::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001
Tele Fax No. 0281 – 2477952/2441142Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील फाइलसंख्या / Appeal File No	मूल आदेश स / O.I.O. No	दिनांक/ Date
	V2/ 2, 3, 4& 5/RAJ/2020	03/D/2019-20	25-10-2019

ख अपील आदेश संख्या(Order-In-Appeal No.):

RAJ-EXCUS-000-APP-076-TO-079-2020

आदेश का दिनांक / Date of Order:	28.07.2020	जारी करने की तारीख / Date of issue:	29.07.2020

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by Shri Gopi Nath, Commissioner (Appeals),Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the **Appellants** & Respondent :-

M/s Max Ceramics Pvt Ltd, Survey no. 72-P3 & 73/1-P2, 8-A, National Highway, Kandla Road, Near Timbdi Village, Morbi.
Shri Dharmendra Kanabar, Director, Max Ceramics Pvt Ltd, Survey no. 72-P3 & 73/1-P2, 8-A, National Highway, Kandla Road, Near Timbdi Village, Morbi.
Shri Dharmit C. Patel, Accountant, Max Ceramics Pvt Ltd, Survey no. 72-P3 & 73/1-P2, 8-A, National Highway, Kandla Road, Near Timbdi Village, Morbi.
Shri Nitin Ramesh Dalsaniya, Proprietor, M/s Tiles Gallery, B/1-2, Seema Nagar Society, Rander Road, Palanpur Patia, Surat.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील केन्द्रीय उत्पाद शुल्क अधिनियम,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित+त जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर० के० पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/ , Rs.10,000/ where amount of dutydemand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में चार प्रतियों में की जा सकती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित्त अधिनियम,1994की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दायर की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T. 7 में दी जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियां संलग्न करें (इनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
The appeal under sub secuon (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) &9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissionerauthorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) वीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।/
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई,वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application hes to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section 35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसर भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान बिए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outsideIndia export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35 EE of CEA, 1944, under Major Head of Account.

(VI) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case,if the order covers variousnumbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) वीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते है। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER-IN-APPEAL ::

The below mentioned four appeals have been filed by the Appellants (hereinafter referred to as **'Appellant No.1 to Appellant No.4'**) as detailed in the below Table, against Order-in-Original No. OIO No. 03/D/2019-20 dated 25.10.2019/07.11.2019 (hereinafter referred to as the **'impugned order'**) passed by the Deputy Commissioner of CGST, Division- I, Morbi (hereinafter referred to as the **'adjudicating authority'**):-

Sr. No.	Appeal No.	Appellants	Name and address of the Appellants
1	V2/2/RAJ/2020	Appellant No.1	M/s Max Ceramics Pvt Ltd. Survey No. 72-P3 & 73/1 P/2, National Highway 8A, Kandla Road, Near Timbdi Village, Morbi. Dist: Rajkot-363642.
2	V2/3/RAJ/2020	Appellant No.2	Shri Dharmendra Kanabar, Director, M/s Max Ceramics Pvt Ltd. Survey No. 72-P3 & 73/1 P/2, National Highway 8A, Kandla Road, Near Timbdi Village, Morbi. Dist: Rajkot-363642.
3	V2/4/RAJ/2020	Appellant No.3	Shri Dharmit C. Patel, Accountant, M/s Max Ceramics Pvt Ltd. Survey No. 72-P3 & 73/1 P/2, National Highway 8A, Kandla Road, Near Timbdi Village, Morbi. Dist: Rajkot-363642.
4	V2/5/RAJ/2020	Appellant No.4	Shri Nitin Ramesh Dalsaniya, Proprietor, M/s Tiles Gallery, B/1-2, Seema Nagar Society, Rander Road, Palanpur Patia, Surat.

2. Briefly stated that the Appellant was engaged in manufacture of Ceramic Glazed Tiles/Digital Floor & Wall Tiles falling under tariff item 6908 90 90 of the First Schedule to the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AAGCM5793HEM001. An intelligence gathered by the Directorate General of Central Excise Intelligence (hereinafter referred to as "DGCEI") that the appellant no.1 was clearing its finished goods illicitly without payment of central excise duty. The intelligence gathered was validated and a detailed inquiry was carried out which culminated into issuance of a Show Cause Notice dated 29.09.2017 amounting to Central Excise duty of Rs. 5,94,832/- under proviso to Section 11A(4) of Central Excise Act, 1944

(hereinafter referred to as **'the Act'**) by the Deputy Director, D.G.C.E.I. Zonal Unit, Ahmedabad. The adjudicating authority confirmed the Central Excise duty along with interest and imposed various penalties vide OIO dated 28.03.2019.

