

# क्षामान्य (देपनीक्षा) नह कर्यक्षाया वैद्यादीत क्याम् एव क्षेत्रा करमानि व्यवसार, श्रास्त्रक (VIII Не сымпитея омения пе<mark>це), сем ноше</mark>ль & вистае.

# द्वितिय नतः ते ५ की अगर १४ (१०५८) अञ्चलका रेसा वरेसे हिंग चॅन्च / See College (कारास्त्रा)



 $81 \pm 16 \times 128 \text{ keV} = 104 \text{ GeV}$ 

Tall, Pro No. 1009 In 1847 (2020) 44-1442 — En ei Lousepettella glockig no boom

राज्यिकती विभाग एउँ हैं। अस्तु अर

347 - 47 + V -布 Ar Helle Frank

est selfment

Kar i

9 Q -S

Limits:

Marise, pietro Marinille di P

 $200 E \cos \rho e TA + \cos \theta + 5 \cdot 10^{11}$ 

21/35/2017

u Stell (1888 9 # 11 (Orde In Appeal No.)).

# <u>BHV-EXCUS-000-APP-044/TQ-046/2018-19</u>

ਮਾਤਾ ਤਾਂ ਮਿਲਿਆ

24.04.804%

दारी करकाली असेवडा

76,04.2318

 $1.009 \pm 0.006 \, \mathrm{color}$ 

Lade of a succession

**क्मार मंतीप,** जातृक्त पञ्चीकार्य करावेत द्वार आहे. 🕹

"Heset by Shri Kuman Samosh, Commissioner (Apocals), Rajket

के से के दुन्तर क्षणुक्त कामुक्त कामक कामूना किन्नेक एउट (इस्तर केवर एक कार्य एक कार्य के उन्हर कार्य कार्य का न्द्रायाः सन्देशः '

withing out to access manifested. Other constitution and a distance of the constitution and the constitution of the Paylor Full transport Cent habitanii ili

के वित्रकारों के अंतिमादी का या । एने या प्रिकालक का oreignet the Appetagla 5 Respondence : π

1. 33% Saferia Steel Edustries, Survey No. 140/B Rhomagar-Taylor Highway, Society and (Kurdej), Dist : Bhasningar

2. Shei Chuan Geryd Parlner of Satsom Steel Industries

A Shir Mimonghibhes Mandal Jaganii, 58, Vilian Compter 4th Misse, Nisar Schlasti Hai. Yrighnyadi Road,, ilhar sagari

हर पहल कोट्या से क्योंने के पार्टिश के अधिने के प्रतिकृत है के प्रतिकृत के स्वाधिन के समझक्त के किया का कार्यक कर कुल्का अञ्चित्रकों है, तेल क्षेत्रकों के कुल्का के स्वतिकृत के बाहिए समझक्त के समझक्त के कि किस के स्वतिकृत

होता हुएन कर्मात राज्य राज्य प्रकार के किया अस्ति का अस्ति का अस्ति होता है। अस्ति हुन कर्मा के साथ के अस्ति कि क्रिकेट के साथ कर्मा के 1966 के अस्ति किया कि किसी **विकेश करा**ई के सामाणिक है। 165

Communication on the most Conduct Tric Appendix Troubles was German 200 of Constraints to the communication of English Appendix appears to a residual configuration.

का किया (Censer) है अभिनेता हो। एका, योका एक या स्थापन का एक पूजा एक साथ को छिट सहस्रोतिक के के कि की है के कि है कि का सन्दर्भ को दिस्ती के को या को किया है 11

this gives both of Couplest Decret A Service Text Accesses "Whose Advisors is a result to  $x_1, x_2, x_3, x_4, x_5$  and the results also below a service of  $x_1, x_2, x_3$  and  $x_4, x_4, x_5$ .

24511 की बैठ जान ने करण कर करिया के अपने जा गाँँ कोंग होता करक वैद्यार प्रत्य को संस्थार प्रतिक प्राव्यक्तिक वीदांत की परिवार क्षेत्रिक विद्यार कुँदिक से एक्ट्रुप में अस्त अपने अस्त्र मुख्या कर को उससे प्रदेश हैं . С

in the What is a substance of a many part of the example of Cype Born the end in Cype Born of Cype Born of Table of An area Alexandria of the Example Supply of Antonia of the many models permitting accepts.

पर कि प्राचनिकाल के प्राचन करने, कार, नहीं के जान करने अपने कुछ है कि हो होना है। ऐसे प्राचनिकार के कि उपने कि कि सिन के कि कि सिन के कि उपने कि कि सिन के कि सिन के

Callegian in the figure of the selection of the purpose of the TEAC Cast described which Take 2 of Coper Coding Demonstrates ACOI and shall be experiposed who we was a single power of the color of the selection of the selectio

प्रतिक्र करवाधिकार के सामा के कि कि अधिका, 19 के में उ. . हुए के अधिका, शिक्ष हुं, 19 के अधिका (क्षा का कि का कि का का कि का का कि का का कि का का कि 14,

. . . .

The appear of the restriction of the Court Court for a factor and the Court of the Appear of the Transfer of the Court for the C

- 使用 (Patrice) (Paul District All Septical Line County Line All All Septiments All County All County Algorithms (Paul All Paul Paul All Pa ::
- H.

ar Taf Lamin are:

en and the first of the wife en and the first of the wife en and and the end of the state of the section of th

The Children Country Country for CDSTAT. Characterists of 15 call the Characterists will be some in the country country of the Caracterists of the Expension to Cart of Texture 10 March 1

and Albert and Common terms.

