) E.L.T. 302 (Tri. Del.)
- *R.V. Steels Pvt. Ltd.* - 2009 (249) E.L.T. 600
- *Industar Polymer Lines* - 2009 (203) E.L.T. 10 (P&H)

(xii) The impugned order has been passed without supplying RJD though requested by the appellants which is gross violation of principles of natural justice and in violation of CBEC Circular No. 1053/2/2017 CX dated 10.2.2017.

(xiii) The only evidence available with the department relied upon in the impugned order is the statements of the appellants. The said lengthy statements of six persons cannot be recorded with a hour as proved by the affidavit duly sworn by all the deponents; that the statements saved in the computer and records of date and time of creation of file, date and time of saving the file words have proved that the files in the computer were created and saved with a minutes only by changing the name of the persons making the statement even without change of pass number and other facts.

4. Personal hearing in the matter was conducted by Shri Madhav N. Vaidyanaya Chartered Accountant on behalf of Appellant No. 1. Appellant No. 1 and recorded the grounds of all 5 appeals, that they submitted written submissions in all 5 appeals to emphasize their grounds. Further that parallel or proprietary concern as well as an proprietor has been missed, which is not correct, legal & proper. The cross examination of transporter not allowed, which needs to be allowed as there are no sufficient evidences available against the premises that all these appeals may be remanded for cross examination.

4.1 Shri Madhav N. Vaidyanaya, Chartered Accountant on Behalf of Appellant No. 1 in their PR submissions stated that they had requested for cross-examination of all the transporters and Shri. Sateh. Shri. Eker, However, the same has not been allowed by the lower authority. That the impugned order suffers the infirmity being



श्री. मधुवन. व. वैद्यनाथ

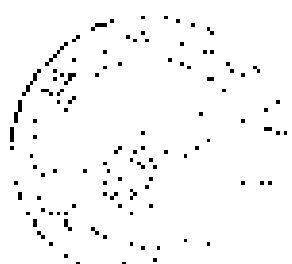
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passed violating the principles of natural justice and therefore, liable to be set aside that without prejudice. He submitted that the lower adjudicating authority has not considered any evidence on which he could and recorded his findings. That the investigation failed to show any amount received by the Appellant No. 1 in respect of alleged clandestinely cleared goods; that there is neither enquiry as to how the goods changed the hands nor any corroborative evidence from the consignee or the transporter that they relied on the decision in the case of *Siron Industries Ltd - 2010 (231) F.T.R.30 (Tri - Ahmed : K. Rajendra - 2002 (142) E.L.T.153 (Tri - Chennai); Vardh Dyes & Chemicals Pvt. Ltd - 2007 (18) ex. 420 (Tri - Ahmed), D.P. Ltd - 2007 (218) E.L.T.242 (Tri - Delhi), Poo Star Industries Ltd - 2007 (216) E.L.T.257 (Tri - Ahmed), U.O.L. Poochek Co.pvt. - 2002 (143) F.T.R.181 (Tri - Chennai), Rama Sanyam Paper & Ld. - 2007 (168) E.L.T.484 (Tri - Delhi) and Miruthai Iron & Steel Works - 2011 (310) E.L.T.374 (Tri); that the Appellant No. 1 is not liable to penalty under Section 114C of the Act read with Rule 25 of the Rules as no evidence was adduced in the SCN to establish that the alleged acts of contraventions had been committed by the Appellant No. 1 deliberately or continuously or in flagrant violation of provisions of law with intent to evade duty and there was no malafide intention to evade payment of duty that statements of the analysts and brokers are not relevant as the same have not been corroborated with independent evidence that he explained as to why the judgments relied upon by the lower adjudicating authority are not consistent with the facts of this case.*

4.2. Sir Mathias M. Vaidyanathan, Chartered Accountant on behalf of Appellant No. 2 in their PE submissions revealed the grounds of appeal and submitted that proprietorship firm and proprietor the education of the said assessee a learned legal entities and hence, no penalty is imposable upon Appellant No. 2.

4.3. Sir Mathias M. Vaidyanathan, Chartered Accountant on behalf of Appellant No. 3 & 4 in their PE submissions stated that they had requested for cross examination of Sri Mahendra Rama, Partner of M/s. Metal Industries, however, the same was not allowed by the lower adjudicating authority that the impugned order suffers the infirmity of being passed violating the principles of natural justice and therefore, liable to be set aside. But without prejudice, he submitted that Para 15.3 of the SCN states that Appellant No. 1 has indulged in clearance of dutiable goods clandestinely with contrivance of appellants and evaded payment of duty whereas, Para 15.4 of the SCN states that appellants have acted as broker and facilitated the ship broker for their clearance of finished goods without issuing required export invoices and without payment of normal excise duty that indicates that the department is not sure whether Appellant No. 2 or Appellant No. 4 was involved in some of trade item transactions or both were involved in so called fraudulent transactions; that ideally such operations of law should have been carried out or at least for the sake of justice the adjudicating authority

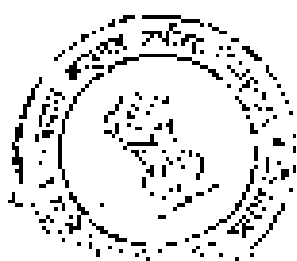
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should have commented or discussed those matters which has no least case in the impugned order that both these appellants have clearly mentioned and revealed their business activity and they do not undertake business jointly. Just neither the CD nor the impugned order contained the fact and this fact is to be kept out for imposition of penalty under Rule 261 of the Act that in absence of such findings these two appellants cannot be penalized. That the investigation has not corroborated the depositions/expansion given by the appellants with regard to entries in the diaries, that many entries were estimates/survey of the goods lying at various place of ship breaking yard; that the lower adjudicating authority has considered merely taking of some date in diaries with those in storage device as corroborations; that how can matching some entries in records seized from the same person can be considered as corroborations; that the lower adjudicating authority has failed to appreciate the submissions of the appellants without any reason recorded in the impugned order with regard to matching of entries in ship breakers records, that no investigation was carried out for physical movement involving vehicles nor with any evidence to whom so called clandestinely removed goods were sold. That the arguments relied upon by the lower adjudicating authority are not relevant with the facts of the case.

4.4 Shri Madhoo N. Vasadarya, Chartered Accountant on behalf of Appellant No. 5 in their F I submissions stated that CD seized is only evidence for alleged clandestine removal, that the investigation has not corroborated the depositions/expansion given by Shri Vinod Patel, trader with regard to entries in the CD. That the lower adjudicating authority has ignored the submission of Shri Vinod Patel that many entries were estimates/survey of the goods lying at various place of ship breaking yard. That the lower adjudicating authority has considered merely taking some date in diaries with those in storage device as corroborations; that how can matching some entries in records seized from the same person can be considered as corroborations; that the lower adjudicating authority has failed to appreciate the submissions of the appellant without any reason recorded in the impugned order. That no investigation was carried out with regard to physical movement involving vehicles. That entries made in data received from CD was mostly made by Shri Vinod Patel or Sundeep for purpose of record of goods if any and can be verified from the record of Forensic Science Laboratory. Hence, it cannot be concluded that entries retrieved from CD are merely waste/removed. That there is no evidence except these entries; that the appellant is not liable for penalty under Rule 261 of the Rules as he has not revealed in possession of the excisable goods removed clandestinely. That the arguments relied upon by the lower adjudicating authority are not relevant with the facts of the case.

