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## BHV-EXCUS-000-APP-029-TO-030-2017-18

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Date of Didle.		Date of restore	20.04.2018

Description Sant Band Kumer Singh, Commissioner, CSSP & Central Runiso, Gundhingere.

आवेसूच्या जन्म्या २०२५४७ के दार तालाडी,) दिलांक फल्कारक के बाल पड़े लोडे ताफिस सहेल में क्यों के इस हो, किंग के 2010 के के के कुछ प्रभागी जे जुने के सुभाग दिंहत जा पुरुष, केंद्री भा तहां को के यन एक उनकीर इस्पान भूत्यत जोधीनजर, को <sup>16</sup>सन अपे<sup>9</sup>सेनम उपन्य की माराइम, किट्रीन क्ल्याद राजक भौगोलिक 1986 में साथ २०१५ संतर्भत ८५ में नई क्योन के सन्दर्भ से अन्दर्भ करें। कार्यस करें सामने का *स्वरूप* से ) किन प्रार्थनस्य के स्वार्थने नियुज्य 'वेश्वा स्व 🚆

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1.M/x M X Shipping & Allied Industries Pot. Md., Plot No. 121, BBY Almag. Bhavaogar

2. Shri Moulik Rishere Baasal, Director of M/s M H Shipping & Alited Industries Pvt 14th.

इस लाईस्क्रामीना से आधित कोड़ा मंकित निगनीतिक्रेत नरीके के आवरण प्रांधीकरी ' फॉर्मनरण के साथ भिनित अवने कर राजना है / Any person approved by most intervent-Appratimate file an appred to the copyright with Linky in the Allowing way.

- होसा शुक्ल वेस्ट्रेंस प्रभाद कुल एवं सनवड प्रभोगे। या प्राणिकश्य के प्रांते त्रयोत सेस्ट्रेंभ व्युणद शुकुर
- liЦ भारिभिनेक प्रमुद्ध के भारत देखाः के उत्पति हो। सिन्न अभिनिधन १९४१ के जाग 68 के में भेग ਸਿੱਖ-ਇੱਛਿੰਦ ਦੁਪਰ ਨੇ ਗਾਂਗਰਦੀ ਨੂੰ ਹੈ Abbeat to Cystome, Dense & Setter office Applicate Tribunal Lundor Rectan 350 et CRA 1998 / Crash Station Solution Finance Act, 1994 kit abbed testory
- बर्धनेन प्राह्में कर्मा के अन्यान्त्रित सभी भाषती प्रोत्ता शुल्क वेचलेरा कम्प्रस्य अन्य एवं के प्रारं क्यीवीय जनगारिकरने थी 'अपने पीत, वेस्ट क्रांक साथ, अन्य का प्रयत्न के दिल्ली को की दिल्ली गाहिए क The special heads of the terms, Roman & Scruber for Abadiate Tribulad of West State for A, The tribulant Stee Defail in all matters religible of a section of a state of a short of 11
- प्रत्येकत परिवर्तनेत प्रदेश में बलाग तर अमेलों का भवतज्ञ शेष आश्चर उर्थाते तो त शतका कर्णन उद्यमार शतका स्व त्रेनावल अमेलास स्वयमधिक्षण विभिन्नेत की विश्वित केंग्रेंस टिंड्यन, स सर्वतांची साल, बहुराओं आज अभा में महर साथ स्वयन्त्रत को सी सभी स्वर्थित ह In

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अग सेव स्वायाधियत्ता है अभ्रश अतीत पश्तुल करने थे 12% फिन्दे त उत्त क तुल्ल उल्पीतर लिगता जो, 2005, 20 सेवर 5 का 1997 विधिय क्रांग तन नेनव (२२) की बार परियों के की विस्ता जाता चाहिए। इसके हैं जग से जा एक प्रति क साथ, कई अत्यद संस्का की योग त्यादा की पिंग पर प्रभाव साथ तूझीता. अस्य क जास या एकट वेक, 2 जिंद अगर का 20 दिखा जा, तरु लुधा। 20 तास करना हो आधिक है जो क्युंसा 1986 के एक प्रति क साथ, कई अत्यद संस्का की योग त्यादा की पिंग पर प्रभाव साथ तूझीता. अस्य क जास या एकट वेक, 2 जिंद अगर का 20 दिखा जा, तरु लुधा। 20 तास करना हो आधिक है जो क्युंसा 1986 के एकट, 2500 के साथ तेल 10% मित्र वाग्र का विधीयत साल शुद्धा की पिंग सारका करें। विधीक दे तो क्युंसा 1986 का प्रियत्वाद संस्थित ल्यीजीय ज्यातांग्रिक मा की साथ क अझरक सदिस्तान का प्रान हो दिया सा संस्थान का प्रात्वाद, संस्थित ल्यीजीय ज्यातांग्रिक मा की साथ क यहारक सदिस्तान का प्रान हो दिया सा संस्थान की प्रात्वाद संस्था की दिशासिल के दुभ्द द्वारा संस्था कर यहारक सदिस्तान का प्रात्व के प्रात्वा, बैच की प्रात्वाद संस्था होने व्यक्ति प्राय्तांग्रेकर सा स्थान कर सहरका सदिस्तान का प्राय्त होता के प्रात्व, बैच की प्रात्वाद से होने व्यक्ति त्यां स्थान साथ संस्थान करता होता का प्रात्व में की प्रात्वाद सी होने व्यक्ति स्थान का साथ कर लिया का प्रात्वा करता हो होता होता स्थान संस्थान के साथ सारका के होने व्यक्ति स्थान साथ करता साथ करता सी भाषात रहेता है। स्वयत्वा अन्य संस्थान होते से सारका साथ के होने व्यक्त साथ साथ करता निर्माण प्रात्वा स्थान स्था हो गए iiiit.