2.1 Aggrieved, the appellants filed an appeal before the Commissioner(Appeals), who vide OIA dated 07.05.2019 set aside the OIO dated 28.03.2018 and allowed the appeal filed by the appellant by way of remand to be decided by the adjudicating authority after allowing opportunities of cross examination of witnesses to Appellant no. 1.

2.2 The adjudicating authority vide the impugned order confirmed the Central Excise duty of Rs. 5,94,832/- under proviso to Section 11A(4) of Central Excise Act, 1944 (hereinafter referred to as **'the Act'**) along with interest and equal penalty under Section 11AC(1)(c) of the Act read with Rule 25 of the Central Excise Rules (hereinafter referred to as **'the Rules'**) upon Appellant No.1 and imposed penalty of Rs. 1,00,000/- on Appellant no. 2 and Rs. 75,000/- each on Appellant no. 3 & 4 under Rule 26 of the Rules.

3. Being aggrieved with the impugned order, the aforementioned Appellants preferred appeals on various grounds as below:-

Appellant No. 1:

(i) That the Department had already issued SCN F. No. DGCEI/AZU/36-49/2014-15 dated 12.06.2014 to M/s. Max Granito Pvt. Ltd. on the basis of the said documents they had approached Settlement Commission for final settlement of the case.

(ii) That the impugned order has been passed by overlooking the fact that most of the statements as well as other documents relied upon against it in the notice were specifically relating to the other assessees i.e. either M/s. Max Granito Pvt. Ltd. or M/s. Oasis Vitrified Pvt. Ltd. as also revealed from the records of cross examination of witnesses Shri Dharmendra K. Kanabar, Marketing-in-Charge of M/s. Max Granito Pvt. Ltd. (Noticee No. 3 of the SCN) and Shri Dharmit C. Patel, Accountant of M/s. Max Granito Pvt. Ltd. (Noticee No. 4 of the SCN) as well as from the Affidavit on oath affirmed by Shri Sukhdev Patel, director of the appellant (Noticee No. 2 of the SCN) on 30.09.2019; that the Commissioner (Appeals) in his previous Order-in-Appeal dated 07.05.2019 has also confirmed this fact at para 5.2 of the said order;

that noticee no. 3 and 4 (of the SCN) during cross examination and Noticee no. 2 (of the SCN) in Affidavit have confirmed that the types of the goods shown in page 43 were manufactured by M/s. Oasis Vitrified Pvt. Ltd.; that the same cannot be discarded without any valid evidence and appellant/s cannot be asked to prove contrary; that they relied upon the judgment of M/s J.V. Industries Pvt. Limited Vs. Commissioner - 2018 (362) E.L.T. A241 (Tri. - Del.).

(iii) That considering the documentary evidence and the depositions made by the witnesses during the course of cross examination on 12.09.2019, duty demand of Rs. 4,85,058/- out of total duty demand of Rs.5,94,832/- (shown in Annexure-A to SCN) was not maintainable as the goods involved therein were never manufactured by the appellant. Thus, at the most department was entitled to demand the remaining duty of Rs. 1,09,774/-; that out of total demand of Rs.5,94,832/- demand of Rs.4,85,058/- as worked out in Annexure – A to the SCN was not maintainable; that regarding demand of Rs.1,09,774/- as worked out in Annexure – B to the SCN they submitted that since appellant has already paid entire amount of demand (including Rs.5,00,000/- during the course of investigation which is proposed to be appropriated in the SCN) with interest and 25% of penalty as intimated vide letter dated 16.05.2018, they requested that matter may please be concluded as provided under Section 11AC(1)(d) read with Explanation 1(ii) of the Central Excise Act, 1944.

(iv) That the variety/ description of the tiles shown were being manufactured by M/s. Oasis Vitrified Pvt. Ltd. at the relevant time; that, the investigation has neither examined M/s. Amar Ceramics nor have they produced any evidence leading to prove transportation of said goods; that there is nothing on record to prove payment of Rs. 29,02,500/- in cash to appellant by the dealer; thus, the findings confirming demand of Rs. 4,85,058/- are unfounded and illegal and therefore, deserves to be dropped.

(v) That since order demanding duty to the extent of Rs. 4,85,058/- (out of Rs. 5,94,832/-) is not sustainable on merits, demand of interest on that amount is unsustainable; that regarding the interest on remaining amount of Rs. 1,09,774/-, they have paid total interest amounting to Rs. 1,15,028/- on total duty demand of Rs. 5,94,832/- vide challan dated 10.05.2018; that balance amount of interest paid on demand of Rs. 4,85,058/- is required to be refunded to it as the said amount of demand is devoid of merits.