And Albert and Albertan

And

area wild arrests flavor treatment

rentere server. Anne som og selventes kritistise ser i skin flavor er din tille, Never eller Mijdeg, jel, Vinjage gillemere, Populæren of Poverse, et linger Jesus Cause Counting Terrimoner: Senser van Gerein Color i eller ser eller elle Guer 1901 in experience Annex og sette server det ny intrinsis alle sette eller hav eller eller sette din

NONE CONTRACTOR

आपने के बहु कियों कर के अब को दिखा का रह हुए के किया है। उससे क्षेत्रे पुन के उन्ने के के अब के बहुत के पुन हिस न के किया के किया के किया कि के किया के किया की किया के किया के किया के किया के किया के किया कि किया कि किया के Live and the state of the s 191

where the present region for the state of the first term of the first field (a,b,b) . It can be shown in Figure 1 and (a,b) in the state of the first term of the state o ..!

বুলিটিকে কৰেব কি কলাজে পৰা বি ক্ষেত্ৰত বিভিন্ন কি কঠা কঠাৰ কে প্ৰিটিকেন কিছিল এই কিছিল আৰু ই কেন্দ্ৰ কিছিল আৰু ১ পিছত (১৮৮ কিছিল আইন ক'ট্ৰিক সিটা বা দিল আ 1998 কাইছে 1991 চনা (২৮) চিত্ৰ কৰেব কৰেব কৰেব স্কুল বাইছিল আৰু ই ১০৮ সিক্ত মুখ্য 16.

itte Project. And Link en edglig de verbler en ele an i waar project op hat projekt en en flest projekt flest sydsoms of de en en Het Ruber meder house uitgestigtes hij persod by het Jerophysikkeer (spream) dy brokken it alle block alle alle brokk 19 fant ander an ander 19 du 1909.

्राहित के दिन के दें राज्येत एक करना एक्ट्रेकर का सामनाज्य प्रकार कर हातांच्या किस्तानायों, के द्वार का किस्तान विशेषित के दूर प्रकार का किस्तान के प्रकार का किस्तान के दूर प्रकार के किस्तान के प्रकार कार के प्रकार के प्र का प्रकार के प्रकार के प्रकार के प्रकार के प्रकार के प्रकार के

erent is the english. His of earling was relative a second map of the public EAS and second relative the State Carvin Easter (Agree in Figure 2001 which I more that does not be a transfer to any other agreement as a first and a second of the condi-ant second by was the conditional to the condition and the second second second of the english of \$10 physics is the englished a second to the angle of the book and the second CC of CC 1544 the Condition is a first expense.

`.f.

partor is and to a different time state of partor maked in the state of the state

:16

composition companies come antidiscon in the largest of command of commands of the composition of the commands of the composition of the compositi p-j

and का माने के कि (1945) करने पता कि ना कि लोग करने कि कि कि कि किया कि 1955 के कोई कि का अपने के समाधा को और में कि कि माने के कि को की कि कि कि कि कि कि किया कि कि कि का का को का का कि Al sake and the market of the common to a supplication of the common and the common to the common sake of the commo 11:

## 🚉 ORDER IN APPEAL ::

The below montioned appears have been filed by the Appellants (herein nifter referred to as "Appellant No.1 to Appellant No.3) as detailed in the Table against. Under in Original. No. 76/Excise/Demand/(original dated 31.03.2017 incremater referred to as into impligned order") passed by the Assistant Commissioner of Central Excise. City Division, Observagor (hereinalter relented to as into lawer adjuctating authority):-

Sr. No.	Адка М.,	Appellant No.	Name of the Appellant.
ı	NY/198/DVR020-7	Арремии No.1	2/15. Veligem inheel industries, Survey No. 248/8, Blaze and Pajent Holliery, Newsgen.
7	WZ/010/DWR/20 7	Application Knoz	Mathej) Mkt.: Bhoknegar. Mks.: Thorondon Mandiel, Lagani. 30. Mirai Co. pks., Flanti. Theor, News. Selection Hat.
1	N272 7704R/20 7	Appreisms Kn <del>. 3</del>	Wegneyert Roed, Shavnagar. Mini Chefen Goyel, Partner of Wis. Saxyam. Subst. Lick. Like, Survey etc. 24976.
		•	Hermeger-Rejkot Highway, Havayani (Kalingi), Dist., Shemeyan

- The officers of the Control Exciso Shavragar Commissionerate on an Intelligence dial some re-rolling units of Stoor, Martin) and Shavragar were origingd to large scale examining Centrol Exciso Duty by way of charactering re-rowal of Re-rolled products viz. M. S. Roandy TWT Bals etc., with the active holp and support of lew brokers, who arecured orders from different customers/buyers and produced the goods viz. M. S. Roand/TWT Bars etc. from different re-rolling units and Fundate units and dispatched the materials (Fig. 1) transporters without Central Excise invokes and without payment of Central Excise duty, conducted a coordinated scarch operation at the premises of Sixi Homanshi, Nand al Jagani, the major broker of Round/CTD Bars at Bhavrager and recovered several materializing occurrents substantiating the ratelligence. The scrutiny of the documents resurced from the various premises revealed than themorem tovestigation into various assects involving evasion of Central Excise duty was required, which was uncertaken.
- 3. Show Cause Notice No. 17/15-19/Demand-Satvani Specific 5-16 based 29.02.2016 was issued proposing demand of Certiral Excise duty of Res3 48,790/- under the provise to Section 11/4(4) of the Central Excise Act, IVAX (acretaather referred to as "the Act") alongwith interest under Section 11/44 of the Act and imposition of honority under Section 11/44, of the Act road with Russ 45 of the

