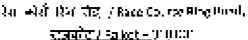


## ारकारम् (आयोहरा) कर कार्याहार, केन्द्रीय राहत् एवं क्षेत्रा करणीर कल्पाद १,७५० । 9/0 HTT FEW MISSION HTT A MEASU CENTRAL EST & TWING.

ਹੁਰਿਸੀਕ ਮੰਜ, ਕੀ ਦੂਸ ਦੀ ਸਟੂਸ ਹੋ<sup>ਦੇ</sup> ਸ਼ਿਆ ਹਨ। ਸਿਲਕਾ,



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<u>र्माध्यक्ष अन</u>्य ६. औं उपाधा क

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अगोल आवेश संस्था (Coper In-Appea, Vir.): "

# BHV-EXCUS-000-APP-059-TO-061-2018-19

आदेश चा दि. अस्य

01.05.2018

जारा बन्दने परे हारीखाः

00.05.201K

Date of Octaes

कुमार सनीभ, आयुक्त (अगोल्स), राज्यनेत दवात गारित 🕹

Passed ha Shri Komar Bentzah, Crattilisaietet (Appeals), Baßet

ৰাম সামুদ্ৰান কৰু না কৰু না কৰু কৰা আনুষ্ঠাৰ সমূহ কৰি একক পুনৰ' উন্নয়ত আৰক্ষিত সামানৱে সামানিক পুনৰ সামানিক কট यस पर्याप हुए हैंसे .

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J. 61% Evershine Strein, Survey No. 2001-P. Changhall Silian Rapid. Vadia, Sikot, 1564 : Вилтиалог.

Starl Vastni Naadn, Portuer: MA: Everstine Steels, Illiawaagor.

3. Shri Mimuushu Gʻzadhil Jagani, 59, Yillar Caullez, Yeqqiwadi Rosal, ishayanga i

ter ustrickflog af er finn stallerfatt dem stallt i die groei uit dat er det de et stalle for mat en model fre Meg uit voor gekoop tot die Orden Appeal mag die en entwal to toe en topfele built fij krijk killen jake,

ৰক্ষা পুনৰ জিল্পাল চৰত দেশ । এই জিল্পা প্ৰথমিক ক্ষমেণিকলৈ কাঁ কৰি আছিল, ক্ষিত্ৰীৰ জ্বলত স্থানী নিজেই এইবৰ মৌ ও না ক্ৰমে কি টোলনাৰ্থনী ক্ষিত্ৰত শ্ৰীপিনৰ ইউটো নিজেন টোল কৰাকৈ জ্বলালিকৰ কৰে, আছিল প্ৰথমিক ক্ষ (2)

Approximation Continues, emission All Nation Continues (Ass.) Pell Antiappy of the Line nervi A. Martin, Turi Appalais. Dicuma uncar Castion **(950 of** 2004, 1944 ) . Inca (Gerana A).

रेमीनका परिवासना एउन निर्माण की सामन जोना पुरस्त निर्माण करायत एक एक प्राचन करियोज त्याच्या प्राप्त की सेल्य होता पेहर कोन्स है। ये जार किन्युरम, को निर्माण से निर्माण करिया है।

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लकरा परिष्येत 100 में कार का असीने के अन्य कार कोने अने ने निम्ना पुन्त के देन काश पुन्त का असका सरीवार काहासिका विकास में किया सकेर किया के सुविधित हम, पूर्व के 2 का आपनी 3 काशमध्य उपलब्ध के 10 को 10 की 2000 के ::

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Denote that I is described into a deal to be of a quantification for the 2-d as provided in the 19 of Denote Borner (Applied Forms 1984) and shall be managed and expense of the solutions of the solution of

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The appeals under this section (i) of Section (5) is the files of Co., 1910, to the file of the control of the class of suggestive is the section of the class of the class of the file of the control of the class of the file of the control of the