(vi) That the order imposing penalty to that extent is not sustainable; that it has already paid total penalty amounting to Rs. 1,48,708/- (i.e. @25% of total duty demand of Rs. 5,94,832/) within 30 days on 10.05.2018; that since demand to the extent of Rs.4,85,058/- is not sustainable, it is entitled to get refund of Rs. 1,21,264/- (@25% of said duty) out of total amount of penalty of Rs. 1,48,708/- paid on 10.05.2018.

Appellant no. 2:

(i) Appellant requested to consider the grounds of defense put forth by him before the adjudicating authority read with the grounds of appeal canvassed by Appellant no.1 in appeal memorandum.

(ii) That except Noticee no.2 of the SCN, other three appellants had appeared before the adjudicating authority on 12.09.2019 for cross examination; that the Affidavit dated 30.09.2019 also may please be taken on record as part of their defense; that no penalty was imposable on them as majority of goods on which duty of Rs. 4,85,058/- was demanded in the notice were not manufactured by appellant no.1 but by M/s. Oasis Vitrified Pvt. Ltd.; that appellant no.1 had already paid entire amount of duty demanded in SCN with interest and 25% penalty, as intimated vide letter dated 16.05.2018; that therefore, as per the provisions of section 11AC (1)(d) of the Central Excise Act, 1944 read with Explanation 1(ii), appellant no. 2 was eligible for benefit of reduction in penalty upto 15% of duty amount and proceedings is deemed to be concluded; that based on the same he prayed to extend the benefit of reduced penalty as provided under section11AC(1)(c) & (e) read with Explanation 1(iii) ibid is admissible to appellant no.1; that in the same way benefit of deemed conclusion as per proviso to Rule 26 of the Central Excise Rules, 2002 is admissible to them.

(iii) That whatever has been referred in the impugned notice as to be depositions with reference to appellant no. 1 is in fact in relation to M/s. Oasis Vitrified Pvt. Ltd.; that for imposing penalty under Rule 26, the first and foremost condition is that alleged person either must be aware of or he must have reason to believe that any goods involved therein were liable to confiscation under the provisions of central excise law.

Appellant No. 3:

(i) Appellant has requested to consider the grounds of appeal filed by Appellant No. 1 as part of the grounds of these appeals also and submitted that penalty imposed upon him is not sustainable as the same has been imposed without appreciating the submissions made before him and without considering role of appellant in the case; that the adjudicating authority has imposed penalty upon the appellant by relying upon the allegations made in the SCN without considering the recorded fact that he was neither accountant of M/s. Max Ceramics Pvt. Ltd. nor had he maintained accounts of the said company and failed to judge that appellant's statement was recorded in the capacity of accountant of M/s. Max Granito Pvt. Ltd. and not of M/s. Max Ceramics; that appellant no.1 had already paid entire amount of duty demanded in SCN with interest and 25% penalty, as intimated vide letter dated 16.05.2018; that therefore, as per the provisions of section 11AC (1)(d) of the Central Excise Act, 1944 read with Explanation 1(ii), appellant was eligible for benefit of reduction in penalty upto 15% of duty amount and proceedings is deemed to be concluded; that based on the same he prayed to extend the benefit of reduced penalty as provided under section11AC(1)(c) & (e) read with Explanation 1(iii) ibid is admissible to appellant no.1; that in the same way benefit of deemed conclusion as per proviso to Rule 26 of the Central Excise Rules, 2002 is admissible to them.

(ii) That the first condition to impose penalty is that the alleged person be either aware of or he has reason to believe that the goods were liable to confiscation and such allegation can be believed to be true if the said person has confessed the same under Central Excise Law; that there is no evidence that he was personally benefitted in any form for the said act on the part of the company. Therefore, as per settled position of law, no separate penalty can be imposed upon employee.

Appellant No. 4:

(i) Appellant has requested to consider the grounds of appeal filed by Appellant No. 1 as part of the grounds of these appeals also and submitted that penalty imposed upon him is not sustainable as the same has been imposed without appreciating the submissions made before him; that the penalty was proposed on the appellant under the impugned SCN on illegal grounds which were contrary to the facts and records of the case; that appellant no.1 had already paid entire amount of duty demanded in SCN with interest and 25% penalty, as intimated vide letter dated 16.05.2018; that therefore, as per the

provisions of section 11AC (1)(d) of the Central Excise Act, 1944 read with Explanation 1(ii), that they were eligible for benefit of reduction in penalty upto 15% of duty amount and proceedings is deemed to be concluded; that based on the same he prayed to extend the benefit of reduced penalty as provided under section11AC(1)(c) & (e) read with Explanation 1(iii) ibid is admissible to appellant no.1; that in the same way benefit of deemed conclusion as per proviso to rule 26 of the Central Excise Rules, 2002 is admissible to them.

