



राज्य (उत्पाद) कर अधिनियम, 1954 के अन्तर्गत राज्यात् कर सेवा प्रदाता के रूप में
 2017-18 के लिए (1-10-2017-18) के लिए कर का हिसाब देना।



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BHY-EXCISE-000-APP-044 TO 046-2018-19

आवक का दिनांक: 21.04.2018
 जारी करने की तिथि: 26.04.2018

कुमार संतोष, जलपान उपविभाग, बस्ती, प्रताप नगर, रायपुर
 Messed by Shri Kumar Santosh, Commissioner (Excise), Raipur-

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- 1. 133/3 Satyam Steel Industries Survey No. 240/3 Bhanuagar-Tajpur Highway, Bhanuagar Bhanuagar, Dist: Bhanuagar
- 2. Shri Chuan Goyal Partner of Satyam Steel Industries
- 3. Shri Himanshubhai Sandilal Jagani, 38, Vikram Complex 4th Phase, Near Saklari Elm, Vigneshwari Road,, Bhanuagar

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ORDER IN APPEAL :-

The below mentioned appeals have been filed by the Appellants (herein after referred to as 'Appellant No.1 to Appellant No.3) as detailed in the Table against Order in Original No. 76/Demand/Demand/16/17 dated 31.03.2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner of Central Excise, City Division, Bhavnagar (hereinafter referred to as 'the lower adjudicating authority'):-

Sr. No.	Appeal No.	Appellant No.	Name of the Appellant.
1	922192/DVR/2017	Appellant No.1	M/s. Satyam Steel Industries, Survey No. 2407B, Balarua Rajput Highway, Rajwadi (Kastel), Dist. Bhavnagar.
2	922193/DVR/2017	Appellant No.2	M/s. Himanshi Mandali Jagani, 30, Vira Co. Plaza, East Chitra, Near Satyam Plot, Rajwadi Road, Bhavnagar.
3	922194/DVR/2017	Appellant No.3	M/s. Himanshi Jagani, Partner of M/s. Satyam Steel Industries, Survey No. 2407B, Bhavnagar-Rajkot Highway, Rajwadi (Kastel), Dist. Bhavnagar.

2. The officers of the Central Excise Bhavnagar Commissionerate on an intelligence that some re-rolling units of M/s. Martel and Shri Satya were engaged in large scale evasion of Central Excise Duty by way of clandestine removal of Re-rolled products viz. M. S. Round/TMT Bars etc. with the active help and support of few brokers, who procured orders from different customers/buyers and procured the goods viz. M. S. Round/TMT Bars etc. from different re-rolling units and Furnace units and dispatched the material through transporters without Central Excise invoices and without payment of Central Excise duty, conducted a coordinated search operation at the premises of Shri Himanshi Mandali Jagani, the major broker of Round/TMT Bars at Bhavnagar and recovered several incriminating documents substantiating the intelligence. The scrutiny of the documents recovered from the various premises revealed that thorough investigation into various aspects involving evasion of Central Excise duty was required, which was undertaken.

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3. Show Cause Notice No. 9/15-19/Demand-Satyam Steel/15-16 dated 29.02.2016 was issued proposing demand of Central Excise duty of Rs.3,48,790/- under the proviso to Section 11A(4) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') alongwith interest under Section 11AA of the Act and imposition of penalty under Section 11AB of the Act read with Rule 20 of the

in accordance with the provisions of Section 36 of the Act and hence the Impugned order passed by the Show Cause Notice is not proper and legal to demand and confirm the Central Excise duty.

(ii) The adjudicating authority failed to establish that they had clandestinely procured the raw materials and manufactured the excisable goods from such illicit procurement of raw material and sold the said excisable goods illicitly; that in absence of clandestine procurement of raw material, manufacture of excisable goods from such raw material, the charge of clandestine removal of the excisable goods cannot be justified in the eyes of law.

(iv) The case had been made out only on basis of assumption presumption grounds as the adjudicating authority failed to establish that the coding name mentioned in the said seized private records was pertaining to the appellant No. 1 as no such question has been asked by the Central Excise officer establishing that the coding name "Satyani" was the name of appellant No. 1; that quantity of illicit removal had been worked out only on the basis of entries found in the seized private records but not established the quantity on the basis of weighment slips etc.

