



पुस्तकालय (Library) का आचार्य, वैदिकीय ज्ञान एवं सेवा केन्द्र केन्द्र, दिल्ली
 010-26100440/41/42/43/44/45/46/47/48/49/50/51/52/53/54/55/56/57/58/59/60/61/62/63/64/65/66/67/68/69/70/71/72/73/74/75/76/77/78/79/80/81/82/83/84/85/86/87/88/89/90/91/92/93/94/95/96/97/98/99/100



संविधान संशोधन अधिनियम, 1978 के अन्तर्गत शाखा -

एक नये एक नये अधिनियम (New Bill)

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

पुस्तकालय (Library) का आचार्य, वैदिकीय ज्ञान एवं सेवा केन्द्र केन्द्र, दिल्ली

संविधान संशोधन अधिनियम, 1978

क्र.	संविधान संशोधन अधिनियम, 1978 के अन्तर्गत	संविधान संशोधन अधिनियम, 1978 के अन्तर्गत	संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
1	संविधान संशोधन अधिनियम, 1978 के अन्तर्गत	संविधान संशोधन अधिनियम, 1978 के अन्तर्गत	संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

BIV-EXCLUS-000-APP-002-TO-004-2018 19

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 Date of Issue: 09.04.2018
 Date of Issue: 01.04.2018

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 Passed by Shri Kumar Ganesh, Commissioner (Appeals), Jaipur

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 संविधान संशोधन अधिनियम, 1978 के अन्तर्गत

संविधान संशोधन अधिनियम, 1978 के अन्तर्गत
 संविधान संशोधन अधिनियम, 1978 के अन्तर्गत



17) The applicant shall be required to submit a copy of the following documents to the Registrar of Companies, Bangalore, Karnataka, India, for the purpose of registration of the company:

- (i) The Memorandum of Association and the Articles of Association of the company.
- (ii) The names and addresses of the subscribers to the Memorandum of Association and the Articles of Association of the company.
- (iii) The names and addresses of the persons who have agreed to take shares in the company.
- (iv) The names and addresses of the persons who have agreed to take deposits in the company.
- (v) The names and addresses of the persons who have agreed to take loans in the company.
- (vi) The names and addresses of the persons who have agreed to take advances in the company.
- (vii) The names and addresses of the persons who have agreed to take deposits in the company.
- (viii) The names and addresses of the persons who have agreed to take loans in the company.
- (ix) The names and addresses of the persons who have agreed to take advances in the company.

18) The Registrar of Companies, Bangalore, Karnataka, India, may require the applicant to furnish such further information as he may think fit for the purpose of registration of the company.

- I. The names and addresses of the subscribers to the Memorandum of Association and the Articles of Association of the company.
- II. The names and addresses of the persons who have agreed to take shares in the company.
- III. The names and addresses of the persons who have agreed to take deposits in the company.

19) The Registrar of Companies, Bangalore, Karnataka, India, may require the applicant to furnish such further information as he may think fit for the purpose of registration of the company.

- (i) The names and addresses of the subscribers to the Memorandum of Association and the Articles of Association of the company.
- (ii) The names and addresses of the persons who have agreed to take shares in the company.
- (iii) The names and addresses of the persons who have agreed to take deposits in the company.

20) The Registrar of Companies, Bangalore, Karnataka, India, may require the applicant to furnish such further information as he may think fit for the purpose of registration of the company.

21) **Application for registration of a company**

The Registrar of Companies, Bangalore, Karnataka, India, may require the applicant to furnish such further information as he may think fit for the purpose of registration of the company.

22) The Registrar of Companies, Bangalore, Karnataka, India, may require the applicant to furnish such further information as he may think fit for the purpose of registration of the company.

23) The Registrar of Companies, Bangalore, Karnataka, India, may require the applicant to furnish such further information as he may think fit for the purpose of registration of the company.

24) The Registrar of Companies, Bangalore, Karnataka, India, may require the applicant to furnish such further information as he may think fit for the purpose of registration of the company.

25) The Registrar of Companies, Bangalore, Karnataka, India, may require the applicant to furnish such further information as he may think fit for the purpose of registration of the company.

26) The Registrar of Companies, Bangalore, Karnataka, India, may require the applicant to furnish such further information as he may think fit for the purpose of registration of the company.

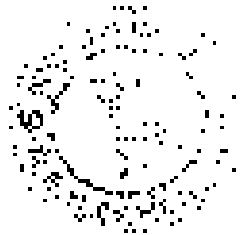
27) The Registrar of Companies, Bangalore, Karnataka, India, may require the applicant to furnish such further information as he may think fit for the purpose of registration of the company.

28) The Registrar of Companies, Bangalore, Karnataka, India, may require the applicant to furnish such further information as he may think fit for the purpose of registration of the company.

29) The Registrar of Companies, Bangalore, Karnataka, India, may require the applicant to furnish such further information as he may think fit for the purpose of registration of the company.