5. Personal hearing in the matter was attended by Shri Rakesh K. Shal, Advocate on behalf of appellant No. 6 who raised the grounds of appeal and gave his written F I submissions to reiterated the grounds of appeal.



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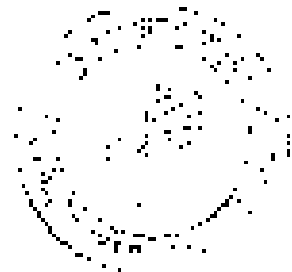
6.1. Shri Rakesh K. Shah, Advocate on behalf of Appellant No. 5 in PH submissions stated that the Commissioner (Appeals), Rajkot vide OIA No. BHV-EXCL-5-000-APP-123 TO-121 2010-19 dated 12.08.2018 had quashed the demand of penalty in similar issue. As the statement of the applicant was recorded on the same date, on the same pattern, on a single day, that this appeal is liable to be allowed and imposition of penalty to be quashed. That the goods under dispute in the present SOA has actually been received by Appellant No. 5 from Mrs. Rishi Ship Breakers, Plot No. 130, Aang, Bhavnagar under license No. 112 dated 27.05.2009 through Shri Satish Gupta, owner in Truck No. KUP194196 vide S.O. No. 3175 dated 27.05.2009 of M/s. New Lal Shrikar Transport Car and the Punjab State Board of Excise & Taxes the said goods and issued Form No. XXXVI Serial No. 100114.

6.2. Personal hearing in the matter was attended by Shri Rakesh K. Shah, Advocate on behalf of Appellant No. 7 who reiterated the grounds of appeal and made written PH submissions stating pertinent facts of this case. That facts stated in Para 6 of their PH submissions clearly establishes that the allegations of the SOA are not correct and they should not be imposed any penalty in this case.

6.3. Shri Rakesh K. Shah, Advocate on behalf of Appellant No. 7 in PH submissions stated that at the time of recording of statement of the appellant, total 4 consignments (One each from Plot No. 88, Plot No. 89 and Plot No. 9) alleged to have been accepted by the appellant without invoice papers. Out of the SOAs were issued. The Commissioner (Appeals), Rajkot vide Order-Appeal No. BHV-EXCL-5-000-APP-123-124 TO-119 19 dated 12.08.2018 has quashed imposition of penalty in respect of alleged clandestine receipt of goods from Plot No. 89. That single statement was recorded by the department against all these 4 consignments. If the appeal is liable to be allowed and imposition of penalty to be quashed. That it has been alleged that the appellant accepted that he received 25 MT goods on 29.02.2010 from Appellant No. 1 through Bhandar B over in Truck No. TB295-0256 through transporter - Mrs. Shree Gauri Karak Road Carrier whereas the same goods/stocks has been accepted by Shri Jaganath Kumar, Proprietor of M/s. J. K. Jindal & Sons in his statement as per Para No. 6.3 of the SOA that the investigator prepared fake record to make fabricated case and the local adjudicating authority has passed the impugned order without discussing important facts and submissions made before him.

6.4. Personal hearing in the matter was attended by Shri Rakesh K. Shah, Advocate on behalf of Appellant No. 8 and he reiterated the grounds of appeal and made written PH submissions to say that the statement and findings are incorrect and necessity needs to be set aside.

6.5. Shri Rakesh K. Shah, Advocate on behalf of Appellant No. 8 in PH submissions



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states that at the time of recording of statement of the appellant total 14 consignments detailed at copy to Answer No. 11 in the statement dated 11.06.2012 of the appellants, alleged to have been accepted by the appellant without invoice and without the SCNs were issued; that Commissioner (Appals), Raigarh vide Order in Appeal No. 2476-EXCISE-DIB-APP-121 TO 131-2010-13 dated 12.2.2013 has quashed imposition of penalty in respect of alleged consignment receipt of goods from Plot No. 35. A single statement was recorded by the department against all these 14 consignments that it has been alleged that the appellant submitted that he received 26 MT goods on 28.02.2013 from the Appellant No. 1 through Bhander Broker in truck No. F-10-0709 through transporter - Smt. Shree Gita Narak Road Daman, whereas the same goods/facts has been accepted by Smt. Sat Narain, Proprietor of M/s. Jothi La Madan Gopal in his statement as per Para No. 3.4 of the SCN that as per Sr. No. 10 & 11 of the table of the Answer No. 11 mentioned in the statement dated 11.06.2012 of Appellant No. 3, as per Para 5.0 of the SCN, the appellant had purchased goods from Plot No. 9 - Appellant No. 1 having weight 21 MT and 25 MT - total 46 MT, whereas it has been alleged in Para 6.5 of the SCN that Appellant No. 5 had purchased 62 MT goods from Appellant No. 1 that the investigation prepared have record to make fabricated entry in the lower authority and to file use passes the impugned order without discussing important facts and circumstances made before him.

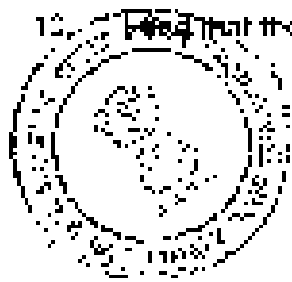
Findings:

8. I find that Appellant No. 1 to Appellant No. 5 have filed appeals beyond 90 days but within further period of 30 days by stating reason that their consultant was busy with other adjudicating proceedings. That their consultant/Chartered Accountant was busy with work related to settle the issues of income tax department and statutory audit of nationalized banks. Since these appeals have been filed within further period of 30 days as prescribed under the Act I conclude that in filing these appeals and appeal to decide these appeals on merits.

9. I find that Appellant No. 1 has deposited 7.5% of demand confirmed as stated by them and Appellant No. 2 to Appellant No. 5 have deposited 7.5% of actually imposed on each of them respectively as a certified by them in their Appeal Memoranda and no certificate report from the Assistant Commissioner of Customs House, Bhavnagar and hence Section 35E of the Act has been complied with by them.

10. I have carefully gone through the facts of the case, the impugned order and written as well as oral submissions made by the appellants. The issue to be decided in the present appeals is whether the impugned order in the facts and circumstances of this case, containing demand with interest to Appellant No. 1 and imposing penalty on the appellants is correct or otherwise.

11. I find that the officers of ICEGAT Announced one related coordinated searches at

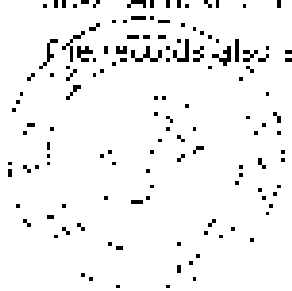


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the places of stickers and transaction receipts, various various forms, various documents like diaries, files, loose papers, computer, pen drive, etc. and many receipts, booking slip registers etc., were received. Further searches were also conducted at the premises of said breaking units and rolling mills.

11.1. It has been submitted that the adj. is acting actively while passing the impugned order has completely ignored the submissions made by the appellants. However, it is that the adj. acting actively has stated detailed defense at the instance of the appellants at various sub-para(s) of the impugned order and also given his findings.