(ii) That the first condition to impose penalty is that the alleged person be either aware of or he has reason to believe that the goods were liable to confiscation and such allegation can be believed to be true if the said person has confessed the same under Central Excise Law.

4. Personal Hearing in the matter was attended by Shri P.D. Rachchh, Advocate on behalf of the Appellants, he reiterated the grounds of appeal and requested to allow the appeal.

5. I find that Appellant No. 1 has deposited sum of Rs.5,00,000/- during the course of investigation by e-payment challan No. 00270 dated 07.10.2013. Remaining amount of duty Rs.94,832/- was paid vide e-payment challan No. 00034 dated 06.12.2017. Interest of Rs.1,15,028/- paid vide e-payment challan No. 00103 dated 10.05.2018 and penalty of Rs.1,48,708/- [@ 25% of duty demanded in terms of Section 11AC(1)(e)] paid vide e-payment challan No. 00089 dated 10.05.2018, Appellant No. 2 has complied with the provisions of Section 35F of the Act by depositing Rs. 7,500/- i.e. 7.5% of Rs. 1,00,000/- penalty vide Challan No. 183 dated 22.6.2018. Similarly, Appellants No. 3 & 4 have also complied with the provisions of Section 35F of the Act by depositing Rs. 5,625/- each i.e. 7.5% of Rs. 75,000/- penalty vide Challans No. 185 & 186 both dated 22.6.2018, respectively. The Commissioner(Appeals) has also noted the above facts in order dated 07.05.2019, which is sufficient compliance of the provisions of Section 35F of the Act.

6. I have carefully gone through the facts of the case, the impugned order, the appeal memoranda and written as well as oral submissions made by the Appellants. The issues to be decided are as under: -

(i) Whether confirmation of demand of central excise duty of Rs. 5,94,832/- from Appellant No. 1 and imposition of penalty equal to duty confirmed upon Appellant No. 1 is correct, legal and proper or not, and

(ii) Whether imposition of penalty upon Appellant No. 2 to Appellant No. 4 under Rule 26 of the Rules is correct, legal and proper or not.

7. I note that the Commissioner(Appeals), vide OIA dated 07.05.2019 allowed the appeal of the appellants by way of remand to be decided by the adjudicating authority in terms of Para 6 i.e after allowing opportunities of cross examination of witnesses to appellant no. 1 and other relevant facts available in the case.

7.1 Accordingly, the adjudicating authority allowed opportunities of cross examination of witnesses to Appellant no. 1. He observed that appellant no. 2, 3 and 4 changed their stand and deposed contrary to their statement recorded during the investigation.

7.2 I find that the officers of DGCEI, Ahmedabad conducted a coordinated search at the factory premises of the appellant, office premises of Max Group of Companies and M/s Tiles Gallery (Trading firm) which was engaged in purchase and sale of Ceramic Tiles, Vitrified Tiles & other Sanitary wares tiles, from where certain records, documents etc. were resumed. During preliminary inquiry of the records resumed, the intelligence gathered was validated and therefore detailed inquiry was carried out.

8. In the grounds of appeal, it is submitted that the adjudicating authority while passing the impugned order has completely denied and ignored the submissions and details of the cross examination. On perusal of the impugned order, it is noticed that the adjudicating authority has categorically mentioned the defense submissions/cross examination details at various sub-para(s) of the impugned order, and had discussed the same and then offered his findings. Thus, the arguments put forth by the appellants are devoid of merits.

9. I find that it is a matter on record that before recording the statement of the appellant No.2, Director of the appellant No.1, all the evidences in the form of documents recovered from the premises of the other appellants during the investigation, were placed before him. He had also seen Panchnamas drawn at the premises of the other appellants. Further, he was also given full opportunity to peruse the same before giving testimony about the truth and correctness thereof. He was also shown annexure prepared on the basis of investigation conducted in respect of records seized from the appellants. On perusal of the documentary evidences viz. print out from the laptops, seized

Note Books and statements of the other appellants, it is proved that the appellant No.1 had removed the goods with the help of the other appellants clandestinely. The records clearly show that the appellants have never filed any retraction to their statement at any point of time. Therefore, all these evidences substantiate the charges against the appellants are valid, admissible and legal evidences in the eyes of law. Therefore, it is proved beyond doubt that the appellant No.1 had clearly evaded the duty of Central Excise of Rs. 5,94,832/- as detailed in relevant Annexure (s) of the Show Cause Notice.