Control Hickor Rules, 2002 (heremafter referred to as "the Rules") upon Appellant No.1 and also proposing personal penalty (hoor Bruc 24(1) or the Rules it open Appellant No.2 and 3. The said Notw Court Notice was adjudicated by the lower adjudicating authority vide the impugued order, in which (if Central Excise daily of Rs. 3.48.7907) was confinited under Section 117(4) of the Act along with hiterest under Section 117(4) of the Act and penalty to Rs. Judic 2907- was imposed under Section 117(5) of the Act read with Rule 15 of the Rules upon Appellant No. 3 with benefit of recorded behalty under Section 117(5) in(N) of the Act, (2) Popalty of 1,000,0007, each under Suie 26(1) of the Rules upon Appellant No. 2 In d.

4. Being asgrieved with the unbugged order, Appellant No.1, 2 and 3 protected appears, inter-alts, or various grounds as under:

#### <u>Apaskana Na. 1 á 3:</u>

- In the allegation of like the moval of excisable godes on the basis of entities found in the private records/ note books selzed under Paramagna dated 17.09.7017 at the promises of the appellant No. 7; that these setzed records had not been proved as fauthenticated documents' to sustain the charge of so called littlet removal as no such direct material existences have been played on records via. Central Excise Records maintained by the spockant No. 1, weightness sites and been taken on record to sustain the entity of weight shown in the said provate note book as well as no material existences had been placed on receivable regarding means of transport; that such well is number had been shown fin figure only and not with registration number as 1934. S.H. G.B etc.\*
- The retieu upon documents had been provided in the form of "LD" and not to half (one as required to meet with the principle of ratural justice read with provisions of Section 33 of the Art; that the private reserve note books were with aveitable for defending the case and they rely on the decision microso of Arts. Shown Stool Corporation reported as 2016 (ARV) ELFALO; that whom the felled upon documents supplied in form of "CD" not found in accordance with the conditions and down under Section 368 of the Art mod with Section 638 of the unitarity before Art, such documents cannot be accepted as "evidence" to train a charge against such person at party; that no such evidence has been posted on record that the reflect upon occurrents had been supplied in CD form

Fag 40016

1

in accordance with the provisions of Section 36 of the Act and honce the Impugnes order passed beyond Show Lause Nosice is not proper and legal to demand and confirm the Sentrat Expise in ty.

- (iii) The adjudicating authority foliad to establish that they had clanuestimely produced the raw materials and manufactured the escisable goods from such that preparement of raw material and said the said consenie goods illnestly: that in absence of clandestine producement of raw material, manufacture of excitable goods from such raw material, the charge of clandestine removal of the excitable goods from such raw material, the charge of clandestine removal of the excitable goods common be justified in the eyes of law.
- The case had been made out only on basis of assumption proumption grounds as the adjudicating authority failed to establish that the coding name mentioned in the said seized private maties was pertaining to the appellant No. 1 and no social question has been asked by the Central Excise officer establishing that the coding name "Sailyam" was the name of appellant No. 1: that quantity of illinit removal had been worked out only on the basis of weightness seized private cratics out not established the quantity on the basis of weightness slibs etc.
- (v) That Shir Hardevetich B. Gahri, owner or track No. (v) 33 9(44, 0.) 48 9044 & GJ-4W-9404 in his statement called 01.04.2015 has not stated anything that all such dishoted transactions had been carried out by Pan Union) in its above track so far as the charge of Chert removal was trained against appellant no. It he also stated that he received payments of freight for such transportation in dash, sometimes from appellant No. 2 and sometimes from the numbers of but this fact had not been completed by the independence evidences via specific recording a statement of the said broken as well purchaser; that no such investigation had been carried out at the one of the buyer/purchaser; that the said track owner had not stated that such quantities mentioned against such entities form the factory premises of appetiant No. 1 and therefore, the say and subharissions the charge of illust removal of the exceptible games.
- (vi) The orthist/hotes or which basis the Apprexime-Flows propored, were not the author/formed one as the same were not get perused before appellant No. 1:

that the comparison of such entries? notes with the sales strime y? register of appellant No. 1 is no sufficient without any comparative dyndropes would also also account matrical and them wherein such particular of runkwal of excitation goods are being shown that no such records pertaining to receipt and consumption of raw material are taken on record; that the goods removed by them on payment of Control France duby and corression statement of partner is not alone the evidence to prove the charge.

ü

(vii) The so called financia, transactions taken place in to collect illicit shrows) had not been proved by providing combonative evidences on record in much as the money flaw back of 3s. 28,21,9237: had not been placed or, record to charge the littish comover of Control Excise goods without payment of Control Excise duty: that the so called transaction corroborated by the adjunctoring authority on the basis of the private note books? records seized from the broken cannot be said as corroborative evidences as the som facility was not extended to the end of buyer/purchaser and no records were alleged on record regrating payment of freight charges.