11.2. It is on record that Shri Ashwin J. Chavda, Sr. Accountant of Appellant No. 1 was authorized by Appellant No. 2, Proprietor of Appellant No. 1 to tender statement under Section 17 of the Act. Documents regarding the statement of Authorized Person of Appellant No. 1 seized were in form of documents received at the premises of Appellant No. 1, 3 & 4. Shri Bharat Sheth and transporters carrying investigation, were placed before him and he had seen Panchnama as drawn at the premises of Appellants No. 1, 3, 4, Shri Bharat Sheth and at the premises of various transporters and the statements given by Appellant No. 3, 4, Shri Bharat Sheth, Driver, Driver and Shri Mananbhai Himmatlal Patel, Accountant of Shri Bharat Mananbhai Sheth for opportunity to peruse the same before giving testimony about the truth, pose and correctness thereof. Thus, Authorized Person of Appellant No. 1 was given sufficient opportunity to examine documentary evidences duly corroborated by oral evidences collected from the premises of Appellant No. 3 & 4, Shri Bharat Sheth and transporters. He was also shown annexure prepared on the basis of investigation conducted in respect of goods seized from Appellant No. 1, 3, 4, Shri Bharat Sheth and transporters showing the details of the transactions carried out through Appellant No. 3, 4 and Shri Bharat Sheth by Appellant No. 1. It is clear from the documentary evidences viz. seized diary of Appellant No. 1, 4 and Shri Bharat Sheth and statements of the transporters, it is proved that Appellant No. 1 has removed the goods with the help of Appellant No. 3, 4 and Shri Bharat Sheth clandestinely and also he covertly carries on Central Excise by setting Central Excise margins without actual supply of taxable goods. These transactions also called with the records of Appellant No. 3, Appellant No. 4 and Shri Bharat Sheth, which are corroborated with the records of invoices issued by Appellant No. 1 and transporters, who have also admitted taxable's of such amount as well as excisable goods. These are substantial evidences, in the form of documentary and oral evidences, on record recovered from the firm and persons indulged in transaction with Appellant No. 1. It is clear that the investigation has corroborated various evidences and established evasion of Central Excise duty and fraudulent passing of Central Credit by Appellant No. 1. Therefore, it is proved beyond doubt that Appellant No. 1 has evaded duty of Rs. 52,92,974/- as detailed in Annexure 88-2, Annexure 14-3, Annexure 26-4 and Annexure 114-1 of the Show Cause Notice. The records also show that Appellant No. 3, 4, Shri Bharat Sheth and Shri Mananbhai



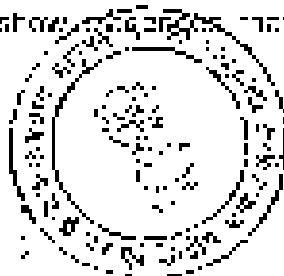
Principal Officer, Accountant of Salt Depot, Bharat Nathi Shahi whose statements were perused by Authorized Person of Appellant No. 1 before giving the said statements, never filed any objection or statement in any part of the proceedings. At these occurrences substantiate the charges against the respondents and are valid admissible and legal evidences in the eyes of law.

10.3 I find that the investigation undertaken by ITOs proved the authenticity of records seized from various transporters, Appellant No. 3, Appellant No. 4 and Shri Bharat Shahi duly corroborated the same with records seized from other witnesses. Regarding demand of duty based on booking register of the transporters, it has been contended by the appellant that department has not adduced evidence with regard to quantity of goods and buyers of the goods, besides the fact that out of 216 entries found in the booking register of the transporters, except for 47 entries, Appellant No. 1 had issued invoices. Thus, authenticity of the booking register is beyond doubt. During investigation, statements of Authorized Person of Appellant No. 1, who is Sr. Accountant and Authorized Person of Appellant No. 1 were recorded in which he failed to produce copy of central issue receipts in respect of clearances mentioned therein and admitted to have cleared goods without issue of invoices. I find that the registers maintained by the GMB at the gate of this booking yard, provides corroborative evidence to establish that the truck has actually entered the booking register of the transporter actually entered the premises of ship-breaking yard of the given date & time. The appellants have not challenged the fact that any entry finalization of dead the trucks are engaged, in order to save money pertaining to cancellation or leaving of truck. Therefore, there is no doubt that both the registers, viz. booking registers of the transporters as well as the registers maintained by ITOs are authentic and genuine. Regarding buyers of such goods, it is seen that the booking register does not show names of the buyers. It shows only destination for which the trucks were hired. It is settled law that in case of casual sale removals, Department is not required to prove the case with mathematical precision as held by the Apex Court in the case of *J. Khanna & Co. (1985) 113 F.T.R. 248 (SC)* wherein it was held that:

*131. The crucial question, payable basis, as in question based on the agreement of parties of goods that delivery and receipt of the evidence, may be appreciated to see the words of Lord Mansfield in *Blanton v. Zachary* (1744) 1 Q.B. 232 at p. 232. According to the Privy Council it was in the power of the state to prove and in the power of the party to have contradicted, since it is not a measure of absolute truth, but a measure for the prosecution to prove facts which are reasonably within the knowledge of the accused at the time of the offence and it is not a matter of absolute truth.*

[Emphasis supplied]

10.4 I find that the department has adduced sufficient evidences to establish that Appellant No. 1 was engaged in standard removals of the goods and therefore, the case law cited by the case of *in. T. Raju & Sons*, as the facts of the present case clearly show, that Appellant No. 1 was engaged in removal of duty by way of



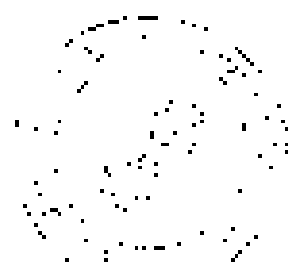
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concealing purchase of the ex-situ goods without payment of Central Excise duty and without issue of licences.

13.5 Regarding demand of duty on the basis of diaries recovered from brokers i.e. Appellant No. 3, 4 and Shri Bharat Shree, it has been contended that the demand made on the basis of these party documents is not sustainable, however, I find that in the diaries maintained by the brokers (i.e. as well as their transactions were recorded. That in case of many entries in the diary, it appears that actually bills were issued by the appellant and on the basis of the diaries and other records recovered from the brokers is established. Further, the brokers have admitted to have received the goods from appellant without Central Excise licences and sold the goods without Central Excise licences. Thus, the case is based not only on these party documents but duty is supported by other evidences. Appellant No. 2 (Proprietor of the Appellant No. 1) has not furnished any satisfactory explanation in respect of bills available in the seized diaries showing entries of the appellant from where goods were loaded and could not produce corresponding Central Excise licences in this regard. The statements have been released by Authorized Person of Appellant No. 1 as well as Appellant No. 3 and 4, which, have sufficient evidentiary value. The combined effect of all such evidence is that no broker has taken tax place and Appellant No. 1 to Appellant No. 4 have indulged themselves in sale of Central Excise duty evasion. Hence, in this case, third party evidence backed by confessional statements are admissible. It is on record that all transactions were recorded in a proper and coded manner and the case was made out after deciphering and copying the same, even though Shri Vinod Anandlalal Patel and Shri Keshu Anandlalal Patel did not cooperate during investigation. The consultations recorded in diaries and storage devices seized from Shri Vinod Anandlalal Patel and Shri Keshu Anandlalal Patel were further corroborated with relevant records. These are vital and crucial evidence as per the Indian Evidence Act, 1908 and are sufficient to prove evasion of duty by Appellant No. 1 to Appellant No. 4.