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The model is the contrast of constraints and the model part and even given the state of the second part of the contrast of the state o '-<u>-</u>] म्हणता अन्द्रिय । इन अन्द्रिय जन्म सम्म अन्द्रिय प्रायम् १२ अन्द्रिय जन्म भाषातिः सुन्य सम्म वर्ष्ट होता । महत्वता अन्द्रिय । इन अन्द्रिय अन्द्रिय अन्द्रयागर्थः अभ्य देशका जन्म भाषातिः सुन्य सम्म वर्ष्टन् होता । व

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िल्ल अधिनिधन । १९४१ की भाष थां को उन्हेंगरको १३१ हुए। (24) के अंतर्गत देखे की मार्थ लवेल , वेपालर ियम गरी, 1954, येग्रानियम अध्य एव अद्रश्च के सन्द्र विश्वनिक एक्ष्य उता. तम जा का क्ये में एक्षे अक्षेत्र शत्म ्रायुक्त, किसीव करते शुल्प तिरादा आयुक्त (प्रक्रिक, श्रेष्टरेक उत्पाद शुल्क पुष्टमा पर्यता भावत के वालेकी सन्दर्भ करें (फोर्ट के उक्त सींग प्रथमित होने आहे... योग वागुरक दुसरी सहारक ता कुछ तरावत करतुला, केन्द्रीय करनाव प्रतन्त्र प्रेयक्रम, को जगातीय तथ्यस्प्<sup>रि</sup>यन्त्या जा ज्योंदन देव जरन का 'मेंदेरे देने । तो अर्थने की ोने भी माथ में मलगत करता, तेमा १ /

(a) All the science cost that is a line power of the power of the science of t

ों से सुरुष्त केल्द्रीय उल्पन्न पूर्व वर्ण तैवाजर अधीलों व प्रत्यिकरण (सरदर) के पांचे जर्भजी के प्रमार्थ में केल्द्रीय उल्पन्न शुरुष अधिकायम 1914 की याम उद्याप के असलेव जो की किल्तोंन आधीनेकम, 1894 की घार 20 के असलित मजायत की भूगे जन्म की बाद के के इस पांचेम के जीवी मांगलेता प्रधित्वकम के अमेरि करना स्वयंत्र क्यांग्र lib प्रेरेक्टी गलर जिसके 10 जिंदन (10%), ऊर गांग को तुरुष पिकटिन के सालकृतन , दन केवल जुन्द िवांटेत है, के भुवताने किया तथा वर्षाते के इंट मध्य के मैनगेन तथा कि ताले प्रवित मधीमेन देव दाई दा মনত প্ৰদাস স্থানিক বাছে।

के होता अभय जुल्ल का गोगलत के उत्तर हो गये । फिर्मा १९ अल्कार में शिका आहिए ज

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प्रेनवेट जमा कि की तह जलत सोध illi

स केंद्र जगा दिया मधी के दिया। अनेर भारतीय केंग लाजा 11111

्र असे पहुं मेंने दुन माल से पालान ''स्वीध संग्रे 2; कॉफिस्टिय 50 में से कॉरोट से पूर्व किसी क्रांग्रिटिय वर्धिकाई के गुरुआ विदायधील स्थापन भागी एवं भगीक को जान, तरी होगे।

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(C) — घमल सरकार को प्रत्नीलाम आयेतन 🖯

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सित सरकार का प्राजनाय आयर्क : Revision application to Government of India: इन उन्हों की पुत्रसार उन्होंने को कि दिन मादिर आदत से प्राप्त उन्हों रहे रहे से सिंही कि 1994 कि आप 3513 के नहम करनुक के उन्होंने अपने महित आदत सरकार प्राप्तिजन आहे. कि 1994 कि आप स्वाप्त 1019 म, 121 सिंह कि बिद के 1996 के साम बड़ देखा के 1999 में 1999 के कि जन्म प्रदेश ? ने अन्द्रविक mappication के 1996 कि दिन के समय बड़ देखा के 1999 के 1999 के 1999 के 1999 के 1999 के 1999 के अन्द्रविक mappication के 1999 कि 1999 के 19 कि साम के 1999 कि 1999 के 1999 कि साम के 1999 कि साम के 1999 कि 1999 के 1999 1999 के 199 1999 के 1999 क 1999 के 1999 के

ाठि साले के किसी सुकतान के साम के रहा गया सुन्दरान निशे । का को किसी तररहात राजे प्राराभुद्र के प्रायाभा के की नारण किसी प्रेंक्स कररखाने ना किश किश एक भड़ार के तो दुसरे राजर पह पासकार के कीरण, का फ़िसी भूडार बहु मुंगा संचला के साल में प्रेंशर तरम के ईबाल, किसी कारखाने के किसी श्वेरराज्य के मान के सुवसन 11 ⊤ सन्त भेष

in taxe of allochases of each substantial for 2000 values in the sill with a factory to a more Long- of In Each of a date of front one walkprouse in an other driving the constant of pressession, of the special of a ware processing all standards from the factory of its water reaso.