10. It is on record that DGCEI has time and again proved the authenticity of records seized from the appellant and duly corroborated the same with records seized from other premises. Para 4.1 and 4.2.1 of the Show Cause Notice has illustrated the examples.

10.1 Further, I find that Appellant no. 3 also admitted that he was maintaining the accounts of the buyers to whom appellant no. 1 had cleared goods illicitly as well as by way of undervaluation as per direction of appellant no. 2 and Shri Sukhdevbhai, Director of the company. He also put his signature in token of having seen the print out placed in a file containing pages 1 to 131, that the print out placed at page no. 43 of the file, was having account of M/s Amar Ceramics, Puna which was coded as "Upera", showing the details of the payments to be recovered on account of goods cleared illicitly from the factory premises of appellant no. 1.

10.2 Further, appellant no. 4 after going through page no 4, 8 & 10 of Note Book mentioned at Sr. no. 21 of Annexure-A to the Panchnama dated 15.07.2013 drawn from his premises, admitted that he has written the details of the purchase of wall tiles from appellant no. 1 during the period from 30.08.2012 to 30.03.2013 on page no. 10. He further explained that appellant no. 1 have sold the tiles to them without cover of Central Excise invoices and accordingly they made payment of the same in cash.

10.3 I find that no statements have been retracted by any person and facts recorded in Panchnamas and contents of seized items are accepted by Appellant No. 1, 2, 3 & 4 in their statements. It is not a case that a single statement has been recorded and relied upon but various statements of

Appellant No. 2, 3 & 4 establishing clandestine removal of final products by Appellant No. 1.

10.4 Further, I note that the transactions recorded in the note books and storage devices seized were further corroborated with relevant record. Therefore, these are considered as vital and crucial evidences as per the Indian Evidence Act, 1872 and they are sufficient to prove the case made out against the appellants.

10.5 Therefore, on going through the papers of this case, it is apparent that it was a group operation by the DGCEI, during which it emerged that the appellant had indulged in clandestine removals. Confessions of the appellants, coupled together with other incriminating documents and deposition of the buyer involved in the instant case, amply proves that the appellant had adopted unfair means in removal of goods in unauthorized manner. I further find that the DGCEI has clearly brought out the evidences of the outcome of the investigation at para no. 6.1 and 6.2 of the Show Cause Notice.

11. In view of my above deliberations, I find that the appellant No.1 have willfully, intentionally and deliberately avoided the requirement of Central Excise Law while removing the excisable goods under reference, and unlawful means were adopted by the appellant No.1 just to evade payment of excise duty. All the above facts bring the matter to the conclusion that the removal of excisable goods were of clandestine nature which resulted in loss of Government Revenue. The evasive mind and mens-rea of the appellant No.1 is clearly established. Therefore, I hold that the removal of excisable goods in this case was of clandestine nature, illicit removal with pure intention to evade payment of excise duty. In view of above, I hold that the appellant No.1 is liable to pay the Central Excise duty amounting to Rs.5,94,832/-under the provision of Section 11A(4) of the Act. It is natural consequence that the confirmed dues are required to be paid along with Interest at applicable rate under the provisions of erstwhile Section 11AA of the Act as imposed by the adjudicating authority. By acting in this manner, the appellant No.1 is liable for penalty equal to the duty under Rule 25 of the Rules read with Section 11AC of the Act. Since the appellant has paid penalty @ 25% of total duty demand of Rs. 5,94,832/- within 30 days of the issuance of the order on 10.05.2018, the amount of penalty shall be twenty-five per cent of the penalty imposed.

12. I find that the facts of the case are distinguishable from the judgments relied upon by the appellants in as much as the documents resumed / collected, analysis thereof and data storage devices have been corroborated by the statements of appellant No. 2, 3, & 4 which were never retracted. The persons involved in this case have closely monitored, arranged, financed and managed all affairs of clandestine clearances made by the appellant No. 1, thus played a vital role in evasion of Central Excise duty. I find the following case laws relevant in the impugned case.

(a) The statements of the accused, if not retracted, the same is legal and valid in the eyes of law, and the same can he considered as corroborative evidence and no further evidence is required. (i) Naresh J. Sukhawani [1996 (83) ELT 258 (SC) (ii) Rakesh Kumar Garg [2016 (331) ELT 321 HC-Delhi]

(b) That the evidence or statement or admission or confession is a substantial piece of evidence, which can be used against the maker of it. (i) Commissioner of Central Excise, Mumbai-V Vs, Alex Industries [2008 (230) 073 ELT (Tn. Mumbai)] (ii) M/s. Divine Solutions Vs. Commissioner of Central Excise, Coimbatore [2006 (206) ELT (Tri. Chennai)] (iii) M/s. Karori Engg. Works Vs. Commissioner of Central Excise, Delhi [2004 (168) ELT 373 (Tri. Delhi)]

(c) Even if the statement was retracted, considering the other facts of the case and corroboration made with other evidences, the same can be relied upon and the persons involved can be penalized for their acts, CCE, Mumbai Vs. M/s. Klavert Foods India Pvt. Ltd. [2011-TIOL-76-SC-CX]

(d) Statement of director/ authorized person of assessee admitting clearance of goods without payment of Central Excise duty and without issuing invoices inculpatory and specific and never retracted later on is admissible as held in the case of Hi Tech Abrasives Ltd. reported as 2017 (346) ELT 606 (Tri.-Del.)