30) The Registrar of Companies, Bangalore, Karnataka, India, may require the applicant to furnish such further information as he may think fit for the purpose of registration of the company.

31) The Registrar of Companies, Bangalore, Karnataka, India, may require the applicant to furnish such further information as he may think fit for the purpose of registration of the company.



ORDER IN APPEAL :

The appeals detailed below have been filed by 3 Appellants (hereinafter referred to as Appellant No. 1 to Appellant No. 3) against Order-in-Original No CIV-EXCL-5-030 JC 41 2019-17 dated 21.12.2019 (hereinafter referred to as the impugned order) passed by the Joint Commissioner, Central Excise & Service Tax, Bhavnagar (hereinafter referred to as the lower adjudicating authority) :-

Sr. No.	Name of the Appellant	Appeal File No.	Appellant No.
01	M/s. Shreeana Steels Pvt. Ltd., Plot No.208, Phase I GIDC Siner, District - Bhavnagar	W2020BVR02017	1
02	Sr. Mohammad Azalhe M. Mulla, Director of M/s. Shreeana Steels Pvt. Ltd., Plot No.208, Phase II GIDC Siner District - Bhavnagar	W2020BVR02017	2
03	Sr. Bharat Singh, Broker Plot No. 819, Is 2, Gantha Chok Jain Senasa Road Bhavnagar - 386107	W2020BVR02017	3

2. The brief facts of the case are that Show Cause Notice No. DCCERAZU06/2019-14 dated 12/04/2019 (hereinafter referred to as the impugned SCN) was issued to the Appellant No.1 to Appellant No. 3 for clearances of M.S. Ingots clandestinely to various customers alleging as under:

- Appellant No.1 had clandestinely manufactured and cleared their finished excisable goods, namely M.S. Ingots attracting Central Excise duty of Rs. 24,72,240/- to various customers without issuing invoices and without payment of Central Excise duty.
- Appellant No. 3 was the Broker and had concerned himself in selling of the excisable goods on commission basis in clandestine manner which he knew and had reason to believe that the same were liable to confiscation and this has made him liable to penalty under Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as the Rules).
- Appellant No. 2 was Director of Appellant No. 1 who had concerned himself in selling, storing, keeping and removing of the excisable goods, which he knew and had reason to believe that the same were liable to confiscation and this has made him liable for actual amount under Rule 25 of the Rules.

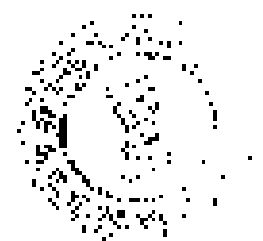
2.1. The above SCN was adjudicated by the lower adjudicating authority vide the impugned order which confirmed demand of Central Excise duty of Rs. 24,72,240/- to be recovered from Appellant No.1 under Section 11A(i) of the Central Excise Act, 1944 (hereinafter referred to as the Act) along with interest on the confirmed

demand under 17A of the Act and also imposed penalty of Rs. 24,72,243/- upon Appellant No.1 under Section 11 AC of the Act read with Rule 25 of Central Excise Rules, 2002 (hereinafter referred to as 'the Rules') and imposed penalty of Rs. 2,00,000/- upon Appellant No.2 and penalty of Rs. 5,00,000/- upon Appellant No.3 under Rule 26 of the Rules.

1. Being aggrieved with the impugned order, Appellant No. 1 & Appellant No. 2 have preferred present appeals, *inter alia*, on the following grounds: -

(i) The request of appellants to cross examine the persons whose statements are recorded and relied upon was rejected without giving any valid reasons to justify the rejection of cross examination which resulted into violation of principles of natural justice. The decision of not acceding to the request of the appellants is attributed to the appellants only while passing the final adjudication order. The appellant relied upon the decision of Hon'ble CESTAT in the case of Self Railing Works reported as 2009 (206) ELT 105 and Gandhi Enterprises reported as 2009 (247) E.T. 153 and submits that the lower adjudicating authority should inform the appellants about the refusal of request for cross examination before making a final decision. The cross examination of the persons whose statements are relied upon in this case would be very essential and relevant to bring on record the correct actual position. The Income Tax Act also says down that truth or correct actual position could be established on record of a case by putting questions and cross questions to the concerned persons. It is held by Hon'ble Supreme Court, various High Courts and the Appellate Tribunal that if the department relied upon evidence of a particular person by recording his statement, then the assessee had a right to cross-examine such a person so as to establish whether his statement of the person was truthful and whether relevant facts having a bearing on the issue involved in the case were left out when the statement of such person was recorded. The appellant filed following case laws in support of their contention.