14 Regarding allegation of undervaluation, it has been contended that the rates quoted by Mrs. Major and Minor as well as other agencies/persons were not actual rates prevailing during this period. I find that ship brokers and brokers subscribe to a bulletin issued by them and other research agencies in order to ascertain prevailing market prices so as to enable them to purchase the goods. Inquiry conducted by DGOEI with various marketing research agencies revealed that day to day price of 1200 mm size of plate is 200/- equivalent to average price of a size of rolling plate within the range of 8 mm to 26 mm. The price adopted by DGOEI was/is relied upon by most of the ship breaking units at Alang and the goods emerging out of breaking up of ships were sold at these prices. I find that in order to be just and fair, the investigation has always

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applicants have navigated in clearance as well as introduction of the goods produced by them, and the correlation of goods sold and payments received in cash or through angadis can't be established. In my view, it is sufficient proof that the entries in the diaries recovered from brokers that cash transactions took place between various trading miscellaneous units and Appellant No. 1 through brokers (Appellant No. 2, 4 and Sri Dharti Shree). Therefore, I find that the rejection of transaction value and amount of the price prevailing in the market as per Mrs. Major's Minor is correct in view of Valuation Rules read with Section 4 of the Central Excise Act 1944.

12. The following case-laws are relied upon to show the correctness of the impugned order, which are discussed as under -

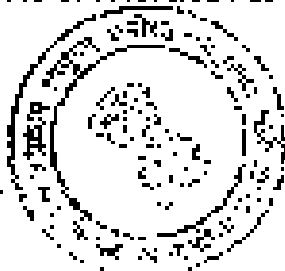
(a) The statements of the accused, if not retracted, are same in eye and valid in the eyes of law. And the same can be considered as corroborative evidence and no further evidence is required. The above has been held in the cases of (i) *Harsh v. Sukhwani* [1969 (83) ELT 258 (SC)] (ii) *Rakesh Kumar Garg* [2016 (371) ELT 321 FC-Delhi]

(b) That the admission or confession is a substantial piece of evidence, which can be used against the taxpayer if as has been held in the cases of (i) *Asst. Commr. (2008) 235 DTR ELT (Tri. Mumbai)* (ii) *Mrs. Durga Soudaria* [2008 (234) DTR (Tri. Chennai)] (iii) *Mrs. Karol Eng. Wolk* [2007 (62) ELT 373 (Tri. Delhi)]

(c) Statement of director and authorized persons of assessee admitting clearance of goods without payment of Central Excise duty and without using *Compt. Excess Invoice* *naulpaoy* and *specific* and have retracted later on is admissible as admission as held in the case of *Hi-Tech Agencies Ltd.* reported as 2017 (343) ELT 608 (Tri. Del.)

14. On careful consideration of the facts and circumstances as outlined above, I find that the statement of Director is the case for the demand. The statement is broad, vague and is specific. The Director merely stated that the documents/invoice records recovered by the officers contained details of procurement of raw materials for the clearance of finished goods with and without payment of duty. The fact is further strengthened by the observation that many entries in the private documents are covered by the incomes stated by the assessee in which duty stands nil. The Director has clearly admitted the fact of the receipt of such as indicative evidence of goods covered by the entries in the private documents which are not covered by the invoice with *naulpaoy* & *specific* as has been held by the Apex Court in the case of *Cybernetic Computers Pvt. Ltd. (supra)*. The activities of *naulpaoy* cannot be required to be proved by sufficient positive evidence. However, the facts recovered & such activities have to be established and examined appropriately. The department in this case has relied upon the oral evidence/ statement of the Director which is also supported by the unimpeached evidence in private records. There is no apprehension that the statement has been taken under duress. The assessee also does not contend that it has asked for more corroboration during the process of adjudication.

15. In view of the foregoing, I find that the Assessments (Appellate) has erred in holding the view that there is not enough evidence of introduction received of goods. Thus, through the statement of Sri Sangey Mathani who was said to be the holder of the private records recovered has not been recorded. It stands admitted by Sri. Sangey Mathani



[Signature]

Date: 20/1/20

...the truth of the contents of the records produced. Consequently, it is no reason to render the goods exonerated.

11. The reliance of standard statement law firm, brought on record only on a matter of investigation conducted by the department and responses furnished by the appellants are not statutory documents and would have gone untested but for the investigation conducted. It is a clear case of suppression of facts from the department and thereby the required period of retention is available in this case and hence the demand cannot be held to be struck down.

(Emphasis supplied)

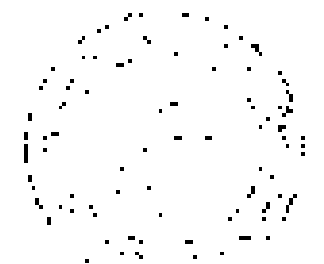
(b) The liability on director of company is mitigation when he was directly involved in the case of Central Excise duty has been held in the case of P. K. King (I) reported as [1977 (27) E.L.T. 16 (SC)].

(c) It is settled legal position that once a case of clandestine removal of excisable goods is established as has been done in the instant case, it is not necessary to prove the same with mathematical precision as held by the Hon'ble Supreme Court in the cases of (i) Shri. Guman Mal reported as [1993 (13) E.T. 1540 (SC)] and (ii) Anant Textiles (Pvt.) P. Ltd. reported as 2009 (305) E.L.T. 567 (SC).

11.1. It also rely on the decision in the case of Hejari Steel & Alloys Ltd. reported as 2177 (200) E.L.T. 441 (Tribunal) wherein it has been held that photographs (dishes) seized from the possession of appellants' employees at the time of search showing entries for excisable as well as unaccounted goods which have been explained in detail and disclosed by GM of the factory fully with incriminating passed a trustworthily that statement of employee containing detailed knowledge to be considered as reliable also rely on the decision in the case of Ramulandra Textiles Pvt. Ltd. reported as 2014 (322) E.L.T. A81 (S.C.) wherein similar view has been accepted by the Hon'ble Apex Court.

12.4. Part of the case that admitted facts need not be proved as has been held by CESTAT in the cases of Alex Industries reported as 2004 (200) E.L.T. 3073 (Tri. Mumbai), M/s. Dnyanesh Solutions reported as 2004 (208) E.L.T. 1038 (Tri. Chennai) that Confessional statements would not be held and there is no need to search for evidence. Hon'ble CESTAT in the case of M/s. Kashi Engg. Works reported as 2004 (180) E.L.T. 373 (Tri. Delhi) has also held that Admissions/Confession is a substantive piece of evidence which can be used against the maker. Therefore, Appellant's reliance on various case laws relating to corroborative evidences and establishing clandestine removal cannot be made applicable in light of the positive evidence available in the case as discussed in the findings of the Tribunal's order.