(v) That Shri Hardevsinh B. Gahri, owner of Truck No. GJ 47 9044, GJ 47 9044 & GJ 47 9101 in his statement dated 01.07.2015 has not stated anything that all such credited transactions had been carried out by him through his above truck so far as the charge of illicit removal was framed against appellant No. 1; he also stated that he received payments of freight for such transportation in cash, sometimes from appellant No. 2 and sometimes from the purchaser but this fact has not been corroborated by the independence evidences i.e. specific recording a statement of the said broker as well purchaser; that no such investigation had been carried out at the end of the buyers/purchaser; that the said truck owner had not stated that such quantities mentioned against such entries found in the said seized private records from appellant No. 2 had been loaded from the factory premises of appellant No. 1 and therefore, the say and submissions of the owner of trucks cannot be taken as corroborative evidences to establish the charge of illicit removal of the excisable goods.

(vi) The entries/note on which basis the Annexure-F was prepared, were not the authenticated one as the same were not got perused before appellant No. 1;

that the comparison of such entries/notes with the sales summary/register of appellant No. 1 is not sufficient without any corroborative evidences viz. daily stock account maintained by them wherein such particular of removal of excisable 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 Central Excise duty and concession statement of partner is not alone the evidence to prove the charge.

(vii) The so called financial transactions taken place in so called illicit account had not been proved by providing corroborative evidences on record in much as the money flow back of Rs. 26,21,923/- had not been placed on record to charge the illicit removal of Central Excise goods without payment of Central Excise duty; that the so called transaction corroborated by the adjudicating authority on the basis of the private note books/ records seized from the broker cannot be said as corroborative evidences as the said facility was not extended to the end of buyer/purchaser and no records were placed on record regarding payment of freight charges.

(viii) That recovery of the incriminating documents is not the criteria to establish the charge of clandestine removal unless it is proved with corroborative evidences viz. illicit receipt of raw material and manufacture of excisable goods from such illicit receipt and its illicit removal; that the illicit transaction of Rs. 26,21,923/- is not a small one which would have reflected in any manner; that the department failed to establish the said transaction with evidences viz. money flow back; that in absence of statement/confession of customers/buyers with reference to so called illicit removal of excisable goods, such transaction value cannot be ascertained; that the Central Excise duty had been worked out on the basis of the sale price shown in the said seized private note books/ records of the third party and therefore the duty demanded on the value shown in the said seized private records was not genuine as per Section 4 of the Act.

(ix) The case laws cited by the adjudicating authority are not directly applicable; the adjudicating authority failed to give due respect to the case laws cited by appellant No. 1 and thus failed to observe the judicial discipline in as much as he has not proved the clandestine receipt and consumption of raw material, not extended the inquiry at the end of buyers to ascertain charge of

illicit removal etc.; that they rely on decision of Um Aluminium Pvt. Ltd. reported as 2014 (311) E.T 354 (Tri. Abd.), Adani Enterprises Ltd reported as 2015 (374) E.T 451 (Mad.) and CPSTAF Ahmedabad Order No. M/1033/11034/2013 dated 17.07.2015 in case of M/s. Jayrang Castings Pvt. Ltd. which are applicable in the present case; that the adjudicating authority has wrongly and without authority or law confirmed the duty which they are not required to pay and thus they are not liable to pay any penalty as well.

(a) The confessional statement dated 22.09.2015 of Shri Chetan Goyal, Partner of Appellant No. 1 was not alone evidence to prove the charge against appellant No. 1; that he simply perused the statements and Panchnama and work sheet pertaining to calculation of Central Excise duty on the basis of entries found in the seized private note books from the brokers. Just perusing documents are not direct material evidence unless such entries have been corroborated with the documents pertaining to the illicit procurement of raw material, illicit manufacture of the goods; that since they had not cleared excisable goods without payment of Central Excise duty, they are not liable to penalty.