- Shodai Grocery Dealer - 618 (577) E.T. 1577
- V.A. Singh - 1993 (94) E.L.T. 620
- Anil Chasing Private Limited - 1986 (31) E.L.T. 273
- A-ha Jyoti Sampling - 1995 (60) E.C.R. 784
- K&S. Gluco Bets Ltd. - 1990 (64) E.C.R. 696
- GIC Insurance Ltd. - 1987 (36) E.L.T. 29 (Delhi)
- H.P. Ltd - 1988 (17) E.C.R. 735
- Menaka Fashion Show - 2000 (120) E.L.T. 32 (Delhi)
- Eric Metal Works Pvt. Ltd. - 1999 (43) E.L.T. 661



(ii) Perusal of Para 5.2 & 5.4 of the impugned order shows that the statements of Shri Bharat Sheth is sought to be corroborated by various evidence which do not have any nexus to the allegation of clandestine removal of M.S. Injex by the appellant. The lower adjudicating authority has erred in rejecting the cross-examination of Shri Bharat Sheth on the ground that he was a co-accused and also on the ground that his statements were not retracted. The appellants submitted that non-retraction of a statement can be held only against a person whose statement has been recorded but the same cannot be the basis for denying cross-examination of that person especially when such statement is being relied upon to sustain a charge against the appellants as they cannot ensure a retraction by any third person. The right to cross-examine the person has been enshrined and protected under Section 301 of the Central Excise Act, 1944. It is a settled legal proposition that statement of co-accused cannot be relied upon to sustain charges against any other accused. The appellant relies upon the following decisions:

- *Nice Extrusions Private Limited - 2559 (242) F.T. 497*
- *Hanks & Son Pvt. Ltd. - 2676 (253) F.T. 138*
- *Khandewal Enterprises - 1922 (13) E.T. 1758*
- *Arya Abhishan Umardar - 2632 (141) E.L. 25 (82)*
- *F.M. Patis - 2000 (123) LLJ Tax (Lor.)*

(iii) The Annexure-A to the SOCM shows that almost all of the alleged clandestine clearances were said to be have made to M/s. Vidhyaram Rolling Mill and surprisingly no investigation has been conducted by the department at such purchasers and even though such investigation would have proved beyond doubt whether such clandestine clearances were made by the appellant or not. The appellants have requested that representation of M/s. Vidhyaram Rolling Mill may be summoned for examination as correct facts can be brought on the record as the said unit was alleged to be predominant buyer of the clandestine clearances made by the appellant. However, the lower adjudicating authority has overlooked the request made by the appellants without any justification.

(iv) The lower adjudicating authority has relied upon various statements as well as evidence which pertains to alleged clandestine removal of plates and scrap obtained out of zinc bracking to rolling mills and also issuance of fake invoices to various units without physical supply of goods which had no relevance to the serious allegations made against the appellants for clandestine removal of M.S. Injex. The statements and private records of Shri Bharat Sheth were not corroborated by the evidence in the form of statement of buyers, purchase order, or raw material transportation of such material, etc. even though the lower adjudicating authority issued the impugned order confirming the duty demand.

Page 6 of 17



(v) It is a serious legal position that serious charge like clandestine manufacture and illicit removal of excisable goods cannot be considered only on the basis of statements of partners or directors or employees or any person(s) associated with a manufacturer as held in the cases of Arya Fibres Pvt. Ltd. reported as 2014 (311) ELT 529 (Tri. - Chand.) and TGL Pulpapap Corporation reported as 2007 (140) ELT 187 (Tri. - Chand.).

(vi) Penalty is a quasi-criminal matter and therefore, it could be resorted to only in cases where mala fide intention or guilty conscious of an assessee was established. The matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the case of Hindustan Steel Limited reported as 1978 (2) ELT (199). There is no violation of any rule committed by the appellants and they have not acted dishonestly or contumaciously and therefore, even a token penalty would not be justified. There is no specific reason or ground specified in the impugned order for imposing penalty.

(vii) There is no short levy or short payment or non-payment of Central Excise duty, therefore, Section 11AD of the Act is not attracted and order for recovery of interest is bad and illegal.

(viii) Penalty of appellant No. 2 under Rule 26 of the Rules is legal inasmuch as Rule 26 of the Rules is not applicable in the instant case. This rule provides for penalty on any person who is in any way concerned with any excisable goods which he knows or has reason to believe, were liable to confiscation as held by Hon'ble CESTAT in the case of Standard Penrel reported as 1998 (300) ELT 194. Even in the case of Vinod Kumar - 2006 (159) ELT 755 (Tri. - Del.) and P.K. Ispat, Ludhiana - 2007 (211) ELT 460 (Tri. - Del.) and in Order No. A-0256/2019, ITO dated 20/04/2019 passed by the Hon'ble IT-STAT, Amritsar in the case of Hitesh Kumar Tale it was held that personal penalty on an employee was not visited nor called for when the employee was discharging his duties in accordance with the directions of the employer. There is no evidence on record to show that Appellant No. 2 acted solely in excess of his status as an employee or that he had any personal interest or involvement in the business of Appellant No. 1.