> ***"14.*** *On careful consideration of the facts and circumstances as outlined above, I find that the statement of Director is the basis for the demand. The statement is inculpatory and is specific. The Director clearly admitted that the documents/private records recovered by the officers contained details of procurement of raw materials as well as clearance of finished goods with and without payment of duty. This fact is further strengthened by the observation*

that many entries in the private documents are covered by the invoices issued by the assessee on which duty stands paid. The Director has clearly admitted the truth of the charts as well as clandestine clearance of goods covered by the entries in the private notebooks which are not covered by the invoices. Such statement is admissible as evidence as has been held by the Apex Court in the case of Systems & Components Pvt. Ltd. (supra). The activities of clandestine nature is required to be proved by sufficient positive evidence. However, the facts presented in each individual case are required to be scrutinized and examined independently. The department in this case has relied upon the confessional statement of the Director which is also supported by the mentioned entries in the private records. There is no averment that the statement has been taken under duress. The assessee also does not appear to have asked for cross-examination during the process of adjudication.

15. *In view of the foregoing, I find that the Commissioner (Appeals) has erred in taking the view that there is not enough evidence of clandestine removal of goods. Even though the statement of Shri Sanjay Kejriwal, who is said to be the author of the private records recovered has not been recorded, it stands admitted by Shri Tekriwal, Director about the truth of the contents of the private notebooks. Consequently, I find no reason to disallow this piece of evidence.*

16. *The evidence of clandestine clearance has been brought on record only as a result of investigation undertaken by the department. The evidences unearthed by the department are not statutory documents and would have gone undetected but for the investigation. Therefore this is a clear case of suppression of facts from the department and certainly the extended period of limitation is invocable in this case and hence the demand cannot be held to be time-barred."*

(e) The penalty on director of company is imposable, when he was directly involved in the evasion of Central Excise duty. CCE, Surat-I Vs. P.S. Singhvi [2011 (271) ELT 16 (Guj)]

(f) Fraud is a well-known vitiates every solemn act. Fraud and Justice never dwell together. Fraud is a conduct either by letter or words and also includes known misrepresentation, Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata.* (i) Aafloat Textiles (India) Pvt. Ltd. [2009 (235) ELT 587 (SC)] and (ii) Ram Chudra Singh Vs. Savitni Devi and Ors. [2003 (8) SCC 319]

(g) Further, it is also settled legal position that once the case of clandestine removal of excisable goods, in the manner it has been executed in the current case is established, it is not necessary to prove the same with mathematical or clinical precision. (i) Madras and Others Vs. D. Bhoormull [1983 (13) ELT 1631 (SC)], (ii) Shah Guman Mal Vs. State of Andhra Pradesh [1983 (13) ELT 1546 (SC)] (iii) Aafloat Textiles (India) Pvt. Ltd. reported as 2009 (235) ELT 587 (SC).

(h) I also rely on the decision in the case of Haryana Steel & Alloys Ltd. reported as 2017 (355) ELT 451 (Tri.-Del.) wherein it has been held that notebooks seized from the possession of appellant's employee at the time of search showing entries for accounted as well as unaccounted goods. I also rely on the decision in the case of Ramchandra Rexins Pvt. Ltd. reported as 2014 (302) ELT A61 (S.C.) wherein the similar view has been adopted by the Hon'ble Apex Court.

12. I am of the view that admitted facts need not be proved as has been held by CESTAT in the cases of Alex Industries reported as 2008 (230) ELT 0073 (Tri-Mumbai), M/s. Divine Solutions reported as 2006 (206) E.L.T. 1005 (Tri. (Chennai) that Confessional statements would hold the field and there is no need to search for evidence. Hon'ble CESTAT in the case of M/s. Karori Engg. Works reported as 2004 (166) E.L.T. 373 (Tri. Del.) has also held that Admission/Confession is a substantial 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 evidences available in the case as discussed in the findings of the impugned order.