(viii) That recovery of Incriminating documents is not the criteria to establish use change of clandestine removal unless it is proved with corresponding evidences viz. It light receipt of raw moterial and manufacture of excisable goods from such tiltett receipt one its libeit removal; took the filtett transaction of 25, 26,21,9237- is not a small one which would have reflected in any manner; that the department falled to establish the sale transaction with evidences viz. Higher flow back; that in absence of statement/cenfestion of costonicits/payers with reference to so cative littelt removal of excisable goods, such transaction value cannot be aspertament that the Central Excisable goods, such transaction on the basis of the sale price shown in the said seized private note backs/ records of the found party and therefore the cuty demander on the value shown in the said seized private note above.

(ix) Indicase laws offer by the adjudicating authority are not directly applicable; the adjudicating authority failed to give due respect to the case laws offer by appellant bould and thus failed to elseave the judicial discipline in as much as the basing proved the clandestine receipt and consumption of raw material, not extended the inquiry at the end of buyers to sustain charge of

Page 2, 61, 10

Likely removal eact; that they only on decision of tim Alluminum Pvt. Etd. reported as 2014 (311) ELT 354 (Tri. And.), Adam's Enterprises Ltd reported as 7015 (374) FLT 461 (Mad.) and CESTAT Almanabad Order No. A/11933 11034/2015 cated 17.07 2015 in case of A/s. Jayrang Continus Pvr. Ltd. which are applicable in the present case: that the adductating at thority has wrongly and victability as law confirmed the duty which they are not required to pay and thus they are not required to pay and thus they are not liable to pay any penalty as well.

(x) The Confessional statement caued 22.09.2015 of Smill Chetan Goyal, Porthod of Aphoblant No. I was not alone evidence to prove the charge against appellant No. 1; that he simply perused the statements and Pondinarin and work shoot pertaining to calculation of Central Exuse duty on the basis of entries bound to the setted private note pocks from the brokers, that perusing considering to the illicit producement of raw material, thick the documents pertaining to the illicit producement of raw material, thick manufacture of the goods; that since they had not cleared excisable goods without payment of Contral Excise duty, they are not hable to be alty.

#### Appellant No. 25

The appellant No. 2 Stated that the impugned order is non-speaking and non-reasonadi and in as much as the adjucticating authority has not death with the pleas made by them in their written submission as well guigments referred by them were completely ignored; that the impagned order is issued in violation of probable or natural justice as during personal hearing they requested to supply. relied upon documents to defend their bases which was not entertained by the adjudicating authority; that the appellant  $\infty$ , 2 is pot liable to penalty under Spotion 26 of the Rules as he had not knowingly and intentionally concerned with i the clearance of the goods or engaged him in any way; that he discharged his duties by introducing the purchase and therefore the resposition of penalty under Section v6(1) of the Rales does not arise in as much as he being a broken was: catied in by the purchaser of the MIS Bars for principase of the same: that same nging hyakar had introduced and finalized this deal, it cannot be said that he arrag a proken had played any role which would render the  $M_{\rm e}$  N. Bars liable for configuration under the provisions of Rule 25(1) of the Rules in order to attract. penal provisions of Rule 26(1) of the Rules; that he had not conspire at callude.

the rolling mile to facilitate the evasion of excise duty by them and he never asked the rolling null to semove the goods clandestinely

- That he had only brokered the sale and had posting to do with the sale of the excisation goods: that he had not asked the saller to sale his woods, thouthbut only introduced the paramasers to the seller file irolling inflig that in his stigment dated ( $G_s(\mathbf{H}, s)$ )  $S_s$  he stated that he had neithful purantsed not dealth with the atlipacel gends; that he never contravened the provisions of the Action the Rules; that he never confessed having purchased Al. 5. Rocha/ TMT Baratiron is the multing multips mentioned in the Anaexire-L; that even it it is admitted shot. he had indused in claudestme removal of goods and whatever written in continents are details of such illight transactions, their one has to have the evidence from sellers regarding such sale, transport of such godes; that his case, is not covered under sub-rule (1) of Rule 25 as he has not dealt with excisable. ecods in any manner whatspayer and he only introduced the publicism; that for a possibly on any possibluince: Rule  $i\delta(1)$ , it is prime condition that either he assi accurred procession of any excisable eachs with the knowledge or belief that the goods are trade to continuation under the Act of Bules or has been to any way. concerned in transacrating, removing, depositing, keeping, conceating, selling or purchasing on basins any other manner death with larry excise deligoods with such knowledge or belief: that he rely on the occision in the case of Shote; Beyon #1 Mfg. Co. reported as 2002 (:48) ELT 151 (allowed in A. M. Kulkann:1- 2003 (56). RELEAST AS SAT Murroom and decision of Rem Nath Sings 1, 2003,7154 (FET 454) (Trit-Delti): that any person to be persuized under the provincing of rule should also be shown to have been concerned in physically dealing with excisable group. with the knowledge or belief that the goods are liable to confiscation under the Actif Rules, that he is not liable to penalty as imposed under the impugued  $\sup_{k \geq N} ||f(k)||^2 \leq \varepsilon^{N}$ arset.
- 5. Personal Hearing in the matter was alterday, by North A. R. Nano, consultant on achair of Aphellant No. 1 & 2, who respected grounds of apacals and submitted two case taws reported as 2014 (311) ELT 354 (T) while disconfidure Alluminum Phy. Ltd. and CLSTAT's Order No. A/11804 (1804/2015) cated 17.67.2019 in the case of M/s. Bajrang Castings PVI. Ltd. concending that evidences of AP party can't be considered if not correlated with evidences with the appellant, that there is no money flow back in this case; that the

Fage Biof 18.

absence of cross examination demand can't be conetd specially in absence of evidence to evide payment of dury.