3.1. Being aggrieved with the impugned order, Appellant No. 3 has preferred present appeal, inter-alia, on the following grounds:-

(i) The impugned order is based on prima facie summons and is also based upon concealment of the adjudicating authority. The impugned order in original is perfunctory and therefore it is required to be quashed and set aside.



(i) The adjudicating authority had not supplied the relied upon documents along with the SCN. It was not proper and legal but supplied some copies of document after request made by him. There were huge numbers of documents had been relied upon which were mainly in the form of recorded statements. For preparing defence reply, each and every document was required to be studied by comparing the contents contained in the statements of the respective persons namely Manish Patel whose statements has been discussed in the SCN. The important work could not be done from the relied upon documents supplied in CD. Therefore, it is clearly established that the adjudicating authority has grossly violated the principle of natural justice. He relied upon the set of case laws *Securo Industries Ltd. (2003) 155(ELT 187) (GSTR 1A)*, wherein it has been laid down that adjudication order was set aside when copies of documents relied upon were not supplied to Assessee even if he was given opportunity one month prior to hearing to take photo copies. It was held that department was obliged to supply all documents. Otherwise, there is violation of principle of natural justice. In the case of *PCC Processor (2003) 122(ELT 26)*, the Hon'ble Divisional Bench of High Court, Rajasthan has held that 'authentic hard copies of documents relied upon are required to be supplied. Mere opportunity to inspect the documents and to obtain photo copy thereof is not sufficient'. In the present case, the adjudicating authority has failed to supply the complete set of relied upon documents though requested. Hence, the impugned order is not proper and legal, but deserves to be set aside.

(ii) The Sub Rule (1) of Rule 25 is pertaining to the circumstances under which circumstances such penalty is imposed. In the provisions, it has been specified that when any person is concerned in transportation concerned in exporting, importing, carrying, selling or purchasing any excisable goods which he knows or has reason to believe are liable for confiscation under the Act or Rules framed there under. In the present case, no such charge of confiscation has been made in the SCN. Therefore, it is clearly established that the adjudicating authority has wrong and without authority of law has imposed penalty under Sub Rule (1) of Rule 25 of the CBR. Sub Rule (2) of Rule 25 provides two such clauses as (2) (i) and 2 (ii) of the CBR. The Sub clause (i) is pertaining to a person who is issuing invoice only without delivery of goods or any person abetted in making such invoice. But in the present case, it is admitted fact that only his name in the invoice appears to have been written as broker though he was not a broker under the definition provided in the section 2 (k) of the Act. Department has not proved that the so called Central Excise Invoice had been prepared under his presence or under his name. Further it is also not proved that the so called Central Excise Invoice Copy need to be issued by the respective manufacturers i.e. Ship Breaking unit situated at SDY Along Gurgaon.

Whereas the Sub clause (a) provides for imposition of penalty in the circumstances when a person issues any document or enables to making such documents, on which basis the user of the said unit or documents is likely to take ineligible benefit under the Act or the Rules made there under like obtaining of Central Excise duty, penalty under the clause is impossible a penalty not exceeding the amount of such benefit, or five thousand Rupees, whichever is greater. In the present case, the adjudicating authority has tried to prove that for which documents, the unit had benefited as well as appellant had received such benefit. Without taking the help of Central Excise Records, maintained by the unit, such penalty is not impossible. In the present case these aspects are silent. In addition to this, no such findings have been given by the adjudicating authority with regard to how many amounts have been received in so called transaction. Therefore, if a penalty established that the adjudicating authority has wrongly and without authority of law has imposed penalty under Sub Rule (1) & (2) of Rule 26 of the Rules.

(v) The impugned order is not self-contained order. In the findings, the adjudicating authority has mainly repeated the facts narrated in the SCN. To sustain such charges of clandestine removals, such Central Excise records would have been verified. In the present case, no such verification has been taken on record. Only on the basis of such statements, such clandestine removal cannot be sustained. Therefore, the impugned order is not correct and true in absence of such verification of the statutory records pertaining to the Act and Rules framed there under. The sales details submitted by the unit, such clandestine removal cannot be sustained on the basis of the above sales particulars without corroborative evidences with reference to the Central Excise records. Therefore, member is not proved to sustain the charge of clandestine removal. Further, he has given a limited role to recognize the buyer and seller to each other and fix the price of the goods on the basis of the market rate prevailing at the date of sale. He was not used to go the unit to the ship breaking units for managing loading of the durable goods. He had not remained present at the time of preparation of Central Excise invoice and at the time of removing of the dutiable goods from the factory premises of the unit. Moreover in the findings of the impugned order, has it been held that he was present at the time of removal of such dutiable goods clandestinely etc. Further, it was also the fact that the freight charges appear to have been paid by the buyer of the so called goods. Therefore, he was not at all involved in any way as provided under Rule 26 (1) & (2) of the Rules.