कारत के बहर किसी मध्य या धांत यह बिभोत कर पहुं पात्र के लिभिनोंग के पहुंचता के 6 आहे पर 20 कहें. के कीय उत्पाद हुन्छ के कुछ मिलेगू के सामज के पर भारत के बातर कियी मध्य में की की लिभी की स्वा है। hh

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- াপটি কলাই সূত্ৰা বৰ গুঁৱালা কিন জিলা মানে ও আছে, উপৰে যা স্বাস্থা বাঁ মান্ত (পিনিল জিলা মান্ত () এ বি ১৯৬০ পিনিসেম স্বাস স্বাই আওঠাৰ নিৰ্বা ৰ জন্মবাৰি সামক বা Dherron without Schweit, of Jack, tiiit
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- 2गरहेको आ उन्ह की दी प्रतियों सकत संस्था परक पार्क को को तो तकतींचा उत्पादन इत्यत (अभार) सिचन करते. १९९९ का जिसमा 3 के अन्त्रीस विभिन्देक्या के द्वारा के संविध्या के ने प्रभु ने भोरवीन की जाना चाएल उपसेका आवेदन के साथ सुख आहेला व स्वीत अन्त्रियां का दी प्रतियों साल्यन की जानी वाहिता सभा ही केन्द्री । 24 उन्हों र भुरूक अधिविज्ञास दिश्व के शास देखने के लाग दियोग्सें श्रेमक की अनुवार के प्राप्त्रकों के भारत की प्राप्त समयत के जानी प्रार्थित ह দেশৰ পাঁ নাঁচ কা Level to subject an object of 60 ( The above application shall be starte in simplicate to Forth M. EA S as above of site day Rule, 0 or Cantral Register Oppedic Regist, 2001 within 3 months, from the state on which the order typed to be appealed spacing to communicated and shall be accompanies to be served each of the Ote and Reder-Instance. In share diate the Accompanies to be coupled by exception expensions provided to precifibed day as conseculation and shall be served as to be the share to be recommonly provided to precifibed day as conseculation and service as the first of the set of the set of the Killer Hextine Account
- ्लगेशम अमेदन के तथा कि महितदेन निर्माति तकत को पट प्रांग की दन्दरों छाड़े? । तिही क्रमण काम तक लाग मार्च व उत्तर उन्हें हो ने होते 2007 के प्रेयतन किया जाए तौर तदि प्रेयन काम एक बाल भगा व प्रायत हो 10 सारों 1000 र का अनुसार केवा जाए The results work of int site of workmanned by a Sec of Per 2006 mbeet the success newspectation by grave bars, or workmanned by a Sec of Per 2006 mbeet the success protocol at by grave bars, or or less 1000 March by the amount Loss Pacets One Lab 15.1
- 1.0
- গঠাইটে<sup>14</sup>টে ভগ্যসানৰ ওকৰে জ<sup>94</sup>টিশৰ , 1975, ৰু জলমুৱলিন দি জেলনাই মূল জাইলা কে বিশেষ জাইলা নিয় পৰি বৰ উপয়িলৈ ১৯৪৪ কৰি বৰ ভয়াবাৰৰ পুৰুষ বিবিধ নিশা বলৈ। বাবিদা য পেছ মনুহ বা প্ৰস্তুটেল্পাৰে কে ০০ এই ৪৮ বৰ্ষ দিন্দ্ৰ ব্যৱহা জ্বাস কৰা বলৈ কৰা ব্যৱহাৰ বা দিনে এক chrain g আইকেটে বাৰ্মাটিলনা ৫ ৫০০ৰ জ্বাহাটোৰ Rai 5.50 মই presention প্ৰকেশ্বেৰি হৈছে জ্বোজ্য ক প্ৰশ্ন হৈছে প্ৰত্য স্থান হৈছে প্ৰথম হৈছে মিল্লাৰ মহাৰ জ্বাহ কৰা মূল্য কৰা বিশেষ ক প্ৰথম হৈছে প্ৰত্য স্থানিত হৈছে প্ৰথম হৈছে মিল্লাৰ হৈছে মূল্য হৈছে মান্দ্ৰ কৰা মান্দ্ৰ জ্বোজ্য হৈছে জ্বোজ্য কৰা প্ৰথম হৈছে প্ৰত্য স্থান মেলাৰ স্থান্দ্ৰ মূল্য হৈছে মান্দ্ৰ হৈছে কৰা মূল্য হৈছে মান্দ্ৰ হৈছে বিশ্বসাহ হয় হৈছে জ Т?
- तीम अन्तर, भेजरीय उतारत १९२२ एक संगणत अभीक्षेत्र स्थभ्य 'श्रेकरण' (तार्थ मिकि) विचलकर्ता, 1962 स आर्थर एक भारत प्रतितिदेश साराज्य को महितादिस राज्ये काल तिवसों की भीत से आगण भाषांथे। तिभा अभा है। त o tentres make invited to the rate converting tense and other related a visio sectorization देन प्रेस Convertes assessment tensor Armster ("The rate (Preseduan Folia), 1983. IEI.
- त्रक्ता के दियान के भिकाले को उन्होंना साहित्य करना थे। संबंधित कर एकर विस्तृत को र भगीतस्थत प्राप्तभानी का भिष उम्मोनादी राज्यवीक वैवस्तृत्व क्वल र स्वार्थ्य कुलाम का देख स्वत्यों है। । र Par the choreater server as and, and preserve a charter to filter of append to the baller, appended successive the appellance of the the the the profile ball we be the rest from the 1C:

## **DRUEK IN APPEAL**

The subject appeal sites, 3(5/RVR/2017) datability 29.00.2017 and 30.1/EVR/2017 datability 50.00.2017 and field by PL K. Spipping & Allied Industries Petri Och. Plot No. 121, Ship Breaking Yard. Alang, D'allie Bravnagor, having taelt office 8, 2266/6, San at Park, Opp. Yiddhav Baug, Wagnawad, Road, Bhavnagar (nerehiafter referred to as 'the appealant no.1') and by Shn You, K.Kishere Barseli, Director of M/s. N. K. Shipping K. Allied Industries, S0°: Mang (Bhavnagar), (percharter referred to as 'sopplication of M/s. N. K. Shipping K. Allier Industries, S0°: Mang (Bhavnagar), (percharter referred to as 'sopplication of M/s. N. K. Shipping K. Allier Industries, S0°: Mang (Bhavnagar), (percharter referred to as 'sopplication of M/s. J. C. KUKAL/BVR/KR/2016-17 (page) 20.03,2017 (percharter referred to as 'tae impligned order') perset by the Assistant Commissionary, Contral excles, Rura, Dwison Bhavnaga: (hereinafte: Pelerred to as 'adjudicating authority'). This Order in Angoal is being based in resources to appeals filed by half the appeal's no. 1/4.2.