5.1 Personal bearing in the matter was attended by Stot Madhay Vacodariya on behalf of Appellant No. 2, who reperated grounds of appeals: also submitted written symmistions staffing that the impugned order should be set aside and nepenalsy imposed on Appellant No. 2 as because there is no complorative evidences; that principles of natural justice not followed by the Department in as much as at selfect upon continents have not been supplied to their and even their impugned order was passed.

## Findings:

- 6. I have carefully gone through the facts of the case, impugned order and written as well as oral submissions made by the Appellants. The respecto be decided as whether the impugned order, in the facts of this case, confirming demand and imposing penalty as all 3 appellants is correct or otherwise.
- 6.1 Appellant No. 2 Theo appeal beyond period of 60 days but wethin further period of 30 days by starting reason that them consultant was two with work related to adjudicating proceedings before various authorities; that their consultant being chartered accountant was busy with work related to inflyation and consulting of 651 work. Since the appeal has been fitted within further time frame of 30 days prescribed under the Act, a concord the delay in trung appeal and proceed to cecide this appeal and on meric.
- 7. I find that the officers of Central Proces, Heavrager conducted a coordinated search at the places of various brokers and transporters, from whete high minating documents like various distries. Thes, bose papers etc. were resumed. Further, searches were also conducted at the premises of re-valling units and certain forcace units. During pretiminary inquiry of the records resumed, the intelligence gathered was validated and therefore databasing units was certical out.
- 7.1 I also find that the statements of Appellant No. 2 recorded from time to time revealed the entries recorded in the hotelook/intastes mattevan during the course of towardgamen and manufactum and clearances of excisable goods vis.

Page 9 of 18

- $N_0$  S. Horind/ IMT Bors to buyers were made against pash transaction. Appellant No. 2 has in a petalled manner explained the coops used and the transactions recorded in the said notehooks idlantes. Appellant No. 3 in his statements dates 29 to 2003 and again pated 22.05.20% had accepted that the goods had been removed without payment of Contral Poofse duty and without respand of Lontral Energy involves and payments had been received by them in case.
- On going through the impugned order of the lower adjudicating authority, I find that the lower adjuctoating authority has given his detailed floorings and has also made detailed analysis of the facts and evidences collected country investigation in the form of statement/speciments, particularly, the intefutable ovinences and sessement of Partner of Appellant No. 1 and statement of Apprehama No. 2 and Thicings have been recorded on the hyldentiary value or the documents visib vis statements. I find that the officers of Central Excise, Shawtasas conducted cours hated search operations at various places including of prokers and recovered incriminating documents like diaries, hotebooks, lives, utose papers onci. It is on record that statements of Shri Himanshu Handlal Jagnati were recorded by confronting their with recovered records and the entries recorded in the motebook/waries resumed under Faridmania proceedings. reversion manufacture and clandestine elegrances of M. S. Round/IMT Jars. (c. boyers against cash transaction without Central Excise invoices and without payment of Central Excise duty. Appellant No.2, has in a datailed manager explained the codes used and the transactions recorded in the said notybooks/draides.
- Out on the grounds of appeal, it is submitted that the adjudicating authority while passing the impugned order has ignored the stomissions made by them. Or perusal at the empigned order. It is noticed that the adjudicating subscriby has categorically mentioned the defense submissions at various subspace(s) of the impugned order, and had also discussed the same giving his condings. Thus, this argument put forth by the appealants is devend of ments.
- 8.2 I find that demand of Rs. 3,45,790/- has been made based on records resumed from the factory promises of Appellant No. 3, based on records resumed; from the Premises of Appellant No. 2, (Broker). I find that before recording statement of partner of Appellant No.1, all decumentary evicences

Page 10 of 15

renovered from the premises of appellant No.1, Appellant No. 2 were placed before him. Appoilant No. 3 in his configuratory statements dated 79.03.9013. and dated 22,09,2015 recorded under Sastion 14 of the but had also gover through all Hanch ramas drawn at the premises and all the statements terrorigi. by Appellant No. 2 and transporters etc. The Appellant No. 2 being partner of Appellant No. 1 was also given full opportunity to provid incriminating documents, statements and outy (a)culation weaksheet before giving testimony about the truth and correctness thereof. He was duly shown duly balculation Annexures propered on the basis of investigation showing transactions carried out through Appellant No. 2 taloxes of Appellant No.1. I And that the documentary evidences and statements at the broker, transporters have been discussed and reproduced to a very elaborate marrier in the impligated order and many transactions recorded in the setzen private records were found adjungwith the statutory records/izansactions of Appallant No.1 Which proves authenticity of transactions and details contained in relied upon documents and relevance of those for buty famility on Appetiant No. 1.