(vi) The adjudicating authority has simply related the events mentioned in the SCN but failed to elaborate the charges framed in the SCN. The adjudicating authority has simply proved the charge by importing the facts and circumstances narrated in



the SON. He has not given his own findings which are required to be given using a quasi-judicial authority.

(vi) Further, no such signature of the appellant was taken in order of having the information shown in the said Annexure II was correct and genuine. Therefore, the impugned order is not sustainable in the eyes of law in the circumstances when the worksheet of demand of SON appears had been prepared on the basis of such particulars mentioned in the seized Diaries which were the records pertaining to the business carried out by him and not pertaining to the business carried out by the unit against which the charge of clandestine removal was framed.

(vii) It is observed that the subject SON had been issued on the basis of the say and submissions made by Sh. Manish Patel, especially with regard to the use of name of such party in "shop name". But such provisions is silent about any coded or secret data, if any, mentioned in the Diary and coded whether the said person under pressure. The "coded" explained by said Sh. Manish Patel had not been demonstrated before the unit or before the authorized person of unit. Therefore, the way or the investigation carried out by the DGOI appears to be doubtful. Without acceptance such secreted data by the law is not order is not tenable within the eyes of law.

(viii) The present case is covered under provisions of the Act which is an Act for collection of tax i.e. Central Excise duty. Therefore, for making such allegation of evasion of Central Excise duty, a document showing the illicit manufacture of excisable goods and document pertaining to illicit removal of excisable goods without payment of duty etc. to be produced by the appellant. In the present case, only the seized Diaries had been taken as evidence for demanding such duty. But these Diaries cannot be said as a legal document, to frame charge of remanding of duty unless and until it is corroborated by any of the Central Excise documents prescribed under provisions of the Rules. Therefore, the impugned order deserves to be set aside.

(ix) It is further to submit that the buyer was always been deploying their own crews as Chitawas for loading of the required Excisable goods to the concerned unit and breaking units. But, though the Chitawala was the key person to state whether the goods under reference had been removed clandestinely, or not there is no mention in the regard. Therefore, the finding of the adjudicating authority that the excisable goods had been removed clandestinely is not correct and legal.

(x) In the SON, it was also stated that the Angadias have paid say role in the goods under reference. However, no SON had been issued to the Angadias. In

14/11/2017

14/11/2017

Angadize have been found to have been involved in cash transaction as alleged in the SCN. But no any specific instance has been placed with reference to particular consignment / Cert of Excess invoice for which the so called transaction had taken place. Therefore, no direct specific evidence was there in the SCN. Therefore, the findings given by the adjudicating authority are not correct.

(xii) It was considered that from the above submissions and from the facts and circumstances of the case, he has proved that

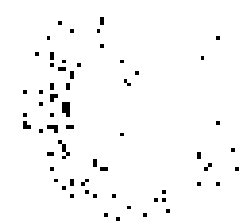
(a) He is not liable for a penal action under Rule 25 (1) & (2) in as much as no such allegation or charge of confiscation of the so called clandestine removal of the excisable goods had been framed in the SCN. The penal action under the Rule 25 can be imposed only when the so called goods has been charged for confiscation. The legal position has been accepted in the case of M.N. Shah (2008 (332) ELT 110 (CESTAT)).

(b) Without having direct material evidences, the adjudicating authority has wrongly and without authority of law has imposed penalty and in as much as there was no charge of confiscation, there was no any material evidences that he was concerned in transpiration of goods illicitly. He had not copied any documents of the unit. The department has failed to prove that he was aware of clandestine manufacture and removal.

(c) The so called clandestine removal of the excisable goods has not been proved on basis of the material evidences. For each consignment as mentioned in the SCN, it is required to be independently proved. But in the present case, the same has been concluded in general. This is not correct.

(d) The so called cash transaction had not been proved with each and every consignment as mentioned in the SCN.

(e) No such evidence has been produced regarding seizure of incriminating documents from the factory premises of the unit to prove the so called charge of clandestine removal reported to have been made by the unit. However, it is clearly established that in the subject case has been made out on the assumption presumption ground only. He had not defended the case well as contended in the impugned order. The findings of the impugned order appear to have been made without any corroborative evidence with reference to each and every so called consignments cleared clandestinely by the unit. Thus, the case against the unit appears not to have been proved with material evidence. The Co-Nuttee i.e. the appellant was also not liable for penal action as provided with the impugned order.