12.5. Hon'ble CESTAT in the case of M/s. N. H. George & Co. reported as 2015 (328) E.L.T. 663 (Tribunal) has held that when proportion of probability was against the appellants, pleading of no statements recorded from officers to excess electricity was not sufficient to raise a presumption that those found unaccounted and uninputted



with prescribed by law is of no use. The relevant portion of the petition is enclosed in Annex -

10.1 Recovery of the loose sheets and other written papers from the possession of the Appellant in the course of search process was earlier treated as a separate matter. This matter was handled quite well and was well within the knowledge of the Appointed Author/Inventor of Appellant as the performance of search along these matters were in the custody of the Appellant. It is common sense that the materials which were in the possession thereof are only possessed by him. He cannot deny that he was and is accountable to the records shown before of such outstanding materials demonstrated developments comprising of 57.100 MT of Springs and 22.500 MT of such grade respectively and contained by Appellant. It is also proved by evidence received of 61.070 MT of Springs and Appointed Author/Inventor were further advised from the records seized from the respondents M/s. Commercial Road Services and M/s. Dinesh Textiles. The quantities received from respondents brought out the possession of developments amount of 82.150 MT of Springs and 22.500 MT of such grade respectively. These quantities were not subtracted by L case because either certain which in the initial investigation were conducted with the Claimant's books, entries and other entries did not match, the respondents entries became incorrect of which were materials not supplied or claimed. Accordingly such quantities became subject matter of litigation received of amount of 66.780 MT of Springs upon actual payment of Rs.400 only. Surely, the loose sheets were essential that process involved of exercise jurisdiction of seizure of 66.780 MT in order of alleged quantity of goods.

10.2 Top statement prepared from their signature being self-recording served to accused and he may have the access with those entries were made and manufactured and copied. The entries, as indicated, were not made for the reason that they are not within the purview of documents.

10.3 Added to the above, the director submitted stamping receipt of the goods are supported by Invoice showing that amount of Rs. 200,000 by him being authorized was received of the duty officer's office concerning the Revenue Assistant of the office in normal conducting longer and wide removed from possession of Appointed Author/Inventor. On the pleading of the Appointed Inventor, failed to submit with claim book of the Appointed Inventor to receive. Consequently, receipt was used with the knowledge of the said Inventor's successors, Director, proprietors and community under their who's evidence corroborated all of their are established associated with their without consent of duty. The case only evidence of Nandani Animal product for Appointed-Inventor to the rest of allegation. All of them established evidence book of evidence. This Agent by his evidence established the persons involved in the case of this letter evidence which their delinquent.

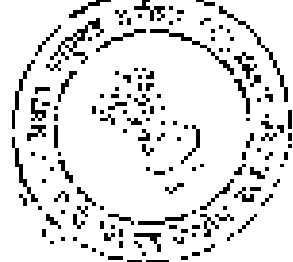
10.4 The numerous statements and actions the Appointed Inventor of his activities recorded from Super. In course of which, statements found in the seized documents found administered and not investigated, such documents, by law, is or use to it. Springs displayed as goods of order having not the signature of the Appointed Inventor, which evidence, but the Appointed Inventor's identity, signature & Banker's credit & debit statements with their terms.

It is to be noted only one evidence, but sufficient beyond reasonable doubt the holding of the Appointed Inventor of the facts. Therefore, Appointed Inventor of all counts, Revenue's responsibility was successful and its sufficiency was established.

(Emphasis supplied)

10.4 Further find that the Appointed Inventor in the case of M/s. P. Sreeni Kumar & Co reported as 20.5(21) CIT 226 (1-Def) has no substance -

10.5 Materially contradictory statement which is retracted after two years without any basis, has no legs to stand. No reasonable grounds have been shown to justify retraction since they were not concocted upon analysis and were not false. Further, contradictions reflected reported by Shri Praveen Kumar was also confirmed by Shri Jagan Kumar and corroborated signatures. Confessions in response to matters were duly referring to Appointed Author/Inventor and his successors. In the previous proceedings, a clearly admitted as genuine and in the fact that Appointed Inventor was never referred to the case, etc. But to force on those facts were no records and were not challenged and already admitted. Also dates on checked invoices were paid to tax and shown that statement being about a year of law.



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medical cases season in country and onwards are restricted manufacturing for export otherwise in default there is no force to restrict Member Appellate's contention that there were no investigations relating to procurement of raw materials and manufacture of high quality of food goods and transportation of goods. These facts are essential to clearly establish and these activities are undertaken with due care of right of a citizen and have merit of these activities. These activities appear to be made to increase and also safeguard foreign exchange by other countries which are not restricted with any special norms to the Exports. As per Supreme Courts judgment in 5 paragraphs (1989) 120 I.T.L.J. 1040 (2002) case. Exports is not required to prove as case with quantitative procedure but what is required is the establishment of such a degree of probability that a product was made or to goods covered by the restriction of goods in the Exports.

(Emphasis supplied)

I do find that no statements have been recorded by any person and facts recorded in Panchnames and contents of seized items have been accepted by Appellant No. 2 to Appellant No. 4. Shri Enam, Sheth and Shri Manishkhai Himmatlal Patel, Accountant of Shri Enam, Manishkhai Sheth, in their statements. It is not a case that a single statement has been recorded and relied upon but various statements of Authorized Person of Appellant No. 1 & 4 Shri Enam Sheth Shri Manishkhai Himmatlal Patel, Accountant of Shri Enam Manishkhai Sheth establishing clandestine removal of the articles by Appellant No. 1 in the circumstances. I am of the considered view that the statements recorded at different time and of different persons are not recorded under duress or threat. Facts of the statements have been independently corroborated by the facts and contents of Panchnames recorded at the time of search. Therefore I am of the considered view that denial of cross examination by adjudgeing authority does not violate principles of natural justice in the given facts of the case. My views are supported by the Hon'ble Benchy High Courts' judgment in the case of *M/s. Girard Ramdas Banga* reported as 2317 (317) 121 of 1980, where it has been held that where deponents have themselves admitted the guilt and statements have not been contradicted, there is no question of cross examination and denial of same does not to give rise to any substantial question of law. Relevant portion of the judgment is reproduced below:-

3. The Tribunal has also following reason:-

"3. As regards the denial of a representative of Shri Enam and Shri Ashok Ganga Vaidya and another the same denial has several key provisions in the conditions. It is seen from the evidence that the entries made in the account books were corroborated by Shri Ganga Shyam Gangaj, Director of the Accounts and Shri Shyam Gangaj, Director of the Accounts of Shri Enam Sheth. It is also clear from the evidence that the entries recorded were true and correct and pertain to the bona fide commercial purchase of raw materials which are necessary and sale of the finished goods to whom without payment of duty. Further from the records it is seen that about sixteen buyers entered in a para 14.13 of the evidence (copy) had purchased the finished goods from the Appellants without payment of duty have also confirmed that they had received these goods without the duty of purchase excise duties and taxes, 1980 of 1979. Similarly, two persons, Shri. Shyam Ashok Sheth and Shri. Shri. Manishkhai Patel have also admitted that they have received the MS goods which is the raw materials for the manufacture of food goods without the duty of excise and that they have received considerable number of such goods in bulk. Considering the evidence available in cases, it is held that the denial of cross-examination



Enam Sheth

of the authors of the papers in issue has not caused any prejudice to the Appellants. In fact none of the statements included have been incorrect or revealed to such an extent that the fact is not disputed, or essential facts of the party is not necessary. The various Appellate Courts in the case of *Haranga Chawdhary - 1982 (1) 141 T.R. 145* and the Hon'ble High Court of Andhra Pradesh in the case of *Shahji Steels Pvt. Ltd. (supra)* have also not held that an absolute right for cross-examination and a stringent corroborative evidence must, cross-examination of the deponent of the statement is not necessary. In view of the above we hold that the denial of cross-examination of *Sudhakar* and *Shri Ashok Kumar Yadav* who furnished the above records has not caused any prejudice to the appellants.