- 8.0 I find that on being controlled with the incriminating deciments setzer!

  during the searches, all three brokers in their respective statements, busing the private sports of their payment of the final Excise duty and they were decided as brokers in such transactions and entries were excitable to their private records. Appellant No. 2 being partner of Appellant No. 1 has accolited the reactions without invaling.
- 3.4 It is seen that these are substantial evidences duty corroborated which have not been replaced at any stage and therefore, as per the settled lead position conditive of the same cannot be undermined by arguments only. I also find that authenticity of records satisfied from the premises of Appellant No. 1, Aparl and Sky 21 Oroker) have been duty corroborated and talked with records satisfied from other premises hat the quantifying Central Euclid duty I able to be paid by Appellant No. 3.
- 8.5 . Appellant No. 1 has argued that demand of duty cannot be confirmed on the basis of diames and records recovered from the faint narry the brokers Anti-Himanship N. Jagani (Appellant No. 2.) and hence, demand made on the basis of

third pasty confirmants is not sustainable. In this regard, I that  $\mathcal{C}_{\mathrm{BM}}$  (i.e.  $\mathcal{C}_{\mathrm{BM}}$ maintained by the brokers recorded light, as well as illight fransocitans of Appellant No. 1. I also flog toot many transactions recorded is private records. tallied with inverces were actually review by Appellant No. 1. Hais, or if  $\mathrm{hr}_{\mathrm{U}_{\mathrm{TMS}}}$ of Ctarles/hotebooks and other private records recovered from the brokers. during spacehins clearly established, also because both brokers have admitted to have dealt with the goods belonging to Appellant No. 1 without favoints and giscsold such 6,00ds willing thinyokes. Notwithstanding above, I also find that demand has been computed on the basis of Annex (res based on the searches) can led but at the unemises of three brokers and one at the aromises of Appellant No. 1. I also find that at lands involved in the base, i.e. broker, Appellant No. 3 and transporters etc. have comobinated evidences comored. during sparefies and therefore, demand da mot be said to be based upon found party byidentos only. The case in tace, is not based only on third party. Continents but duly complorated by host of poher evidences also. I find that multiplicity of party would itself negate the concept of the third party. In the assume case, and evidences of chancestine removal have been eathered by the investigating officers successfully from many places and increfore, it connet be calling third party dylocates but an imbarrative and supporting evidences against Appellant No. 1.  $(\widehat{\Phi}_{\mathcal{F}}(\alpha,\alpha_2))_{i,j}$ 

3.6 Appellant No. 7 has in his statement dated 27.09.2015 recorded during final part of the investigation, on song confronted with vital documentary and one condenses along with city calculation Aurierunes, admitted that they cleared excisable goods without payment of duty and no Confrol Exciso I, voices resent for such transactions. This statement of Aupellans No. 2 dated 22.09.2015 has not used retracted till date and horse, has sufficient excitancy value, within cannot be beliefed: The compined appreciation of all such corresponding exidences reflects that Confrol Doriso cuty existences in full such corresponding exidences reflects that Confrol Doriso cuty existences in these are required to be considered with and hard extensions and are sufficient to prove the case ogalist, appellants. In this regard, I also rely upon the decision of principal usuch of the Londole CLSTAT in the case of tim Prayers Against reported as 2017 (346) FLT 175 (74-Del) wherein it has been held as under the

Page 32 < 0.18

\*5- I note that in both the proceedings almost identical set of facts were. involved. The attegation was that based on evidences cattested from the sapptiers' side, anactoanted retript and furtiles manufacture of dockble items: by the appellant was sought to be sustained. Admittedly, the case is not only <u>based on the material aridence collected from the supplier's and and also as</u> corrobanated by the responsible persons of the supplier's end. The receipt and use of the such anscroupted raw materials for further manufacture has apparently been admitted by the appellants and one duty short patalities size. been discharged during the course of investigation (Iself). The appellants great emplosis all non-availability of the further corroboration by way of details of transport, maney receipt, etc. In the <u>pres</u>ent case, the gridenays cultected from <u>the supplier's after is categorical and connect to disputed. The private records of </u> the suppliers have been completed and complited for the connuitness of their cantents by the persons who were in charge of the supplicits units. When such addence was brought before the partner of the appellant's unit. he categorically conficted unaccounted clearance of distable freing. However, be did not name the covery to whom sigh  $p_{
m CO}$  jets were sold. In sigh signstan, it <u>Is strange that the appellant has taken a piec that the department has not</u> es<u>(eq</u>italie<u>d</u> the details of trajers and transport of the finished poo<del>ds</del> to such buyers. It is seen that the receives maintained by the supplicits, which were effiltmed by the <u>persons involving connot be brushed adde. I it is not the case</u> of the appeliant that the suppliers maintained such records and to takely <u>implicate the appoilant</u>. In fact, the supply of enaccounted raw historials has bean correborated by the portner of the appellant's firm, in such situation, it is not remaker for the respectiont to, now in the appeal stage, raise the paint berequirement of coast-exciolization, etc. Admitteelly, none of the private recepts <u>40 the statements given have been retracted as later morrested for their </u>  $g_0 \underline{che}(x) \cup \underline{che}$  where  $g_0 = g_0 \subseteq g_0 g_0 \subseteq g_0 g_0 \subseteq g_0 g_0 \subseteq g_0 g_0 \subseteq g_0 g$ beinted ussertion that the statement by the partner of the appellant-from is not voluntury. You look case lows relied upon by the appellants are not of any support in the present case. In the cases involving unscrounted manufacture, the existence of each case are to be appreciated for conclusion. As histenpiguady, the third party's resorre at the supplier's side as officially the person in-charge and further corresponded by the appearant coupof be <u>siscounted only on the groups of turpler evidences like transportation and </u> receipt of manay has not been proved. . In a Clabbestine manufacture and <u>clearance, each stabe of anglastig</u>a compolibe established with execusion. On correful consideration of the grounds of appeal and the filldings in the impagned owner, I find no remain to interfere with the finding recorded by the lower comparity. Accordingly, the appeals are dismissed."