(xii) The adjudicating authority has failed to consider the various case laws as relied upon by him and mentioned in the above mentioned written submissions dated 27.07.2015. Again, here relying upon the said case laws which are reproduced here under as the same are separately applicable in the present case. -

- (i) Mikund Limited Vs. CCE - 2007 (210) ELT 120
- (ii) Mani Green Taxila Vs. CCE - 2007 (217) ELT 340
- (iii) Metal Sila Vs. CCE - 2007 (210) ELT 135
- (iv) S.R. Juythawala Vs. CCE - 1999 (117) EIT 350
- (v) S.L. Kressa Vs. UOI - 1982 (66) ELT 500 (Bom HC); 1997(94) ELT A 249(SC)
- (vi) Gupta Exports Vs. CCE - 2006 (217) ELT 337 (CESTAT)
- (vii) Amul Foods Co. Ltd. Vs. CCE - 2003 (153) EIT 103 (Tr. D-1)

4. Personal Hearing in the matter was attended to by Shri. Aditya Tripathi and Arsal Dave, Advocates on behalf of Appellant No. 1 and Appellant No. 2, who reiterated the grounds of appeals and submitted that the impugned order is not correct as it should have been passed after their request for cross-examination as stated in Para 4 of reply dated 16.06.2016 to GCN was considered. That this case has been made out only on the basis of statements and hence cross-examination is necessary and appeals need to be decided by remanding the case to the adjudicating authority as held by Hon'ble CESTAT in the cases of Sandrum Hyes & Chemicals Pvt Ltd. by CEN - 4 Ahmedabad vide Order No. A/13579/2017 dated 22.11.2017, Neo Exports P. Ltd. reported as 2016 (240) EIT 497 (Tr. Ahmed.) and Anja Nitras Pvt Ltd. reported as 2014 (137) ELT 525 (Tr. Ahmed). No one appeared from department despite P.H. Notices issued to the Commissioner.

4.1 Personal Hearing in the matter was attended to by Shri N.K. Mani, Consultant on behalf of Appellant No. 3, who reiterated the grounds of appeal and submitted that there is no corroborative evidences to implicate Appellant No. 3, that no investigation has been carried out by DCCEI on sale breaking units though they are to be treated as manufacturer. That in similar cases against Shri Bharat Shree a lenient view was taken by Hon'ble CESTAT and the Hon'ble Commissioner (Appeals), Rajkot that in absence of evidences, lenient view may be taken in this case as per CESTAT's orders dated 04.12.2015 and dated 17.07.2015 (copy of orders submitted by him). No one appeared from the department despite P.H. Notices were issued to the Commissioner.

4.2 Shri N.K. Mani, Consultant also submitted written submissions on behalf of Appellant No. 3, stating that:

.....



(i) The department had not supplied copies of relief upon documents along with SOA though they had requested for CD containing copies of relief upon documents & not the material evidence in the circumstances that he could not make effective defense reply. If the relief documents were physical available not retaining the narrations as recorded in the respective statements of the respective persons which has been relied upon in the SOA. He would have defended the case strongly as the SOA had been issued only on assumption presumption grounds without direct material corroborative evidences.

(ii) All such confessional statements recorded by the department were not a one to establish such charges as charged. All such confessional statements have been recorded under the provision of Act only on the base of the Private Records viz. seized Diaries which was only pertaining to the business carried out by him with a view to the purpose. (1) Registre 8, private records maintained by Angelina etc. These all private records had not been corroborated with the Central excise records maintained by the Ship Dressing units Alang as well as Hot Re Rolling units/Furnace units.

(iii) The department has also failed to establish any material evidence that by which truck No. the stated excisable goods had been transported from the registered premises of the appellant No.1. In absence of the evidence, the charge of removal of the dutiable goods without payment of duty is not proved.

(iv) It is observed that the seized Diaries under reference did not contain vehicle number, therefore, the said transcription stated to have been made from the factory premises of the Appellant no. 1 is not proved. Only the say and submission of San Manish Patel is not the material evidence to prove that Appellant no. 1 had cleared the dutiable goods clandestinely. If the said Diaries is an authenticated document to show charge of clandestine removal, then such vehicle number and freight charges, if any, would have been written in the Diaries. Therefore, the Adjudicating Authority has wrongly and without authority of law has confirmed the duty by issuing the Impugned order. The said proceedings can be quashed when San Manish Patel is there. In the present case, no such evidence with regard to the buyers had been taken on records for framing the charge of clandestine removal. Therefore, it is clearly established that the Adjudicating Authority confirmed the demand without having any direct material corroborative evidences as discussed in the grounds of appeal. In addition to this, the Adjudicating Authority has wrongly imposed penalty upon the Appellant No. 1 under section 113C of the CEA, 1944 / Rule 25 of the Rules in as much as department is failed to establish the clandestine removal of dutiable goods. Such charges have been confirmed only on "assumption presumption grounds". As well, the Appellant No. 2 was also not liable to penalized under Rule 25



(f) (2) of the Rules in as much as such order has been passed only on various assumptions.