2. There was a telay of about 27 (ays in filing the apoet and therefore the appellants filed separate mist applications to wordone the telay is filing the appeals. The prime reason given by the appellant no.2 who the delay is due to the fact that the Director ite. The appellant no.2 who tokes effer the entire business of the company, was initially indecided and thereafter ited to business and social commitments and resultantly by the time hereafter business and social appeals, a period of 27 days beyond the permissible period of doily had already is observed of alleressid reasons, they prayed for considering their request sympathesically and to boldone the delay. In accordance with the period vested in me vide Section 35(1) of the C. Ex. Act, 1944 and the cause of delay heiring bore the only of 27 days.

 Further, 'n accordance with the provisions of Section 35-F afric. Ex. Act, 1944. The appeliants have posid mandatory deposits at the rate of 7.5% each of the positiescise duty for the confirmed positions, amounting to Rev 2,75,621/Heach. Therefore, admit the appeals

4. The appellant null is engaged in the activity of obtaining goods and inviterials by breaking of shipp, beats and other floating processes which encodes to ment factore in teams of Note 9 of Section- XV of the That Schedule to the Central excise Lanff Act, 1985 and was registered with the Central Escise having registration no. AALCM7650FXM001. The appellant no.1 was availing updation (CVD paid of the time of treas/fitmenat Ship on under the provisions chersfruit/fie CENVAT Creatibility, 2004

5. REFER Stated, the Directorate General of Central Excession interligence [bere-m-aiter referred as DGULL, for browny) gathered an interligence which indicated that the ship breaking on to of Mang, bett. Showhaga , were engaged in large scale evasion of Central Excise Duty by why of concessing removes of Plates to the Rolling Milo, diversion and index of Viation of goods etc. with the aid of decreated brokers and commission agents.

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6. Iterators, search operations to recover documents and monods at syleence, were conducted at the premises of various Ship Breaking Units and certain Roling Musians come at the major transporters and sizitements of their concerned active gersare were recorded under section 14 of the Central Excise Act +1941. Search was also conducted at the premises of the epiperant M/s MuK. Shipping & Allied industries PVL Etd. cold statements of the Kental Monok. Statements of the recorded sectors.

7 On the obsist of the investigation confed out by the DGCLI it was aneged that does & steel scrap was cleared plandest new from Plot No. 121 belonging to the appellent, without ascance of involces. In was a energinant the transporters supplied trucks for loading of scrap. specificely to the unit /plot rumber of Alang ship recycling yars for which the indere was made either by the unit or the broken through whom series was cold by the said unit what plat number aparated in the Dav/up/adoking registers. On the basis of the investigation it was alleged that as per lithe official record of Gurarat Mantime Board (...e. gate registers, in three cases, trucks so indenced and supplied by antitransporters has ensered the identification Recycling yard for leading of coraptingm the appeliant's promises and mereafter the cloaded trucks. couply weighing 82 MT were cleared without issuance of involces and without asyment of appropriate Central Excise outy of excisable goods. obtained from preaking of shipe valued at Rs.14,20,000/- involving Central Excee puty of Rs.1,28,132/-.

\_ بنر From the investigation conducted by DGC1. In respect of sympression of actual value and under valuation of ducable goods by the Abia blockow hiwas of egod that the appenant was destroy they yours. ay supplexsing the value of the strength for the period cross (0.21.2007 for 30.03.201). The INGERE conduction a struty of the day to day prior a option should be mained by the various matter insearch agencies of iron & when emerging them breakage of ships. If was observed that in order to will their goods at maximum rates, and Ship Dreakers / Grukers / Buyers subserface to the data to latest prevailing prices circulates by various market mana at lagencies and considered that licensidering all the factors. or demand and supply the ences are used by such seences were realistics that the price depended on the average thickness of scrap size ; It was blidged that, by the departury the adual size / thickness of MS Praces in the Central Excise involces , and only declaring their generic decorption such as "Old & Used Plates", "Wakte & Shiap of Iron & Steed", Waster strep of Cast Bon", Muticle of Thirt & Step 1, "White & Smap of Propeler", "Waste B. Surap of Stall ass Sheaf loss, the appellant was suppressing the curfuly of the step and, underviating the XS Be real de-Plates so as to enable than to declara daily part of the value of such  $q_{\rm edds}$  in the invertex and called the differential value, over and abave the declared involte value, by way of unaccounted cash amounts. It was alleged that they reported to non-declaration of actual description of scrapobtained from the ship breaking and thereby computaged the goods and

applied suppressed cates.