[Emphasis supplied]

H.7. Appellant No. 1 has also dited Final Order No. A/11033-11034/2019 dated 17.07.2015 of the Honfale CESTAT in the case P/s. Tajrang Castings Pvt. Ltd. and Others in support of their contentions. I find that the order of Honfale CESTAT help as unsent:

15. In view of above proposition of law, <u>a diary recovered from</u> the tooker and few statements alone cannot be made the basis for deriving CANVAL credit to the Appellant to the absence of cross-examination of the third party bigmess styen. Further, there is no exidence of alternative purchase of new material by the Appellant for manufacture of goods cleared on payment of duty during the relevant period. ..........."

[Emphasis suppried].

- 9.8 On going through the grounds of appeals, as also the written submissions made before the lower adjudicating authority, as discussed in the impulped order. I find that no request for cross examining any of the witnesses has been made by the appellants in the present case and therefore, the order of the Houlbie CESTAT in the case of M/s. Bajrang Castings 2VL Ltd and others sopro is not appurable to the instant case.
- 9.9 Let is settled law that to cases of clandestine removal, department is net required so prove the case with mathematical precision. We this view is duly supported by judgments of the Honfeld Supreme Court in the cases 1983 (13)  $\pm 1.043~(-0.0) \pm 2199.(-235)~\pm 1.087~(\pm 0.0)$ .
- 8.9.1 The statements, if not retracted, are legal and valid to the eyes of law also and have to be considered as combinative evidences as lieur. In the cases of Narosh J. Sukhawasi reported as 1975 (RR) H. Will (MJ) and Rakesh Apmar Carg reported as 2015 (331) ELT 121 aK-Delhi. I find that Sustainent of Directory at profiled persons of assessee admitting clearances of woods without phyment of Contro. Excise outly and without issuing revoices inculpatory and specific and not retracted is admissible as held in the case of WAs. Hi Tech Atmatives (td. reported as 2017 (346) L. 1 (486) L. 1 (486) L. 1
  - 104. On scrept consideration of the facts and circumstances as outlined above, I find that the statement of Biroctar is the basis for the demand. The statement is inculpatory and a specific, the Director clearly admitted that the decements/private records recorded by the officers contained details of productment of rewinderfals as well as clearance of finished goods with and without payment of duty. This fact is further strongthened by the observation that many antities in the private documents are covered by the Chances issued by the assesses on welch outy stones paid. The displayment as clearly constructed the trate of the eligibles in the private by the engines in the private of the trate of the eligibles in the private parely and covered by the they be in the private parely and covered by the they be in the private parely as element is another the engines. Such statement is another the engines. Such statement is another of Pythems & Components Detailed, Issued.

    The parely to describe the dependent is applied to be

Page 14 of 18

proved by sufficient positive evidence flowever. The facts presented in each individual case are required to be scratimized and axamined undependently. The department in this day has relied upon the confessional statement of the Director which is disposited by the mentioned entries in the private records. There is the averagent that the statement has been raked order duries. The pessessed also does not expect to have asked for consciousition during the process of adjudication,

- 15. In view of the foregoing, I find that the Commissional (Appeals) has erred in taking the view that there is not enough evidence of chandestine removal of quads. Even though the statement of Suri Sanjay Kejruwal, who is wis to be the author of the private records recovered has not been accorded, it stands admitted by Siri Takiwal, Director about the private of the private antennals. Consequently, I find an evacuate disalter this piece of orderice
- . The evidence of claridestine claurance has been prought on theorem only as a result of invasingation undertaken by the depositions. The evidences appointed by the depositional one not statutory documents and would have gone undetected but for the threstigation. Therefore, this is a steam case of suppression of facts from the depositional and certainly the extended period of finitiation is invocable to this case and hence the demonstration to the home have, "

## [Lmphasis supotred]:

10.18 Torso (elly on the decision in the case of Mas. Harryana Stee, & Alloys Ltd. reported as 2017 (3657) FIT 431 (Trit-Pell) wherein it has been hole that notebooks (distries) seized from the possession of appellant's employee at the firms of socion showing entries for accounted as well as imaconimized goars win'th have been explained in detail and disclosed by GM, of the factory tally with involves/gate passed is trust-worthy. They statement of employee minning into several pages and sontaining detailed knowledge to be considered reliable. It also rely on the decision in the case or MAs. Hampsondra Rexins Pet. Ltd. reported as 2014 (362) ELT A61 (5.0.) wherein similar view has been taken by the Hamble Supreme Court

8.00.1 I am of the considered view that the edmilese facts need not be proved as has been held by the (km/ble CESTAT in the cases of Alex Industries reported as 2008 (200) FLT (0073 (745-Varmbal) and M/s. Divine Solutions reported as 2006 (200) E.L.T. 1005 (Tm. (Chennai), Her/ble CESTAT in the case of M/s. Karori Engal Works reported as 2004 (166) E.L.T. 373 (Tri. Del.) has also

Page 5 of 18

hold that Admission/Confession is a substantial piece of evidence, which can be used against the maker. Therefore, the Appellant's retiance of various case taws is not applicable in tight of the positive evidences available to this case as discusses above and in the impugned order. I onlible CLSTAT in the case of Missibility Sponge 2 and reported as 2015 (328) ELT 453 (Tri-Delt has also field that when preparationable of propostality was against the Appellant, pleading of an attachments recorded from buyons, no excess electricity consumption found, no raw material purchase found unaccounted and no input-output ratio prescribed by 1875 is of no use.