From the above considerations, we are of the view that the law was not a case where required cross-examination and therefore there was no prejudice to the appellants. As said above, the appellants' records were not destroyed or damaged. Learned counsel for the appellants submitted that the only evidence in the case that these goods should be returned to the appellants following question, when according to them, is substantial question of law.

Whether denial of cross-examination of witnesses caused any prejudice to the Appellants?

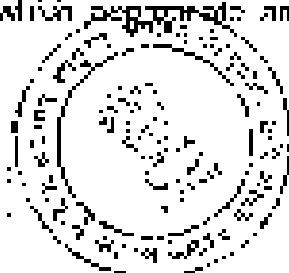
We are not inclined to accept the submission of the appellants that the denial of cross-examination and non-production of the same would not give rise to any substantial question of law. We uphold the judgment of the Tribunal and find the same to be a substantial and not necessary to answer it.

(Emphasis supplied)

12.6 In view of above, I find that Appellant No. 1 has evaded payment of Central Excise duty by way of carted-out removal of goods as well as by uncarted-out of the goods. Hence I hold that the order of adjudication authority is correct, legal and proper.

12.7 I find that Appellant No.1 has intentionally adopted unlawful means to evade payment of Central excise duty. The evasion mind and means used by Appellant No.1 is clearly established. Therefore, notwithstanding removal of excisable goods in this case was of clandestine nature, albeit removal without the excise payment of excise duty and hence Appellant No.1 is liable for penalty equal to the duty under Rule 25 of the Rules read with Section 114C of the Act. In view of above, I find that Appellant No.1 is liable to pay Central excise duty of Rs. 52,32,304. Under Section 11A of the act, it is natural consequence that the continued duty is required to be paid along with interest at applicable rate under Section 114A of the Act.

13. Appellant No. 2 has submitted that Appellant No. 1 is a Proprietorship concern and when penalty on Appellant No. 1 is imposed, no penalty on Appellant No. 2 is invocable under Rule 25(c) of the Rules. I do not find force in the argument of Appellant No. 2 since in the present case there are cogent evidences that Appellant No. 2 had played important role in evasion of central excise duty. The Appellant No. 2 possessed the entire part regarding evasion of central excise duty by him, as well as all the day to day business was also monitored and supervised by him. Appellant No. 2 is the person who deal with carted-out of goods, manufacturing, storing, depositing, removing, selling and in all such manner deal with excisable goods on which appropriate amount of central excise duty has not been paid. Thus, he had



reasons to believe that such goods so removed are liable for confiscation. It is seen that generally under this rule it is impossible on the person who has dealt with such excisable goods, which he knew that the same are liable to confiscation. My view is also supported by the order of CESTAT in the case of *Rashika Private Ltd.* reported as 2012 (231) E.L.T. 159 (Tri. Ahmed.) which is thus:-

"On this case some notes were placed by the goods were offending in nature and therefore liable for confiscation and duty was levied accordingly. Finding that goods are offending in nature, there is only a technical measure in the sense that the goods are specifically identified that these goods are liable to confiscation in view of the specific provisions of the show cause notice which indicate the nature of offence as for as goods are concerned and the nature of such offence, the findings recorded by the highest authority are sufficient to show that the goods were liable to confiscation and therefore, imposition of duty is justified."

(Emphasis supplied)

13.1 I find that for the CESTAT Ahmedabad in the case of *Yarushai Samsuddin Dada* was reported as 2011 (204) E.L.T. 20 (Tri. Ahmed.) has also held that general penalty upon partners is impossible in addition to penalty imposed on the partnership firm.

13.2 I further find that the Ludhiana High Court in the case of *C. Esvaran* reported as 2014 (308) E.L.T. 254 (Mad.) has held as under:-

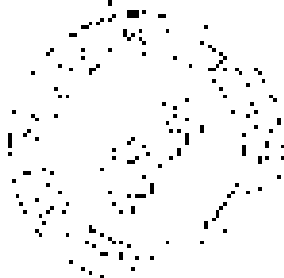
"It is to be noted that the statutory authority created records on the date as well as on the venue. The finding recorded by the highest authority was reversed on appeal. The nature and contents of the order was once again noted by the CESTAT. The CESTAT being the lawfully acting authority issued a notification that there was covering evidence to show that the appellants evaded the duty by falsifying the records and engaging the goods manufacturer."

"The issue primarily raised in the present appeal is as to whether the statutory authority was justified in imposing tax on the goods used as the evidence."

"Section 10(1) of the Customs Act, 1962 provides that not only the person who is instrumentally guilty is punishable but by extending the provisions of the Act also the person who assists or commits such act is also liable for payment of penalty. The goods in question were seized on the basis of his and his partner's [sic] report and the appellants in their A.O. 817 of 2002 in the proceedings [sic] the tribunal stated [sic] that to remove the charges, therefore, the statutory authority was fully justified in imposing the tax on the goods used as the evidence."

(Emphasis supplied)

14. Sri Vinod Anand Ltd. Dale and Sri Anand Amershihal Patel, Brokers (Appellants Nos. 3 & 4) have contended that they have not dealt with the goods in the manner prescribed under Rule 28 of the Central Excise Rules, 2002 and therefore they are not liable to penalty. I find that the diary maintained by Sri Vinod Amershihal Patel in coded language contained details of bill as well as first class notes by Appellant No. 1. When asked about the entries in the diaries, no genuine replies like, the accounts were imaginary, he was practicing accounts on Runways, etc. He never co-operated with the investigation, however, DGOEL officers got the coded data decoded and the whole content of spreadsheet retrieved & revealed. The decoded data matched with the data maintained in the spreadsheet form and in case of some transactions, Appellant No. 1 had issued Central Excise invoices whereas for many transactions, no



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Central Excise invoices were issued and to Central Excise duty was paid. This authenticates the data maintained by Shri. Viree Anandhithar Patel. His brother, Shri. Keshav Anandhithar Patel was handling business of registered concern and was involved in facilitating clearance removal through the department. The records also showed cash transactions for various buyers and sellers through angadias.

14.1. Appellant No. 3 & 4 in their submissions argued that they have not indulged into clandestine activities but accounts maintained on Pen Drive Computer were written for earning accounting software etc. I also find that they were not, any indulging themselves in handling goods cleared clandestinely but were also involved in selling by Appellant No. 1 in clandestine removal of the excisable goods. As far as sale recovered from Pen Drive Computer is concerned, the argument of learning accounting software is nothing but an attempt to get out of duty liability. It is a common practice that any software is to be installed either in computer desktop or laptop and not in Pen drive. To do something special with intent to pay less in such a way that no one can substantiate at later stage about the data, it is a practice to create reference in Pen Drive to avoid detection from the owners. The correlation of data recovered by DGCE with the data available in Pen Drive is neither a miracle nor a coincidence.