Appellant No. 2:

(i) The appellant No. 2 stated that the impugned order is non speaking and non reasoning one in as much as the adjudicating authority has not dealt with the pleas made by them in their written submission as well judgments referred by them were completely ignored; that the impugned order is issued in violation of principle of natural justice as during personal hearing they requested to supply relied upon documents to defend their case, which was not entertained by the adjudicating authority; that the appellant No. 2 is not liable to penalty under Section 26 of the Rules as he had not knowingly and intentionally concerned with the clearance of the goods or engaged him in any way; that he discharged his duties by introducing the purchaser and therefore the imposition of penalty under Section 26(1) of the Rules does not arise in as much as he being a broker was called in by the purchaser of the M S Bars for purchase of the same; that since being broker had introduced and finalized the deal, it cannot be said that he being a broker had played any role which would render the M. S. Bars liable for confiscation 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 or collude

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the rolling mill to facilitate the evasion of excise duty by them and he never asked the rolling mill to remove the goods clandestinely.

(iii) That he had only brokered the sale and had nothing to do with the sale of the excisable goods; that he had not asked the seller to sell his goods illicitly but only introduced the purchasers to the seller (i.e. rolling mill); that in his statement dated 03.04.2014, he stated that he had neither purchased nor dealt with the alleged goods; that he never contravened the provisions of the Act or the Rules; that he never confessed having purchased M. S. Bora and TMT Bars from the rolling mill as mentioned in the Annexure-1; that even if it is admitted that he had indulged in clandestine removal of goods and whatever written documents are details of such illicit transactions, then one has to have the evidence from sellers regarding such sale, transport of such goods; that his case is not covered under sub-rule (1) of Rule 25 as he has not dealt with excisable goods in any manner whatsoever and he only introduced the purchaser; that for a penalty on any person under rule 26(1), it is prime caution that either he has acquired possession of any excisable goods with the knowledge or belief that the goods are liable to confiscation under the Act or Rules or has been in any way concerned in transacting, removing, depositing, keeping, concealing, selling or purchasing or has in any other manner dealt with any excisable goods with such knowledge or belief; that he rely on the decision in the case of *Sudrajat Dayoo & Mfrs. Co.* reported as 2002 (348) ELT 151 followed in *A. N. Kulkarni* - 2002 (50) ELT 103 (L.S.I. Mumbai) and decision of *Kam Nath Singh* - 2003 (151) ELT 454 (Tri.-Del.); that any person to be penalized under the provisions of rule should also be shown to have been concerned in physically dealing with excisable goods with the knowledge or belief that the goods are liable to confiscation under the Act/Rules; that he is not liable to penalty as imposed under the impugned order.

5. Personal hearing in the matter was attended by Mr. A. K. Natar, Consultant on behalf of Appellant No. 1 & 2, who reiterated grounds of appeals and submitted two case laws reported as 2014 (311) ELT 354 (Tri.-Mum.) in the case of *Alum Aluminium Pvt. Ltd.* and CESTAT's Order No. A/11834/11034/2015 dated 17.07.2015 in the case of *M/s. Bajrang Castings Pvt. Ltd.* concerning that evidences of 2nd party can't be considered if not corroborated with evidences with the appellant, that there is no money flow back in this case; that in

absence of cross examination demand can't be upheld specially in absence of evidence to evade payment of duty.

5.1 Personal hearing in the matter was attended by Shri Madhav Yandotariya on behalf of Appellant No. 2, who reiterated grounds of appeals also submitted written submissions stating that the impugned order should be set aside and no penalty imposed on Appellant No. 2 as because there is no corroborative evidences; that principles of natural justice not followed by the Department in as much as all relied upon documents have not been supplied to them and even then 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 issue to be decided is whether the impugned order, in the facts of this case, confirming demand and imposing penalty on all 3 appellants is correct or otherwise.

6.1 Appellant No. 2 filed appeal beyond period of 60 days but within further period of 30 days by stating reason that their consultant was busy with work related to adjudicating proceedings before various authorities; that their consultant being chartered accountant was busy with work related to taxation and consulting of that work. Since the appeal has been filed within further time frame of 30 days prescribed under the Act, I condone the delay in filing appeal and proceed to decide this appeal also on merits.

7. I find that the officers of Central Excise, Unavagar conducted a coordinated search at the places of various brokers and transporters, from where incriminating documents like various diaries, files, loose papers etc. were resumed. Further, searches were also conducted at the premises of re-rolling units and certain furnace units. During preliminary inquiry of the records resumed, the intelligence gathered was validated and therefore detailed inquiry was carried out.