- 2. In view or above foots, I find that the contentions raised by the Appeliants are of no help to them and the Department has adduced sufficient that and ideal emission correlative evidences to demonstrate that the Appel and were engaged to clandestine removal of the gapeta I, therefore, that the the confirmation of demand of Central Excise duty of Rs. 3,48,790/- by the lower adjudication; and ority is correct. Jegal and proper.
- 9.1 It is natural consequence that the confirmed demand is required to be paid along with interest at applicable rate under Section 11AA or the Act, I, therefore, uphold the impugned order for payment of interest also.
- 9.7 If find that this is a case of clandestine clearances of the rinfsperi groups and hence, the impugned order has correctly imposed penalty on Appellant Mo. 1 equal to duty of Rs. 3,48,7907 impost Section 11AC(1) of the Act  $\frac{\sqrt{2}(2\pi L_0^2)}{\sqrt{2}}(1.55)$
- 10. As failts policity on Appellant No. 2 is conserted, it is contended that has fille Was Planted as tink person and the was not concerned with the goods and therefore, penalty is not impostible on plan. I find that he was the link person and had got the goods supplied without cover of Central Excise invoices and without payment of Lentral, excise only, ingrindrating documents escablishing clandestine clearances of the goods were also found from the promises of appellant No. 7 during the search operation on 17,00,2012. The details of clandestine transactions recorded to their draw/notabooks contained data is or the goods, highly not, cash payments, etc. and his role has been discussed in the impulying order. I also find that inquiry has originated from his premises one transform, be cannot now plant that his role was shufted only as a tink person between buyers and seller. Therefore, I find that possibly of Rs. 1 Like under

Page 16 of 16.

8016-76(4) of the Rules has been correctly imposed on him.

- IGLT I find that penalty of Rs. 1,00,0007- has been imposed an Appollant No. 3, as partner of Appollant No. 1 even when penalty of Rs. 3,48,7907- has already been imposed on partnership firm for duty evasion or Rs. 3,48,7907-, which is an higher side. I, therefore, reduce penalty on Sim Chotan Goyd ite. Appollant No. 3 to Rs. 50,0007 as partnership firm and partners are two different logal persons and possibly can be imposed on both legal persons in appropriate cases simultaneously.
- 11. If You're! above, I uphold the impagned order in respect of Appellant No. 7 and reject their appeals, however. I reduce possibly on Appellant No. 3 to Ru 50,000/- as dismissed above.
- १२. अर्गलकतीओ द्वारा दर्ज की नई अधीतों का निपयश सम्बोद्धा तरीके से किया जाता है :
- $D_{\gamma}$  . The appeals filled by the Appellants stand disposor off in above terms,

Barrens

ा(तुन्तार सर्ग्रेष) - (तुन्तार सर्ग्रेष) अस्तुक्रसम्बद्धाः

By RPAD

 Mas. Satyam Steel Industries Survey No. 2407B, Bhavhagar-Rarkot (Highway, Navagam (Kadrej), Dist.: Bhavhagar.

 Shri Himonshu Nandial Jagani, 38, Vihat Complex, Franta Floor, Near Sahkari Hat, Waghewedi Road. Uhavragan.

Shri Chetan Goval, Partner of M/s. Satyani Steet lacustries, Scryby No. 240/B, Bhavhagar-Rajkot Highway, Navagair (Kadher), Dist.: Bhavhagan.

ीसकं मार्थकः स्तील इंडस्ट्रीज्ञ, सर्व संबर रहकंकी आवनसम्भागनाट गृहवे, गवानामा (१८९न) जिल्ला: भावनसर

भी हिनासु नद्भाव जान भी, उट. विहार कोमलीका, भीषा १००० सहका है हाट के मिल्ही, भार राजी सेन उस्तामण भी मेलन कोमल, भागीलार मेलने सन्दर्भ स्टोल इंडस्ट्रीज़ सर्व नंदर २८००म साद्यानस्थानकट हाइवे, स्टाराम

(राहरेन्ट), जिल्ला आवगरायः

<u>Expry for Information and necessary action to:</u>

- The Critel Commissioner, GST E Central Excess, Annoclated Zone Ahmedapad for his kind information.
- The Commissioner, GST & Control Landso, Phaymagn Lammissionerate, Shazineger.
- 3) The Additional Commissionari GST C. Contral Excise, Bliavnagar Commissionerate, Bhavnagar

Page 17 of 10.

- 4) ind Assistant Lommissioner, CST & Central Excise Division I, Blassagar. 5), The Superintendenc, GST & Central Excise, Ranger Silvon Shavnagar. (26) Guard File.
- - 7) F.No. V2/217/6VP/2017 (8) F. No. V2/340/6VP/2017

Buse 18 of 18