14.2. Appellant No. 3 & 4 also argued that they had given explanations for the documents to the investigating officers during search itself. However, it is on record that Appellant No. 3 & 4 has not co-operated with the investigator and had given evasive replies at a long. Therefore, their case is very much covered under Rule 28 of the Rules and penalties of Rs. 12,95,021/- for abetting Appellant No. 1 in clandestine clearance of the excisable goods on each of Appellants by the adjudicating authority under Rule 28(1) of the Rules is proper and there is no need to interfere with the same.

14.3. I find that the facts of the case are distinguishable from the judgments relied upon by these two appellants inasmuch as the documents examined, analysis thereof and data storage devices have been corroborated by the statements of Authorized Person of Appellant No. 1, statements of Appellant No. 3 & 4, statements of Bharat Bhatt, statements of transporters and records obtained from GMD and others and the statements have never been refuted. The persons involved in the case have closely monitored, arranged and managed all affairs of clandestine clearances made by Appellant No. 1 and hence, penalty imposed on Appellant No. 3 & 4 is, in my view, of case-law & sources from Para 12 to Para 13.5.

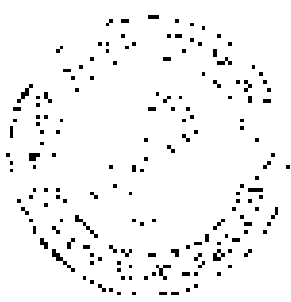
15. I find that the ledger named as 'MR' and maintained only in the premises of Appellant No. 4 has contained details of transactions and Appellant No. 3 in his statement dated 01.01.2024 has admitted data contained therein and also admitted that Appellant No. 4 has facilitated him to purchase the excisable goods i.e. procursors without clandestinely involving Central Excise duty of Rs. 7,16,873/- and the

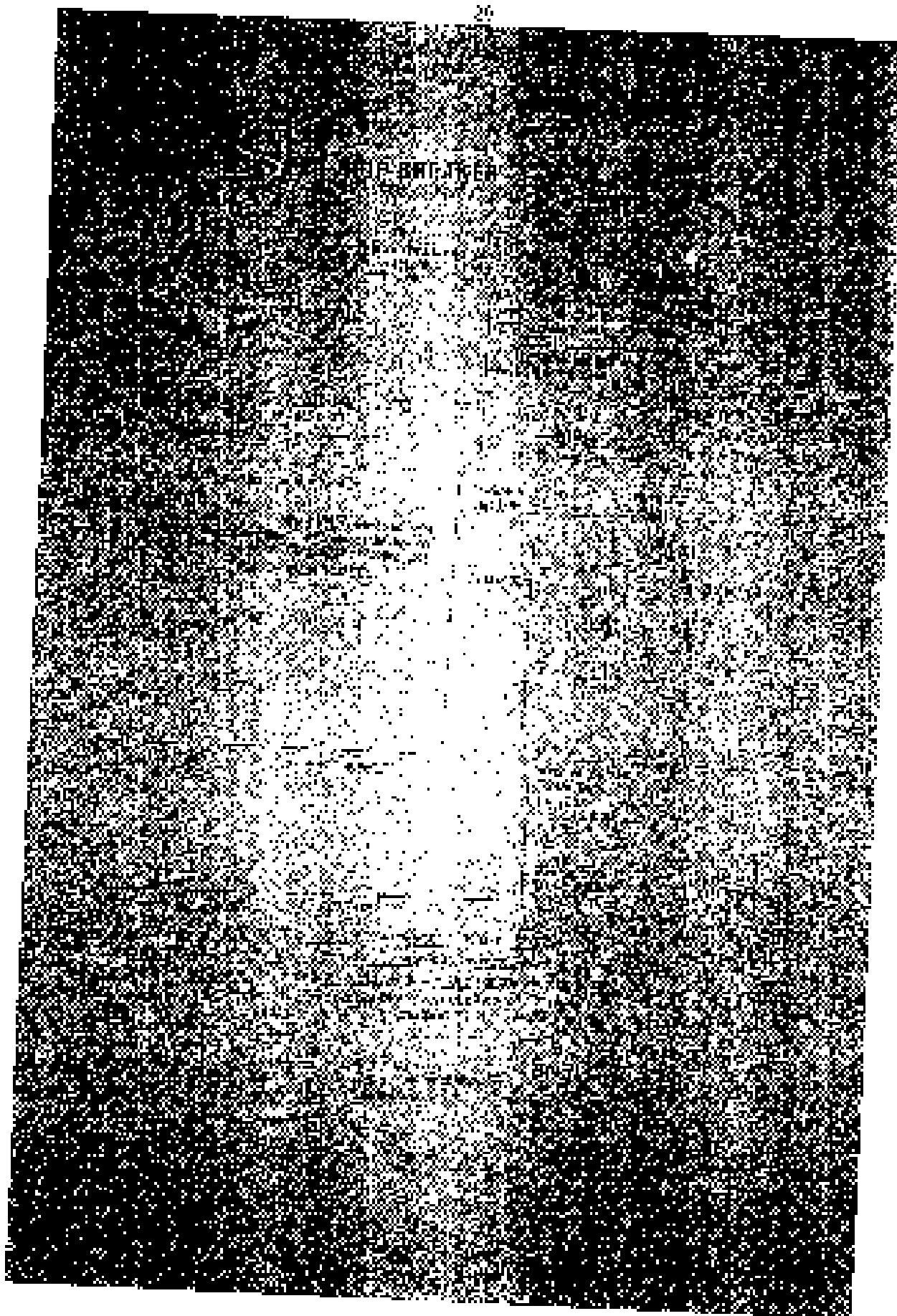


documents in the statement were never detected by him. The print cuts obtained by Forensic Science Laboratory from the Computer Laptop and Pen drives seized from the premises of Appellant No. 4 duly corroborate the said statements and in-vices that the excisable goods were cleared by Appellant No. 1. Hence, imposition of penalty of Rs. 7,00,848/- under Rule 28(1) of the Rules on Shri. Manendra Arbalal Rana is justified.

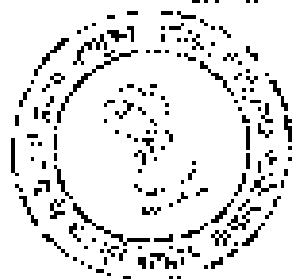
15. The Mrs. SON has alleged that Appellant No. 6 to Appellant No. 8 purchased goods clandestinely cleared by Appellant No. 1 without payment of Central Excise duty and without issuance of central excise invoices. The lower adjudicating authority has imposed penalty of Rs. 39,604/-, Rs. 17,280/- and Rs. 1,74,440/- on Appellants No. 6, 7 & 8 respectively under Rule 28(1) of the Rules whereas Appellants No. 6 to 8 have contended that they cannot be penalized when investigation has not been carried out at their end. The 26 MT worth alleged to have been purchased by Appellant No. 6 from Appellant No. 1 in truck No. RJ-27GA-1975 had actually been purchased by him vide invoice no. 112 dated 27.08.2005 evidencing 22 MT from M/s. Rishi Ship Dressers, Plot No. 139, Mansi, Dhanrajpur in same truck number i.e. RJ-27GA 1975, even in type of Invoice No. 112 dated 27.08.2005 is introduced as tender.