7.1 I also find that the statements of Appellant No. 2 recorded from time to time revealed the entries recorded in the notebook/notes moreover during the course of investigation and manufacture and clearances of excisable goods viz.

M. S. Round/D&I Bars to buyers were made against cash transaction. Appellant No. 2 has in a detailed manner explained the codes used and the transactions recorded in the said notebooks/diaries. Appellant No. 3 in his statement dated 29.03.2013 and again dated 22.06.2013 had accepted that the goods had been removed without payment of Central Excise duty and without issuance of Central Excise invoices and payments had been received by them in cash.

8. On going through the impugned order of the lower adjudicating authority, I find that the lower adjudicating authority has given his detailed findings and has also made detailed analysis of the facts and evidences collected during investigation in the form of statements/documents, particularly, the prefabricated documents and statement of Partner of Appellant No. 1 and statement of Appellant No. 2 and findings have been recorded on the evidentiary value of the documents/such statements. I find that the officers of Central Excise, Shikhar conducted coordinated search operations at various places including of brokers and recovered incriminating documents like diaries, notebooks, files, loose papers etc. It is on record that statements of Shri Himanshu Mandloi Jagpal were recorded by confronting them with recovered records and the entries recorded in the notebook/files returned under Fatahiana proceedings revealed manufacture and clandestine clearances of M. S. Round/D&I Bars to buyers against cash transaction without Central Excise invoices and without payment of Central Excise duty. Appellant No.2 has in a detailed manner explained the codes used and the transactions recorded in the said notebooks/diaries.

8.1 On the grounds of appeal, it is submitted that the adjudicating authority while passing the impugned order has ignored the submissions made by them. On perusal of the impugned order, it is noticed that the adjudicating authority has categorically mentioned the defense submissions at various sub-paragraphs of the impugned order, and had also discussed the same giving its findings. Thus, this argument put forth by the appellants is devoid of merits.

8.2 I find that demand of Rs. 3,48,770/- has been made based on records returned from the factory premises of Appellant No. 1, based on records returned from the Premises of Appellant No. 2 (Broker). I find that before recording statement of partner of Appellant No.1, all documentary evidences

recovered from the premises of appellant No.1, Appellant No. 2 were placed before him. Appellant No. 3 in his confidentially statements dated 29.08.2013 and dated 22.09.2013 recorded under section 14 of the Act had also gone through all search warrants drawn at the premises and all the statements recorded by Appellant No. 2 and transporters etc. The Appellant No. 2 being partner of Appellant No. 1 was also given full opportunity to peruse incriminating documents, statements and duty calculation worksheet before giving testimony about the truth and correctness thereof. He was duly shown duty calculation Annexures prepared on the basis of investigation showing transactions carried out through Appellant No. 2 broker of Appellant No.1. I find that the documentary evidences and statements of the brokers, transporters have been discussed and reproduced in a very elaborate manner in the impugned order and many transactions recorded in the seized private records were found tallying with the statutory records/transactions of Appellant No.1 which proves authenticity of transactions and details contained in relied upon documents and relevance of these for duty liability on Appellant No. 1.

8.2 I find that on being confronted with the incriminating documents seized during the searches, all three brokers in their respective statements, during the investigation have admitted that Appellant No. 1 had cleared goods without Central Excise invoices and without payment of Central Excise duty and they know because they acted as brokers in such transactions and entries were available in their private records. Appellant No. 2 being partner of Appellant No. 1 has admitted the transactions without invoice.

8.3 It is seen that there are substantial evidences duly corroborated which have not been refuted at any stage and therefore, as per the settled legal position sanctity of the same cannot be undermined by arguments only. I also find that authenticity of records seized from the premises of Appellant No. 1, Appellant No. 2 (broker) have been duly corroborated and tallied with records seized from other premises where quantifying Central Excise duty liable to be paid by Appellant No. 1.