(g) The appellant submitted so called financial transaction taken base from the particulars shown in the seized books cannot be proved without any corroborative evidence. The department had only made the allegation upon thin or assumption presumptions grounds and not in with accordance with each and every so called assignment shown in the worksheet attached to the SCN. The authentic and records seized from my annexe has not been proved by material corroborative evidence viz. Bank/ Excess records maintained by the appellant No 1. All such evidences favor on records were of only "private records" and these "private records" have not been proved with any kind of Central Excess records viz. Daily Production Register, Duty payment particulars, Genva, Credit Accounts etc.

(h) The adjudicating authority failed to give due respect to the various case laws cited by him during the course of deciding the SCN. The same are again treated as squarely applicable and prayed to consider the same, so as to his legitimate right may not be damaged.

(i) The present case has only been made only on "Assumption Presumption grounds" without direct corroborative evidences and in absence of the evidence the charge of concealment without payment of duty is not at all sustainable and accordingly he is also not liable for penal action as the present case has been built up only on "Private Records".

(j) He relied upon following case laws which are squarely applicable in the present case.

(a) 2014 (311) F.T.354 (Trib. Andh) - M/s. Um. Aluminium Pvt. Ltd. v. CCE Vadodara

(b) The Hon'ble CESTAT Ahmedabad has passed an Order No. A/1133-1334/2015 dated 17.07.2015 in the case of an Appeal filed by M/s. Rajrang Castings Pvt. Ltd., Smt. Anil R. Dixer vs CCE and Service Tax, Ahmedabad II.

(c) CCE Chandigarh vs Shakti Iron Cold Straps Pvt. Ltd., [2009] 229 LLJ 1001 (FBI) has allowed credit. Appeal against this order filed by the Department was dismissed by Apex Court [2009] 242 F.T. 23 (SC)

(d) CESTAT Chennai in the case of "G.L. Prakash Corporation vs CCE Hyderabad [2002] 140 LLJ 181 (FBI) (Ct.)

FINDINGS:

5. I have carefully gone through the facts of the case, the impugned order, the appeal memoranda filed by all three appellants and written as well as verbal submissions made during the personal hearing. The issues to be decided are:

- (i) Whether in the facts and circumstances of the present case, the denial of request for cross-examination of the persons whose statements have been relied upon for demanding Central Excise duty is correct, legal and proper or not.
- (ii) Whether in the facts and circumstances of the present case, the impugned order confirming demand of Central Excise duty, interest and imposing penal penalty under Section 11A of the Act is correct or not.

6. It is on record that Appellant No. 1 was registered with Central Excise as manufacturer M.S. Ingots in their induction furnaces and Appellant No. 2 was the Director of Appellant No. 1. The officers of the Directorate General of Central Excise Intelligence (hereinafter referred as DGCEI) gathered intelligence, which indicated that some ship-breaking units of Assam Shipyard are engaged in large scale evasion of Central Excise duty by way of clandestine removal of plates to the rolling Mills; diversion of goods, undervaluation of goods etc. and that most of such illicit activities are carried out by Ship Breakers of the area with support of some brokers, who procure orders from Rolling Mill Units and Furnace Units, make arrangements of transportation for delivery of the goods and realisation of sale proceeds, etc., that brokers procure orders from Furnace Units and Registered Dealers etc. for supply of false Central Excise invoices without any physical supply of goods. The DGCEI conducted search operations at the premises of Appellant No. 2 and recovered incriminating documents and carried out investigation with Transporters, Engagers, etc. and ascertained that Appellant No. 1 has clandestinely manufactured and cleared M.S. Ingots and evaded Central Excise duty. Based upon these documentary evidences, SCN was issued to Appellant No. 1 demanding Central Excise duty and the imposition of penalty and duty was contained by the lower adjudicating authority vide impugned order and penalty was imposed under Section 11A of the Act read with Rule 27 of the Rules.

6.1 Appellant No. 1 & Appellant No. 2 have contended that their requests to cross-examine the persons whose statements were recorded and heavily relied upon in SCN and impugned order, were refused without giving any valid reasons, which amounted into violation of principles of natural justice. I find that the impugned SCN demanding Central Excise duty on account of alleged clandestine clearances of M.S.



ingels was issued to Appellant No. 1 on the basis of Interlocking documents recovered from the premises of Appellant No. 1; and statements of Appellant No. 2 and his accountants Shri Manish Parshant others. The appellants have made requests for cross-examination of persons whose statements have been relied upon in SOs vide their reply to SO N. The lower adjudicating authority has not communicated his decision on such requests made by them and denied the request of cross-examination also in the impugned order only. The lower adjudicating authority was required to decide the requests of cross-examination and communicate such findings before passing the impugned order. I also find that the lower adjudicating authority heavily relied on the oral evidence and confirmed demand without proper analysis of the evidence available on record and without properly considering submissions of the appellants which wasted an opportunity of having justice.