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It is also found that Para 6.1 of the G.O. has alleged that Applicant No. 7 has received 25 MT goods on 28.09.2014 from Applicant No. 1 through Basirah Express in Truck No. PD 295-8236 through the transporter M/s. Shree Gun Jarak Roadways whereas Para 6.2 of the RCN has alleged that Applicant No. 8 also has received 20 MT goods on 28.09.2014 in same Truck No. PD 295 9036 through same transporter i.e. M/s. Shree



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Gularanus Roadways, both contradicting each other. I further find that Para 4.2.4 (Page 11) of the SON has stated that "...and whereas, it can be seen from the above maps that on 20.08.2009, Mrs. Mrs. Chanderan, Road Operator had sent (last hearing) on 20.08.2009 a letter to Mr. Mr. Chaudhary to take Scrap from the loading of goods to Mr. G. S. Manoj Gadhingari. However, on verification of the invoice issued by Mrs. Suresh Ram on 20.08.2009, and one day's thereafter, it has been observed that Mrs. Suresh Ram had not issued any invoice for the goods cleared under Truck No. RV 9704 (2009) and thus, it appears that said goods had been cleared satisfactorily without cover of Central Excise warrants and without payment of Central Excise duty leviable thereon and consequently about Truck No. bearing No. H-231H 9704.

15. I also find that Para 6.3 of the SON (as per Sr. No. 10 & 11 of the Table given against Question No. 11 of the statement dated 16.08.2012 of Appellant No. 3) has stated that Appellant No. 3 had purchased goods from Appellant No. 1, (indicating P/c No. 3) having weight 24 MT and 25 MT. Total 49 MT, whereas Para 16.6 of the SON has alleged that Appellant No. 3 has purchased 52 MT goods from Appellant No. 1. Thus, the facts narrated in the SON contradict each other in respect of Appellant No. 3.

16. Hence, no credible evidence is available in the SON established by involvement of these three appellants in purchase of scrap/shredded goods from Appellant No. 1 in this case.

16. In view of facts narrated in Paras 6.1 to 6.3, I find that no sufficient and credible evidence is available in this case to establish that Appellants No. 3, 7 & 8 were concerned in purchasing 20 MT, 24 MT & 42 MT of scrap/shredded cleared by Appellant No. 1. Hence, I find that this is not a fit case to allow imposition of penalty on these three appellants imposed by the Impugned order and therefore, set aside penalty imposed on them under Rule 28 of the Rules.

17. In view of above, I uphold the impugned order concerning demand and interest thereon to be recovered from Appellant No. 1 and imposition of penalty on Appellant No. 1 to 5 and accordingly reject appeals filed by them, but allow appeals filed by Appellant No. 6 to Appellant No. 8 by setting aside penalty imposed on them.

- 18. अपीलकर्ताओं द्वारा दजे की गई अपील का निराकरण उपरोक्त तरीके से किया जाता है।
- 19. The appeals filed by the Appellants stand disposed of in above terms.



(Signature)
(Signature)
 (कुमार संतोष)
 प्रधान आयुक्त (अपील):

By R.P. Singh

1. Mrs. Shree Ram Steel & Rolling Industries (Unit-2), Plot No. 11, Along Ship Recycling Yard, Along, P.O. Mansa Bhaunagar.	श्री. श्री राम स्टील एवं रोलिंग इंडस्ट्रीज लिमिटेड 2) प्लॉट नं. 9 अलग शिप रिसाइक्लिंग यार्ड, अलग, पी.ओ. मानर, भावनगर
2. Shri. Darabhai D. Patel, Proprietor of Mrs. Shree Ram Steel & Rolling Industries (Unit-2), Plot No. 3, Along Ship Recycling Yard, Along, P.O. Mansa, Bhaunagar.	श्री. दारुभाई डी. पटेल प्रोप्राइटर आफ म. श्री राम स्टील एवं रोलिंग इंडस्ट्रीज लिमिटेड - 2; प्लॉट नं. 3 अलग शिप रिसाइक्लिंग यार्ड अलग, पी.ओ. मानर, भावनगर.
3. Shri. Kishor Anand-Lax Patel, Proprietor of Mrs. Shree Krishna - Patangrao, 302, Shoppers Park, Ramrao Chavak Waghewadi Road, Bhaunagar-364 201.	श्री. किशोर अमरशीभाइ पटेल प्रोप्राइटर ऑफ म. श्री कृष्णा ऐंडरपट्टन, 302 शॉपर्स पार्क, रामराव चौक, वाघवाडी रोड, भावनगर - 364 201.
4. Shri. Vinod Anandshaha Patel, Plot No. 102, Esplanade Mega City, Opp. Victoria Park Bhaunagar - 364002.	श्री. विनोद अमरशीभाई पटेल प्लॉट नं. 102 इस्कोन मेगा सिटी विक्टोरिया पार्क के सामने भावनगर - 364 002.
5. Shri. Mohendra Anbalal Bhaiji, Partner of Mrs. Manu Meel Industries, A-206 Leela Plaza, Wagwan Road, Bhaunagar - 364002.	श्री. महेंद्र अंबालाल बाणा, पार्टनर आफ म. मनीषी मेहन इंडस्ट्रीज ए-206, लेला प्लेजा, वाघवाडी रोड, भावनगर - 364 002.
6. Shri. Lalita Prasad Partner of Mrs. Manu Steel Corporation, Mandi, Gobindgarh, Punjab.	श्री. ललिता प्रसाद, पार्टनर ऑफ म. मानु स्टील कॉर्पोरेशन, मंडी गोबिंदगढ़ पंजाब.
7. Shri. Sat Narain Proprietor of Mrs. Joti Lal Mehar Gopal, Mandi, Gobindgarh, Punjab.	श्री. सत नाराइन प्रोप्राइटर आफ म. जोती लाल मेहन गोपाल, मंडी, गोबिंदगढ़ पंजाब.
8. Shri. Jitender Kumar, Proprietor of Mrs. J.C. Jindal & Co., Main Khun Mandi Gobindgarh Punjab.	श्री. जितेंद्र कुमार, प्रोप्राइटर ऑफ म. जे. ए. जे. जिंदल एंड कंपनी, मंडी गोबिंदगढ़ पंजाब.

प्रति:

- (1) प्रधान न्यायक आयुक्त, केंद्रीय वस्तु सेवा कर, अहमदाबाद क्षेत्र, अहमदाबाद को जानकारी हेतु।
- (2) आयुक्त, केंद्रीय वस्तु सेवा कर, भावनगर को आवश्यक के संबंधी हेतु।
- (3) राज्यक आयुक्त, केंद्रीय वस्तु सेवा कर, भावनगर को आवश्यक कार्यवाही हेतु।
- (4) आई.टी.एस. (1) प्रपोजन सं. 02/14/2015/149 5/14/2015/19
- (5) आई.टी.एस. (1) प्रपोजन सं. 02/14/2015/149 5/14/2015/19
- (6) आई.टी.एस. (1) प्रपोजन सं. 02/14/2015/149 5/14/2015/19
- (7) आई.टी.एस. (1) प्रपोजन सं. 02/14/2015/149 5/14/2015/19
- (8) आई.टी.एस. (1) प्रपोजन सं. 02/14/2015/149 5/14/2015/19
- (9) आई.टी.एस. (1) प्रपोजन सं. 02/14/2015/149 5/14/2015/19
- (10) आई.टी.एस. (1) प्रपोजन सं. 02/14/2015/149 5/14/2015/19