6. The adjudicating authority confineed the 500% Cause Notice holding that Notices No.1 have uncergone unlowful activities by way of degat diabatane removal of excisable goods /undervaluation of goods/fraudulent paysing on of Cervar Crofit and wherever the dow short paid on an excision of variation of arise was more than 2% if was of surgedup of order variation of the goods and was rightly recoverated from the experised in view of contraventions of Soctians 3 & 4 of the Cerva at Excise Act = 1544 & Poles (4,65,10,12) A12, of the Certra Excise Poles 2007 and passed the imposed area confirming-

- Central Excessionary of Rs.1,29,132/- (BEC Rs 1,74,400/ 1) For Cossi Rs.2.495/--F HSC Rs 1,264/-) on account of denoestion removal of goods.
- Dentral Excise duty of Ro.35.46.494/-(BED Ro. B4,45,131/ + 1d. Cess - Ro.56.900/-+ HSC Ro.34,450/-) undervaluation of scrap, totally amounture to Ro.36,77,616/-(BED Ro.55,69,531/- - Ed. Cess Ro.71,391/- + HSC Ro.75,594/-)
- III. Interest index sector 1048 of the Act on the Control Excise only.
- Equal peneity of Rs. CS, 77,616/- (Rupees Thirty Six Caxles Severity Seven theorem Six Huadres and Sixteen Only) on the appellant under Kale 25 of the Central Excise Rules. 2004 read with Section 10AC how Sochan 10AC(1)(a)" of Centra Excise Act, 1914.
- V Penalty of Rs. 36,77,616/- (Rupeys Thirty Six Lake Sevency Seven Uloasenci Six "Jundred and Sixteen Only" under the provisions of Rule – 20 of the Central Excise Kules, 3002 nm San Moulik Kishere Baras I oppelland no...".

 The sope ants files their apression the to owing grounds and regarding clandestine removal of goods interalis contended that:-

- A. The SCN has been fully developed on the basis of anyate records rise. Trib/Dooking register end misc, papers spized on coulded from the premises of thansporter companies on truck owners of Alang/Bhavnagar area and statements of various commission agents and private records molintained by other unregistered and uasual business onfittins. They have often tao following over lows in support or their contentions:
  - 2005 (1996) LET-587 (181 DrJhf), M/s. Binari C. Mrg. Pol. 117 Ws. CCI Delb (1)
  - 2007 (208) LTP 700 (101 Yum), Y/s. Variah Cashing V/s. CCF, nanc-11.

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- 2004 (177) FCT 500 (Thi OclFC), M/s. National Alumbia um Eq. Ur., (T-1 OclFC).
- ZCGG (109) BLT-10X (17-Xum): Xr. Jaganosus Prennath V/S. CC Mumbal.
- S. 2006 (297) LLV-D21 (Im-ftel) Mr. Fredeep Sab V/s, CC-Pataw.
- C. 2004 (16c) CET-291 (CHAMPA) Mrs. Aslowin X. Forka Wist CC-Anniedabae.
- 2011 (275) EE, -146 (Un-Alone) M/s. Selectoriam Steels Pvt. Ffd., 9/s. CCE-symposiabad-11. (Para-22)
- 6. Permission by the appellant for cross exercisitation of certain nersons to accertain the factual cosition was not accepted ansicross examination was not allowed to one appellant.
- C. A decision should be based on comoborative boolimentary and on-imperchable documentary evidences such as purchase of excess raw materials excess concomption of electricity, more of payment between consider and consignes, when was not the cases acro, the SEA S its confirmation was based on the assoments of transporters and orien routine & cases, persons, who did not have knowledge of excise law automorphy signed the statements as notated by the OBCET authorphes. They have cited the following case laws in support of their partertions:
  - Y/s. Valent focus 3:016 Pvt. 54., V/s. CCE, Munipai.2003. [152], ELT. 131 (T).
  - M/s Deepak Tanuon W/s. Cold E-Bhubaneswar. 2000 [1267 11]-10/9
  - M/s. Oodbistgar colls 11(1): Vis. U.O. U 1978 (2) ELT-172 [SC].
- 3. If is a satablished text that simply continuatory viewments, incorded under contral pressure should not bin the sele meson and ground to confirm clandestime removal and valuation; P/s. Orient Enterprises V/s. Commit, reported at 1986 (22) 8.5.7. 507 (1rt).
- F. The appenant was statuterily bound and maintained all the estimated statutory and presented resource at portable information to the department on the periodical network and the department in a tradical network maintained the information to the department in a proper manner. In the statutory records the "Dary production register" maintained by one unit: that the balance of their final product was contactly antered in Daily production register" maintained by antered in Daily production register at the disposal side; that entries with regard to product on and issue/sets of the statutory tendent in a proper during the approximation of the production register at the disposal side; that entries with regard to product on and issue/sets of the statutory tendent in a proper during the approximation of the private records which were not vertice.

- F. That weightent of the excessible goods sold by company were distributed out at the lovely inhibit developmental by Central Excession and proper weightent allos were caucil in each transaction and handles (were value that the truck drives at the time of clearance of sold excissible goods and also are copy was kept on the appellant's company's rounds, that the records showing for exact statistical company and the company has been bendled by the appellant while not abjectes to by the proper board for company had never faced a sing 9 query in this impany. That dispertment has gnoted the exaction and verification of appellant's rounds that disperture faced a sing 9 query in this impany. That dispertment has gnoted the examination and verification of appellant's rounds that dispertures.
- G. Thet recovery of Kalpha slip and statements of third party were not admissible editeace and also forther observed that statement of solitonized representative of UV slipatity cannot no held valid evidence to cohold dandestine removal and imposition of penalty.
- Regarding undervalues on of metal scrap clearances. they intervaliate contended that -
  - A. There is no provision anywhere in the law as periodical that assesses should fix if e-price of exclusible groots on the tasks of price constant and chut ated by the chaothorized private valuation institutes based at Purgap, Govindgem and other places.
  - B. The appellant authority totally failed to detect a single specific case flow more the Angella or any other agency/herson, who actively support in carrying activity and environmetry ble activities.
  - C The focal excise qualit offloers had also period (all y and timely subtled all the statutory consists at out-ain intervals and they had never objected and doubted in any transaction/sale mechanism or patient laduding interval is ion.
  - D. Similarly the Income tax autoor this have also never doubted of objected with regard to monoclal transaction so cannot out ty: the appellant with their various outforders.
  - F. The department could not detect even a single incident of selected of cash knownt which leads to prove that the appellant was not ved frequency in any type of mandestine activity.
  - F. That request for cross examination of the officers of EGCEI who had investigated the case of undervaluation was not granted by the adjuctuating subjectly.