12.1 Hon'ble CESTAT in the case of M/s. Surya Cotspin Ltd reported as 2015 (328) ELT 650 (Tri-Del) has also held that it is established principle of law that fraud and justice are sworn enemies as under:

> **"15.** *Evidence gathered by Revenue unambiguously proved that the dealer respondents officers were conduit to cause evasion of Customs duty engineered by Respondent manufacturer. It is established principle of law that fraud and justice are sworn enemies. Therefore, revenue deserves consideration and it should be allowed to arrest fraud.*
>
> ***16.*** *It is settled law that Revenue need not prove its case with mathematical precision. Once the evidence gathered by investigation brings out preponderance of probability and nexus between the modus operandi of the respondent with the goods it dealt, and movement of goods from origin to destination is possible to be comprehended, it cannot be ruled out that circumstantial evidence equally play a*

role. In the present case, it is not only the photocopy that was used against the respondents, there are other credible and cogent documentary evidence, circumstantial evidence including oral evidence as well as expert's report went against the respondents for which stand of Revenue cannot be criticized. The best evidence when demonstrate the modus operandi beginning from finding of unaccounted goods in the factory till parking of clandestinely removed goods and also throw light on the intention behind suppression of production which was established and corroborated by recording of higher quantity after search, the respondents made futile exercise in their defence.

17. *Apart from the photocopies of the invoices the other evidences gathered by investigation were not inferior at all. That directly brought out nexus of the respondent to the evasion committed. When the respondent failed to rebut on other evidence adduced by investigation, those equally became vital to appreciate the case of Revenue.*

18. *There is no difference to the proposition in Apex Court decisions cited by respondents. But the probative value of other evidences could not be ruled out by them. That leads to the conclusion that those were not stranger to the case but are intimately attached and speak for themselves. Therefore, the respondent fails to get any benefit out of those Judgments. When the document examiner found that the signature contained in the photocopy was of the directors, issuance of such invoices by the respondent manufacturer cannot be ruled out. Accordingly, stand of the respondent that photocopies are inadmissible in evidence in the present case fails to sustain.*

19. *For the clear case of evasion based by cogent and credible evidence came to record, dealing with the other citations made by respondents is considered to be mere academic exercise. It may be stated that fruits of a forbidden tree is always forbidden."*

(Emphasis supplied)

12.2 I further find that the Hon'ble CESTAT in the case of M/s. Praveen Kumar & Co reported as 2015(328) ELT 220 (Tri-Del) has held as under:-

"23. *Voluntary confessional statement which is retracted after two years without any basis, has no legs to stand. No new facts have come on record to justify retraction short levy was paid consequent upon confession not once but twice. Further confessional statement rendered by Shri Praveen Kumar was also satisfied by Shri Rajender Kumar authorised signatory. Contentions that resumed records were only referring to pouches and lime tubes and not to filled pouches of tobacco is clearly afterthought as pointing out to the fact that seized record are having reference to the pouches, etc. has no force as those facts were on record and were not challenged and actually admitted. Also duties on evaded tobacco were paid in two instalment (2nd instalment being after a gap of four months). Once evasion is accepted and documents are confronted manifesting fraudulent intentions to defraud, there is no force in learned Member (Judicial)'s contention that there were no investigations relating to procurement of raw materials and manufacture of huge quantity of final goods and transportation of goods. I feel once an evasion is clearly admitted and these activities are undertaken in the darkness of night, no evader shall leave proof of these activities. Once fraudulent intent to evade is manifested and later confessed, proving such evasion by other activities which are not recorded, will be giving a bonus to the evader. As per Supreme Court's judgment in D. Bhoormull - 1983 (13) E.L.T. 1546 (S.C.) case, Department is not required to prove its case with mathematical precision, but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of facts in the issue."*

12.3 In view of the above, I find that the arguments put forth by the appellant is of no help to them and department has adduced enough evidence to show that the appellant was engaged in clandestine removal of the goods and therefore, the case laws cited by the appellant are also of no help to them, as facts of the present case clearly shows evidences that the appellant was engaged in evasion of duty by way of clandestine removal of their goods.

13. The appellant No. 2 i.e. director of appellant No. 1 has contended that the adjudicating authority failed to establish in which manner he has abated the so called evasion of Central Excise duty and thus wrongly imposed penalty under Rule 26 of the Rules. Coming to the role played by him, I find that he was key person of the appellant firm and was directly involved in clandestine removal of goods manufactured by their firm. He was looking after the day-to-day functions of the appellant No. 1 and concerned himself in all matters related to excisable goods, including manufacture, storage, removal, transportation, purchasing, selling etc. of such goods, His role is also discussed in detail in the impugned order passed by the adjudicating authority. Looking to involvement of appellant No. 2 in the case and gravity thereof, I find that imposition of penalty upon him under Rule 26 of the Rules is proper and justified.