8.4 Appellant No. 1 has argued that demand of duty cannot be confirmed on the basis of diaries and records recovered from the found party like brokers Hari Hirankar V. Jagann (Appellant No. 2) and hence, demand made on the basis of

third party documents is not sustainable. In this regard, I find that the diaries maintained by the brokers recorded licit, as well as illicit transactions of Appellant No. 1, I also find that many transactions recorded in private records tallied with invoices were actually issued by Appellant No. 1. Thus, truthfulness of diaries/notebooks and other private records recovered from the brokers during search is clearly established, also because both brokers have admitted to have dealt with the goods belonging to Appellant No. 1 without invoices and also sold such goods without invoices. Notwithstanding above, I also find that demand has been computed on the basis of Annexures based on the searches carried out at the premises of these brokers and one at the premises of Appellant No. 1. I also find that all facts involved in the case, i.e. broker, Appellant No. 1 and transporters etc. have corroborated evidences gathered during searches and therefore, demand cannot be said to be based upon third party evidences only. The case in fact, is not based only on third party documents but duly corroborated by host of other evidences also. I find that multiplicity of party would itself negate the concept of the third party. In the instant case, the evidences of clandestine removal have been gathered by the investigating officers successfully from many places and therefore, it cannot be called third party evidences but corroborative and supporting evidences against Appellant No. 1.

3.6. Appellant No. 2 has in his statement dated 22.09.2015 recorded during trial part of the investigation, on being confronted with vital documentary and oral evidences along with duty calculator Annexures, admitted that they cleared excisable goods without payment of duty and no Central Excise Invoices raised for such transactions. This statement of Appellant No. 2 dated 22.09.2015 has not been retracted till date and hence, has sufficient evidentiary value, which cannot be belied. The cumulated appreciation of all such corroborative evidences reflects that Central Excise duty evasion has indeed taken place and Appellant No. 1 has indulged in it. I, therefore, find that all these are required to be considered vital and hard evidences and are sufficient to prove the case against appellants. In this regard, I also rely upon the decision of principle bench of the Hon'ble CESTAT in the case of *Tim Prakash Agarwal* reported as 2017 (346) FT 175 (74-De) wherein it has been held as under :-

"5. I note that in both the proceedings almost identical set of facts were involved. The allegation was that based on evidences collected from the suppliers' side, unaccounted receipt and further manufacture of dutiable items by the appellant was sought to be sustained. Admittedly, the case is not only based on the material evidence collected from the suppliers' side and also as corroborated by the respective persons of the suppliers' end, the receipt and use of the such unaccounted raw materials for further manufacture has apparently been admitted by the appellants and the duty short paid has also been discharged during the course of investigation itself. The appellants' great emphasis on non-availability of the further corroboration by way of details of transport, money receipt, etc. in the present case, the evidences collected from the supplier's side is categorical and cannot be disputed. The private records of the suppliers have been corroborated and admitted for the correctness of their contents by the persons who were in charge of the supplier's units. When such evidence was brought before the partner of the appellant's unit, he categorically admitted unaccounted clearance of dutiable items, however, he did not name the buyers to whom such goods were sold, in such situation, it is strange that the appellant has taken a plea that the department has not established the details of buyers and transport of the finished goods to such buyers. It is seen that the records maintained by the suppliers, which were offered by the persons in-charge cannot be brushed aside. It is not the case of the appellant that the suppliers maintained such records only to falsely implicate the appellant. In fact, the supply of unaccounted raw materials has been corroborated by the partner of the appellant's firm. In such situation, it is not tenable for the appellant to, now in the appeal stage, raise the plea of requirement of cross-examination, etc. Admittedly, none of the private records or the statements given have been retracted or later retracted for their authenticity. In the appeal before the Tribunal, the appellant is making a belated assertion that the statement by the partner of the appellant-firm is not voluntary. Various case laws relied upon by the appellants are not of any support in the present case. In the cases involving unaccounted manufacture, the evidence of such case are to be appreciated for conclusion. As noted already, the third party's records at the supplier's side as offered by the person in-charge and further corroborated by the appellant, cannot be discounted only on the ground of further evidences like transportation and receipt of money has not been proved. In a clandestine manufacture and clearance, each stage of operation cannot be established with precision. On careful consideration of the grounds of appeal and the findings in the impugned order, I find no reason to interfere with the findings recorded by the lower authority. Accordingly, the appeals are dismissed."