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- 5. Then infect as which they had sold and delivered their final products /goods at their factory data is considered and generally unown as "<u>PNANSACTION VALUE</u>" and exceed duty is being part on this value; that the DGCLI authorities faced to understand on examine the norms of determination of sale price of exceeding determined and centred by the unregistered and niv/de institutes most of twich are situated outside their (agint; Thet their (which are situated outside their (agint; Thet their (waterschor value) was determined as performent with a processing of Exceeding to the centre of commentary evidence and the processing of Exceeding the department commentary evidence and the consideration by the authority for the rige their price appear to be incomplete and not supported by provisions of the law.
- 25 That the epselant is an excise registered unit and bot filed vericus prescribed monthly/quarterly report/returns but such returns were never challenged by the coopertment including suring inspection.
- \* That is the Ship Breaking hard velop the once of excisable ant-holds a phaleyby determined depending on cuentity to be anthashid, quality/modis of Non-excisable goods, terms and condition and requirement of sheelf caller by buyers/castomers, torows & condition of payments that present in the case which quality and pressly for sticl action of the call only concerned.
- That the authority are failed to Extralish users way Mala fire Intractor and the dologistic definitie of low by the appellaction definition Cost, revenue
- X. The appeliant placed reliance upon judgement in a SLP of the union of India V/s. X/s. Kamalash. J names Corporation+ 1091 (125) LUI-CSU (SC) and M/s. Dabur lades Ltd., V/s. State of U.P. reformed at AIR-1990 (SC) 1911.

13. Regarding imposition of penetty on a special track they contended that the source cannot be imposed only on the passis of material which simply points but to a possibility of clarkestme activity; that <u>Evision</u> Serie's of the Euler (2001, 00 to); case of Miss. Arst; Caselog, Caulted, and the protocol at 2011; (2022) EU-191 (0.4.1. held it. "that the borden was an the Revenue to address evidence to prove, that, propaging physical back been manufactured. The private respects of private gaseds, of private gase pair physican but it could not be a sole factor in deciding false production?

13. The appellant no.2 filled the expect velterailing the corrections, where  $y_{10}$  is for each by the expectant of 1 and inter allo added that

 Califfic day on the solidated and alleged traudulent removal at excloable goods the lappellant not2 was lisving sofficient balance in the Cenvel credit accounts of the appellant's company liand.

There was no reason for them to put form provage at stake for such a magging amount of excise (http://

- The company of the appellant no.2 assister paralised onder the provision of Section 15 AC of the wet, and the appelant rol2 who is a Directory on the company has also area densitied separately under Rate-26 of the Rules, icle and manuallulations behavior for the same effects and that simultaneous behalty is against the split of statutory provisions and hence they are not liable for any paraity under rule-26 of the Rules; in the Rules of the Rules; in the Rules of the Rules is and there they are not liable for any paraity under rule-26 of the Rules; interpreted of the Rul
- 3) The department failed to provide tampible documentary evidences to conditionate its actions, for example the investigating officers could not usive act this concerned of variations each the statements, below it weigh bridge owners' statements, statements, below it weigh bridge owners' statements is to be used to be statements, below it weigh bridges and also failed to be yout provide state of accountly belows of accountly below of the bridge of documents soles to ansive at the exact condustor of quantity removed clandestinely. The department also failed to be opening, the department also failed to be opening. The department also failed to be borned to be bridged by the authority.
- 4. The appeared of 2 proved for being aside and quashing the Order in Original (O(C) No. 57/AC/RDR41/EVR/RR/2016-17 dated 20:03-2017, isseet by the respondent authority under his .No.V/15-20/Ad//DCCF1/HQ/2012-13 on totality had consecutativy lasting at order directing the respondent authority not to initiate any speruive aduen to recover the daty continued and penalty infloyed on the appellant to the date of final decision of the appeal and to grant present her or the appellant.

We recard in a period of the matter was (1931-01) 19.02.2019, which was attended by Chin A.R. Cza, Pxdisa Consultant of the appellant. In Appeared and received the submitations grade in his defence reply and the normal in all appeals or constitutions profile to 18.2.

15. The 7-D Chaing at Acrity has based Orden in Orlginel Net 57/AC/EVEVEVER/2005-17 dated 20.00.2017 confirming the Carlow Excise 30-TY Containd of Rep36.77,010/- and imposing Aqual periality on the appellance of 2 under Section 1160 of the Control Project Act -1944 and

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C do 26 of the Control Exclose Roles, 2002 respectively along with the applicable interest under Section 11AB of the Act, bid. If take up both appeals for decision by this are combined order.

to. It have covefully goine through the linguigned order passed by acjockwriteg architecty, the submissions made by the appealants in the appeal memory runch as well as by Shri A.H. Oze, Excise Consultant of the appealants at the time of personal hearing and the various case laws order by the ball of the factor to be decided is – whether the appellant was accessly involved in clandes the removal of the packs without the factor to be shown of the packs of the packs without the factor of ship presiding at the Alang ship invalued from the activity of ship presiding at the Alang ship invalued your and secondly under valuation of the linguigned goods and consequently whether.

- (a) So approacht act, it is liable to pay Certalal Excise duty on the goods so the over claudest judy.
- (b) The capeliant no. It is Capit to day the differential Carlys Excise dury for goods so bloamd by suppressing their value.
- (c) The appellent no.1 is liable to senalty equal to ducy.
- (d) The approach bet2 is liable to any personal peak ty equal to the dury so dona need.