14. Coming to the penalty imposed upon appellant no. 3 in the case, he has contended that he has not dealt with the goods in the manner prescribed under Rule 26 of the Central Excise Rules, 2002 and therefore not liable to penalty, that since entire amount of duty, with interest and 25% of the penalty has been paid within 30 days from the date of communication of the said order he was entitled for the said benefit; that the amount paid may be considered as under protest. In this regard, I find that the said incriminating details were maintained in the laptop by appellant no. 3, further he also confessed that the fully finished excisable goods. i.e different types of tiles were cleared illicitly without accounting for the same in their books of accounts without issue of invoices and without payment of Central Excise duty. Therefore, his role is very much covered under Rule 26 of the Central Excise Rules, 2002. Therefore, penalty imposed by the adjudicating authority is proper and there is no need to interfere with the same.

15. As regards penalty imposed on appellant no. 4, I find that he has contended that, Rule 26 on a small trader like appellant cannot be to the tune of Rs. 75,000/-, specifically when penalty of Rs. 1,00,000/- was imposed on each of the director, that since entire amount of duty, with interest and 25% of the penalty has been paid within 30 days from the date of communication of the said order it was entitled for the said benefit; that the amount paid may be considered as under protest. In this regard, I find that appellant no. 4 purchased various types of tiles clandestinely without cover of invoices or without payment of duty from appellant no. 1 and have therefore connived, aided and abetted appellant no. 1 in evasion of Central Excise duty. As he had supported in commission of offences, his role is very much covered under Rule 26 of the Central Excise Rules, 2002. Therefore, penalty imposed by the adjudicating authority is proper and I find no need to interfere with the same.

16. Further, I find that the appellant has requested to conclude the proceedings as they have paid Rs. 5,00,000/- duty during investigation alongwith interest and 25% of penalty as intimated vide letter dated 16.05.2018, they have requested that matter may please be concluded as provided under Section 11AC(1)(d) read with Explanation 1(ii) of the Central Excise Act, 1944.

16.1 I note that the entire purpose of the said section is to reduce litigation and wherever the assessee admits the duty liability and deposited the same along with interest, the said provision further grants him relief in terms of quantum of penalty, but since the appellant has paid the said amounts under protest the proceedings cannot be concluded.

16.2 I find that the appellant has also contended that the demand is not correct and therefore, the payment of duty made by them under protest should be refunded to them. In view of my discussions above, I find that the demand raised in the SCN is correct and the payments made by the appellant are in order, hence, the question of refund does not arise.

17. Thus, I find that the appellants have miserably failed to make out the case in their favour and therefore, in light of the findings delivered in the impugned order, as also hereinabove, all the charges confirmed under the impugned order, are not required to be interfered with. Duty and interest as confirmed on the appellant's unit, ipso facto are upheld. Since appellant no. 1

has paid the entire duty and interest amount and reduced the penalty within 30 days of the issuance of the order, the benefit of reduced penalty @25% of 5,94,832/- i.e Rs. 1,48,708/- is available to them. The personal penalty imposed under rule 26 is upheld.

18. In light of the above facts, findings and discussion, the impugned order is upheld to the above extent and all the 4 appeals are dismissed.

सत्यापित,

विपुल शाह
अधीक्षक (अपील)

(Gopi Nath) 28/7/2020
Commissioner (Appeals)

By Speed Post

To

1	M/s Max Ceramics Pvt Ltd. Survey No. 72-P3 & 73/1 P/2, National Highway 8A, Kandla Road, Near Timbdi Village, Morbi. Dist: Rajkot-363642.	2. Shri Dharmendra Kanabar, Director, M/s Max Ceramics Pvt Ltd. Survey No. 72-P3 & 73/1 P/2, National Highway 8A, Kandla Road, Near Timbdi Village, Morbi. Dist: Rajkot-363642.
3	Shri Dharmit C. Patel, Accountant, M/s Max Ceramics Pvt Ltd. Survey No. 72-P3 & 73/1 P/2, National Highway 8A, Kandla Road, Near Timbdi Village, Morbi. Dist: Rajkot-363642.	4. Shri Nitin Ramesh Dalsaniya, Proprietor, M/s Tiles Gallery, B/1-2, Seema Nagar Society, Rander Road, Palanpur Patia, Surat.

Copy to:

1) The Pr. Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2) The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3) The Joint Commissioner, GST & Central Excise, Rajkot.
4) The Deputy Commissioner, CGST, Division-I, Morbi.
4) Guard File.
5) File No. V2/2,3,4/RAJ/2020.