[Emphasis supplied]

H.7 Appellant No. 1 has also cited Final Order No. A/11035-11034/2015 dated 17.07.2015 of the Hon'ble CESTAT in the case *M/s. Infrang Castings Pvt. Ltd. and Others* in support of their contentions. I find that the order of Hon'ble CESTAT be as under:-

- (5). In view of above proposition of law, a plea received from the lower and few statements alone cannot be made the basis for denying CENVAT credit to the Appellant in the absence of

cross-examination of the third party witness given further, there is an evidence of alternative purchase of raw material by the appellant for manufacture of goods cleared on payment of duty during the relevant period."

[Emphasis applied]

9.8 On going through the grounds of appeals, as also the written submissions made before the lower adjudicating authority, as discussed in the impugned 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 Hon'ble CESTAT in the case of M/s. Bajrang Castings Pvt. Ltd and others supra is not applicable to the instant case.

9.9 It is settled law that in cases of clandestine removal, department is not required to prove the case with mathematical precision. My this view is duly supported by judgments of the Hon'ble Supreme Court in the cases 1993 (1) 111 (643) (SC) + 2130 (1735) (1) 387 (SC).

9.9.1 The statements, if not retracted, are legal and valid in the eyes of law also and have to be considered as corroborative evidences as held in the cases of Narash J. Sushama reported as 1995 (83) JT 700 (SC) and Rakesh Kumar Garg reported as 2015 (331) ELT 321 (K-Delhi). I find that statement of Director authorized persons or assessee admitting clearances of goods without payment of Central Excise duty and without issuing invoices inculpatory and specific and not retracted is admissible as held in the case of M/s. Hi Tech Abrasives Ltd. reported as 2011 (346) L. 1608 (IT, Del.)

"14. On careful consideration of the facts and circumstances as outlined above, I find that the statement of Director is the basis for the demand. The statement is inculpatory and is specific. The Director clearly admitted that the documents/private records recovered by the officers contained details of procurement of raw materials as well as clearance of finished goods with and without payment of duty. This fact is further strengthened by the observation that many entries in the private documents are covered by the invoices issued by the assessee on which duty stamp paid. The Director has clearly admitted the facts of the cases as well as clandestine clearance of goods covered by the invoices in the private documents which are not covered by the invoices. Such statement is candid and estoppel as has been held by the apex Court in the case of Systems & Components Pvt. Ltd., supra. The activities of clandestine nature is required to be

proved by sufficient positive evidence. However, the facts presented in each individual case are required to be scrutinized and examined independently. The department in this case has relied upon the confessional statement of the Director which is also supported by the mentioned entries in the private records. There is no averment that the statement has been taken under duress. The assessing also does not appear to have asked for cross-examination during the process of adjudication.

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

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

[Emphasis supplied]

11.11 I also rely on the decision in the case of *M/s. Haryana Steel & Alloy Ltd.* reported as 2017 (354) EIT 431 (Tri-Del.) wherein it has been held that notebooks (diaries) seized from the possession of appellant's employee at the time of search showing entries for accounted as well as unaccounted goods which have been explained in detail and disclosed by GM of the factory tally with invoices/ gate passad is trustworthy; that statement of employee running into several pages and containing detailed knowledge to be considered reliable. I also rely on the decision in the case of *M/s. Harishandra Rexus Tel. Ltd.* reported as 2014 (302) EIT 461 (S.C.) wherein similar view has been taken by the Hon'ble Supreme Court.

11.12 I am of the considered view that the above facts need not be argued as has been held by the Hon'ble CESTAT in the cases of *Alex Industries* reported as 2008 (230) EIT 0073 (Tri-Mumbai) and *M/s. Dine Solutions* reported as 2009 (206) E.L.T. 1005 (Tri. Chennai). Hon'ble CESTAT in the case of *M/s. Karori Ergg. Works* reported as 2004 (166) E.L.T. 373 (Tri. Del.) has also

Held that Admission/Confession is a substantial piece of evidence, which can be used against the maker. Therefore, the Appellant's reliance on various case laws is not applicable in light of the positive evidence available in this case as discussed above and in the impugned order. Hon'ble CESTAT in the case of *M/s. K. R. Sponage P. Ltd* reported as 2013 (328) ELT 453 (Tri-Dell) has also held that when preponderance of probability was against the Appellant, pleading of its statements recorded from buyers, no excess electricity consumption found, no new material purchase found unaccounted and no input-output ratio prescribed by law is of no use.