17 To som up the charge of iclandesting removal once again, the adjudiation, withoutly has confirmed the marge holding frict –  $^{*}L$ there fore, they that is respect of these entries contained in Fille/Section Registers pertaining to Notices No. 1 where no corresponding involces are  $M_{\rm class}$  quark larger been element characteristics,  $\omega that for quark of Courtest$ Excuse duty by Natices No. 1, therefore, in respect of 08 entries conteined in Trip/Backing Registerat participing to Malkaba Ma 1 20006 no contrasponding. involces and respect, groots have been cleaned cloudestinely without exyment of Control Excision data by Nothern No. 1, 1966, Noticen No. 1 has charred the SE (A) of ship-breaking goods valued at Re.14,20,000/- Swatching C. Ex. duty. relative expressibles to Set 1, 28, 1927- Americal Deels I.e. on Central Explore involved have been receipt for such transactions. In new of the above, I hald that allogation of charlestian algorization of excluding grade invaluing  ${\cal C}$  . Ex. duty torally amounting to Roll, 28, 1327- made in Show Cause Notice is proved 2.2910.6455 KeV

It is observed that the aspellants have printerly interval contended - "pidemand should be based on correlationative and as implacehoolic boostections, evolving a piperteel by proof of provides of excess have materials, excess consumption of electricity, indee of provident between consignational consigned atc., which is not the case have; that the ScN is taken on advate records can atchements of transportation openies, prokers are Wheney's the wind documents of the appoints relation to purchase,

1.N / V2/815/*841/2447* 1.Na V2/808/6V8/2217

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production, elserchowiets have not been ser divised; that shows evolviation of the accual persons such as transportans, brokets and continuouslasion agents and the DOCET officers who reconnees his statements and continuous the investigations periodizing to undervaluation of goods who has not accepted and was not granted by the adjudicating rationarity; that ha case can be booked simply on the basis of the mark of others: that heres of the recipiest units to whom state and estimely cleared goods were reconvex and delivered is not shown and could not be polytication by the lowestighting agency."

L

t fine substance in the contention of the appellants in earning 78. 19. this is a case of excess unaccounted goods contact damaget rely without phyment at outy. Excess unaccounted finished goods require unaccounted. jaw material newswer, the actualization order has not been able to throw any light on these aspects at excess unaccounted purchase of raw. material and production of diriched gands, this abserved met, Cespice repeated requests by apartants, the adjudicative sucharity did not cross. verify. Ulie peco da :l The apholiant, porte sing tu one action/dealance/prioritiase/sale/ Enishion goods to further correbotate. the state certs of the various persons and also the collins of the Trib. Registers and Toorsporter's Registers. The impurpoed rater also does not exemine way contracticions which may have been found with reference to the periodical returns filed by the appellants. The investigations carried out to prove clandest ne removal have only conted out at possibilities of planuesting removal but are not fool proof by dence to make a watertight. case in favour of revenue. The adjudicating authority also old nat agree for allowing coast-recombations of the private costral persons of the transporters, commission agents, brokers etc., uzsed on whose statements the couple of dencedure removal and undervaluation of goods has been confinated. The aductivity authority is silent on the meanie for het e<sup>n</sup>uwary gross examination of the concerner persons and the officers. Such about of the adjudicating outhority serves not in conservance with the quasit, up dat arreads by not giving the appendixt, a taly and just opportunity to present their case. Incretors these aspects of vorthying the receiver of the appellant and allowing cross examination of those concerned need to be re-examined in accordance with the principles of assurations, contaided no the case in a fair and just margier.

20. Summing up the charge of undervaluation, 1 the that the edgedicating authority has held of the Advances find and hold that there is a reason to doubt that price quotied by M/s. Major and Minor is actual and the interval of the price quoties by M/s. Major and Minor is actual and the interval of (1/2, 2.8) i.e. enter of Plates and Schap 2% because then the rate of M/s. Major and Minor is consultative, f. (Interfore fully agree with the new industrial by DROET, that duty short paid an account of visibility necessarility necessarility of the plates and regime of the plates and regime of the second of endervaluation of the genesis and regime necessarility of the Minor 2% is an account of endervaluation of the genesis and regime necessarility recoverable from Matters Mo. 2. Accordingly, 5 (And (An) the differential duty, as per American for the time of Ka.26, 68,484/- is rightly recoverable from Notices from Notices for 1.5.

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71 It is to throming thim the phote that the valuation of the goods has neen race on the basis of the prices as declared and determined by the varians methl articling agencies. The investigations partied out in consonance with various private matal prioring agencies point out to the fact that it these private againstes provide requisit updates on proces which are the actual introhiling energiatic particular point of time, however when the prices i charged by appendnts are compared with these prices, they are found to be much lower. The investigation only points out at the presidility of upon valuation and raises a count recording the authenticity. of the larges/veloation as declared by the approach but the same conner. be said to be the uningte test of Illinois to prove the charge of undervaluation. In order to establish the same, the trail of financial transactions, the bank accounts of the appenants, the cash flow from and to the appellance and the Directory's was required to be studied and involucated. Undervaluation is required to be proved and backed up by change, trail or at least some somblence of the same. The levestigation is silent on this vital aspect and has not taken care to check this. This asarch or undervoluation acquires to be further investigated with reference to the chandel (repsections, it also find that impurst for cross examination of the efficers whereastied out the investigation with impaint out indervisionlike of the surap steel was also not granted by the abjufcating authority. The adjudicasing authority is ellent on this vital aspect regarding the reasons. for not or an long the same.