62. I further find that similar appeals filed by various Ship Breaking Units and Rolling Mill Units against Orders-in-Appeal passed by the then Commissioner (Appeals) Central Excise, Rajkot, have now been decided by the Hon'ble CESTAT, Ahmedabad vide Final Order No. A/13317-13318/2017 dated 28.12.2017 remaining such the cases to the adjudicating authority. Para 6 of the said order is reproduced as under:

Toward both sides and parties for record. On going through the impugned orders of the authorities below, I find that even though various issue have on the subject have been raised in, however, detailed analysis of the facts and evidence which were collected during investigation in the form of statements/documents, particularly the statements of the Director and the Assistant of the Appellant broker, Shri Dhruv Shrivastava have been not analyzed and findings were not recorded on the evidentiary value of these statements vis-a-vis the documents. In the absence of the detailed analysis of the documents, it is difficult to ascertain the facts alleged in the above cases relate to these inconsistencies. Both sides have submit that it is prudent to remand the matters to the adjudicating authority, to elicit the evidence in detail and record findings on the said evidence relied upon in raising the demands and processing, penalties against the respective Appellants. All issues are kept open. The Appellants are at liberty to submit evidences in support of their defence. Needless to mention that a reasonable opportunity of hearing is given to all the Appellants. The Appeals are allowed by way of remand to the adjudicating authority.



6.3 In view of above factual and legal position, I find that this case is also required to be remanded to the lower adjudicating authority who shall examine the request of cross examination and pass fair and reasoned order after detailed analysis of the facts and the evidence available in the case giving sufficient and reasonable opportunities to the appellants to explain their case. All issues are kept open and the appellants are at liberty to submit evidence in their defence.

6.4 I find that Commissioner (Appeals) has power to remand as decided by the Hon'ble GSTAT in the case of CCE, Meerut Vs. Singh Alloys (P) Ltd. reported as 2012(284) EL 417 (Tribunal); I also rely upon decision of the Hon'ble Bench in the case of CCE, Meerut II Vs. Honda Soil Power Products Ltd. reported in 2013 (207) EL 1393 (Tribunal) wherein views have been expressed in respect of inherent power of Commissioner (Appeals) to remand a case under the provisions of Section 35A of the Act. The Hon'ble Gujarat High Court in Tax Appeal No. 2761 of 2014 in respect of Associated Hotels Ltd. has also held that even after the amendment in Section 35A (b) of the Central Finance Act, 1944 after 17.08.2014 the Commissioner (Appeals) could retain the power to remand.

7. In view of above, I set aside the impugned order and remand the matter back to the lower adjudicating authority to be decided afresh.

8. સર્વોચ્ચ અંતે ઉપરોક્ત શરતો અને શરતો વગર આ આદેશ તરત જ લેવામાં આવશે.

8. The appeals filed by the Appellants stand disposed off in above terms.

By: (Sd/)

સચીવ,
ગુજરાત સ્ટેટ ટેક્સ ડિપાર્ટમેન્ટ,
ગુજરાત સરકાર,
અમદાવાદ

સચીવ,
ગુજરાત સ્ટેટ ટેક્સ ડિપાર્ટમેન્ટ,
ગુજરાત સરકાર,
અમદાવાદ

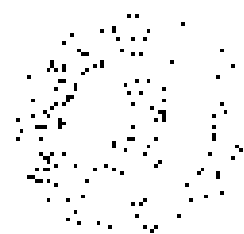
To

1. M/s. Shahana Steels Pvt. Ltd.,
Plot No.208,
Phase-II C, BG Ehor,
District - Bhavnagar

૧. શાહાના સ્ટીલ્સ પ્રા. લિમિટેડ
પ્લોટ નં. ૨૦૮, બેસ II, ડી એફ ઈહોર
સીદોર,
ડિસ્ટ્રિક્ટ - ભાવનગર

2. Shri Muhammad Afzalbhai Inayatbhai
Director of M/s. Sysbans Steels Pvt. Ltd.,
Plot No.208,
Phase-II C, BG Ehor,
District - Bhavnagar

૨. શ્રી મોહમ્મદ અફઝલબાઈ ઇનાયતબાઈ
માહેબુલ, મે. શાહાના સ્ટીલ્સ પ્રા.
લિમિટેડ
પ્લોટ નં. ૨૦૮, બેસ II, ડી એફ ઈહોર
સીદોર
ડિસ્ટ્રિક્ટ - ભાવનગર



S	Shri Bhajat Sarka, Partner Plot No. 1115 H-2, Godha Chawl, Jan Darshan Road, Shyamagar - 384 001	श्री भगत सेक, प्रोप्रायटर्स नं. 1115, जी -2 गोदा चौक जैन देवराय रोड, श्यामगर - 384 001
---	--	--

Copy for information and necessary action to:

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information
 - 2) The Commissioner, CGST & Central Excise, Bhavnagar- Comptrollerate, Bhavnagar.
 - 3) The Assistant Commissioner, CGST & Central Excise, City Division, Bhavnagar.
- AS* Guard File