9. In view of above facts, I find that the contentions raised by the Appellants are of no help to them and the Department has adduced sufficient oral and documentary corroborative evidences to demonstrate that the Appellants were engaged in clandestine removal of the goods. I, therefore, find that the confirmation of demand of Central Excise duty of Rs. 1,48,790/- by the lower adjudicating authority is correct, legal 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 116A of the Act, I, therefore, uphold the impugned order for payment of interest also.

9.2 I find that this is a case of clandestine clearances of the duty-paid goods and hence, the impugned order has correctly imposed penalty on Appellant No. 1 equal to duty of Rs. 1,48,790/- under Section 116C(1) of the Act.

10. As far as penalty on Appellant No. 2 is concerned, it is contended that his role was limited as link person and he was not concerned with the goods and therefore, penalty is not imposable on him. I find that he was the link person and had got the goods supplied without cover of Central Excise invoices and without payment of Central Excise duty. Incriminating documents establishing clandestine clearances of the goods were also found from the premises of Appellant No. 2 during the search operation on 17.09.2012. The details of clandestine transactions recorded in their diary/notebooks regarding details of the goods, truck no., cash payments, etc. and his role has been discussed in the impugned order. I also find that inquiry has originated from his premises and therefore, he cannot now plead that his role was limited only as a link person between buyers and seller. Therefore, I find that penalty of Rs. 1 Lakh under

Rule 76(1) of the Rules has been correctly imposed on him.

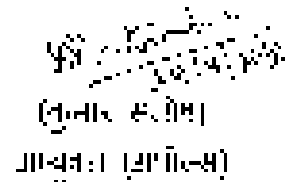
13. I find that penalty of Rs. 1,00,000/- has been imposed on Appellant No. 2, as partner of Appellant No. 1 even when penalty of Rs. 3,48,750/- has already been imposed on partnership firm for duty evasion of Rs. 3,48,750/-, which is on higher side, I, therefore, reduce penalty on Shri Chetan Goyal i.e. Appellant No. 2 to Rs. 50,000/- as partnership firm and partners are two different legal persons and penalty can be imposed on both legal persons in appropriate cases simultaneously.

14. In view of above, I uphold the impugned order in respect of Appellant No. 1 and Appellant No. 2 and reject their appeal, however, I reduce penalty on Appellant No. 3 to Rs. 50,000/- as discussed above.

15. अपीलकर्ताओं द्वारा दर्ज की गई अपील को निम्नलिखित प्रकार से किया जाता है :

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




 (मुन्सिफ़ ऑफिस)
 जायपुर (राजस्थान)

By RPAD

1.	M/s. Sayam Steel Industries Survey No. 240/B, Bhanuagar-Rajkot Highway, Navagam (Kachaj), Dist: Bhanuagar.	श्रीयत सायम स्टील इंडस्ट्रीज, सर्वे नंबर 240बी, भावनगर-राजकोट हाइवे, नवानाग (काचेज) जिल्ला: भावनगर.
2.	Shri Himanshu Nandlal Jagran, 38, Vihar Complex, First Floor, Near Sahani Hat, Waghasadi Road, Bhanuagar.	श्री हिमांशु नंदलाल जागन पी. 38, विहार कॉम्प्लेक्स, गीमा 38, वाघसादी रोड के पास, भावनगर, जिल्ला: भावनगर.
3.	Shri Chetan Goyal, Partner of M/s. Sayam Steel Industries, Survey No. 240/B, Bhanuagar-Rajkot Highway, Navagam (Kachaj), Dist: Bhanuagar.	श्री चेतन गोवाल, भागीदार, सायम स्टील इंडस्ट्रीज सर्वे नंबर 240बी, भावनगर-राजकोट हाइवे, नवानाग (काचेज), जिल्ला: भावनगर.

Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise, Bhanuagar Commissionerate, Bhanuagar.
- 3) The Additional Commissioner, GST & Central Excise, Bhanuagar Commissionerate, Bhanuagar.

- 4) The Assistant Commissioner, GST & Central Excise Division-1, Bhubaneswar.
- 5) The Superintendent, GST & Central Excise, Range-5/B, Bhubaneswar.
- 6) Guard File.
- 7) F.No. V2/217/BVR/2017 ;& F. No. V2/340/BVR/2017

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