L1 goes without saying that proceesamination of these involved in Investigation of the nast by the appelent is in accurdance with the principles of annual justice and supported by sound legal distures. The CPET vire climits: No. 1053/02/2017-02: dated 10.03.2017 has in para 14.5 stated as follow: If Wiener statement is added ipper is the originalization proceedings, it would be required to be established through the process of conversationization of the actions tables a required for croate complexition of the process whose statement is relied upon in the L00.2

23. It is a well sate of position in law and has been held in a number of chars that an essense in has the right to seek cross exemination. In a number of mount judgements too, a smallar view has been taken by the High Courts and the Tribunals.

74 The Harfold High Court of Colored to the case of Response Gorg Vs Completional Custor's as reported in 20-3(254)EUT 353(DEL) has below Para No.10 or the judgement that - 'Drise ner as the general preparitives are resonand. Here can be no denving that also any statement is used against the essence an apportunity of cross examining the judgement's used against the essence an apportunity of cross examining the judgement's used against the essence an apportunity of cross examining the judgement's used against the essence an apportunity of cross examining the judgement's used against the essence could be given to the reservation for the essence elements and the be given to the reservation of this is clear them the element (supra), apart from this the decision of this mount is 25% Clyanet leg [ to (supra) studies the form in function of the opposite)." Further, in Para Ne.14 of

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the jurgement that, "The Orienton Reach also abserved that though it orients for deviaed that the right of cross semilarities in the global judicial proceeding is a valuation right global to the accusacionatics, as there proceedings may have adverse consequences to the generated, of the same time, under controls adverse consequences to the generated, of the same time, under controls adverse consequences to the generated, of the same time, under controls adverse that such computionses have to be exceptional and that theirs adverse have been stigulated in Section 9D of the Central Excise Act, 1944. The ancanationes where the person who has given a statement is deal or consected in a such computer of the in Section 9D of the Central Excise Act, 1944. The ancanationes where the person who has given a statement is deal or consected by facil, or where the person who has given a statement is deal or consected by facil, or where the person who has given a statement of the ediverse party, or where the person who has debated without an amount of unity and exposed where the circumstances of the owner, the Centra adverse party, or where the circumstances of the owner, the Centra adverse anreasonable. It is clear that universe such viewed whose sects, the Notifier would have a tight to chard accusive the persons whose statements are being relied upon even in quari-perior allows are an or the persons whose statements are being relied upon even in quari-perior allows.

2.5. Sultann, the Hon'S's High Cault of Gujanit in the case of Commissioner at Sen. Ex. Abmedonard II versus Dujarat Oyaromet Ltd as reparted to 2017(345) FET.520(Grij.) in Para No.5 has hold that:

confirmation of demond and imposition of penalty without such apportionity was found in the violation of approxit justice, "In Jun, 14 of Jujudgement that "Having heard the learned counsel Shri harshan Parish for the Remove and having perioded the decrements on record, if energies that in this sec of cases the insport of oppoun was that the duty could ner have been confirmed and benefity could not have been imposed without offering crosscomposition of the important calculation. The Lit Melainer (individ) had held that from the beginning the stand of the respondent was that the cross exemutions was now bury. By notice of apph arcive, the appeals should be placed before the adjudicating authority for denote consideration for absorving principles of noticest partices in the statement, according to the cajudicating officies, were recorded without twent, structure constraints of the wilness of no shows raise their statements, cannot be a ground for rejecting the request for couse sconglination,"

This is follows that in accordance with the principles of natural (00)(0, especially in a scenario where entire case has been framed on basis of private records and statements of third parties, granting cross examination of all concerned as stated above assumes onmoll importance. The records of the appellant also monit confirm and cross-vertication as requested by there.

26. In view of the foregoing discussion and findings, 1 ternand the case back in terms of the above for ventioning and prost-checking the renards of the sppe ant holl and gravting the oppellants opportunity for emissives in atom of the concerned persons based upon whose statements the

Page 11 of 17. fr-x\_\_ - - -

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case is relied upon for the purpose of combattine comoval and endervaluation of goods as requested by them. The order for importion of penalty under service 1. AC on the aphellant natil and the perconal penalty. on spoellent no.2 also considuently stand remanded back.

the appeals filed by the eppeliant No.01 and appollant No.02 stand-27. disposed affilin zouve terails.



ິຈາາຊີາ‱່∱<sup>30</sup>າວການ√ - (Sun F Kuman Singh) Cammissioner (Appeals)/ Commissioner. COST & Central Exclose. Gauld ht has an

Cote: 17.04.2018

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- MAS, M.K.Shipping and Alfed Tradistics, No. No. 2., 5hip Smaking Yard, Alang, Scelyn, Elst, Bhavhagar,
- Shri Moulik Kishore Bansal. Ji: BCJOL, V/a. M.K.Shipping and Alliad fortuation, Pol No. 121, Shin Breaking Yard, Alang, Sosiyn, Dist, Hhavnagan

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Соруно :

... The Chief Convolssioner, CCST & Central Prase, Abrociaboau

- The Commissioner (Appeals), CGB & Central Excise, Rajket
  The Commissioner, CGS (is Central Excise, Bravolager,
  The Assistant Commissioner, CGST & C. Ed., Rural Division, Phavnagar,
  The Assistant Commissioner (Systems), CGST, Tajkat.

- 5. The Superintendent, COST & Central Patiso AR 1, SBY Alangu
- 7. Copy to Apple: 8.6.6.72/305/BVR/2012 of Shill Moulik Kishore. Banha Difettor, Mys. M.K.Shiaping and Allied Incustries, Alang.
- PA to Contrussioner of CGST & Central Explored Sanchinagan ∠∱r Gur⊶triba