- ਉਨ੍ਹਾਂ (ਜ਼ਿੰਨਿਆ 1964 ਦੀ ਪੇਸ਼ 12 ਅਮਰਮੁਸ਼ਸ਼ ਸਿੰਗ ਦਾ (24 ਨੂੰ ਵਾਲੰਤ ਵਰ ਦੀ ਵਰ੍ਹਾਂ ਵਾਲਿ, ਸਰਗਰ ਜ਼ਿਲ੍ਹਾਵਾਰੀ, 1314, 55 ਨਿਜ਼ਸ਼ 375 ਸੰ Лı प्रभाव के प्रभाव के प्रभाव के प्रभाव के किया है के किया के प्रभाव के प्रभाव के प्रभाव के प्रभाव के किया के किय 1974) के कहा मिल्लीन के प्रभाव के किया होती हो हिसी होता 1994, 4 और के बहु के क्रमण आहुत क्रिकेट, के हिस के हि पुरा किया के बाद के किया के किया की किया की अपने किया किया किया किया की किया के प्रभाव के किया करता है कि किया The scould under sub-section (i) was (for all the contain two to be under Ayl 1954) staff to flee in figs 57.7 as prescribed. The Control of the State of the Control Text Fluctuary Control of the Recommendation by Arranging and the Control of Control of the Recommendation of the to finishe appeal to be the open the transiti
- हों। जरू, केरहर हार पूर्ण हो है कि 24 में 1 पिन्द । पीन्देंद्र है पीने अभी है व उसने से क्लीन हरण हार (है है है)। 134- दें एक 134- में अपनेत, जा के देनका कर किया 1844 की पार शाह हिएका कि 25 में 11 मा , को 14 है, अने आहे और की निकार स्थितिक में 104- अपने केर कर किया कर के 1 पिन्द ने पीनेत्र, अने समाय का आहा कि 15 है। अने 14 के 1 के 3 कि 3 कि पिन्देंग है के भूग ने केर कर कि 15 कि 15 कि 15 कि 15 कि 15 कि 3 कि 3 कि 3 कि 15 के III

त्र । प्राप्त कर कार्य कर कार्य १९ - विक्षाद कार्य के कार्य कर तथे १९ - कार्य कर के कार्यकार के मिना के बे कार्य, के कार्य ने मार्ग के बनुष्य मुंदे कार्यकार्य के कि कार्यकार कार्यकार कार्य के कार्य के किया कार्यकार कार्यकार के कार्य र साम अहंग एक काँगा को राष्ट्र (सूर्त कर्ण । राज्यक अहंग एक काँगा को राष्ट्र (सूर्त क्रिकेट)

The art appeal to be find before the exercise, the content of the Charlest Exercise And Charlest of the content of More than on the Books 35 of the Theorem Asy, 160rg on Approximation of the Lindon Small to Letter the Tribunal 21 . LN 6 on payment of 10% of the drive first whose control only and penalty over a choose company of the service of the control of payments and the control of the c

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- 1.1 PRODUCTION CONTROL OF THE PRODUCT OF BUILDING

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two data of the pression of the Constant of the Release (No. 2) Acres (10. 4).

#### तार राज्य में क्योंक्ष्य यक्ति

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िक्कों का अपूर्ण के किया के किया कर का किया है। इस किया कि पुरुष के किया कि कि किया का का कि किया कर का किया का किया किया कि किया का का कि किया का का कि किया इसिंक का किया के किया कि कि पूर्ण के किया कर अस्ति कर किया कि किया कि किया कर की किया का किया की किया का किया भग कल वा (गुर

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- ारि के बाद श्रीप्रमा के श्रितकार कि समित के स्वार्ध के साथ स्थित को साथ से लेक से लेक के लेक कि स्था कर की की श्रीप्रकार को पुरुषके प्रदेशकार करके देश के श्रीप्रकार के Nagal को शिक्षक के तो देश प्रमुख्य के की अबक्र 1 li
- तरिक्षिण रहेना विश्वस्थात । हर है अनुसार के दिए औं पार्टी बाजा हम न प्रेनेशा का उत्तर शिक्षित आकार्य के नहीं की है जैन ऐसे बाद की अनुसार किसेना के देश में कि पिल्ला कार की अधिकार का 10 कि के अधिकार में का मिला की का समाज की का जाता न स्रोत कि बार 80 1-1 Out to the endy a located to be of earthware in proximal of earth in the provider shown in the provider will be said on the contract of the co
- व्यक्त बन्दा की हो परिचार का उसके 60 है है के कि किहीब स्टब्स करते (हरोग है कि बन्दी, 100 के दिवस 1 के बहुआ विदेशित है, इस बहेश के 19 के 20 के 30 के 4 कि बन्दी बहुत 1 के 25 बहुत के 25 व के 25 व कि बहुत के 35 के 17 का कि कि कि उसके विद्यालय है कि दिख्य के 20 के 3 कि 19 के 3 की दिख्य की 19 के 20 के 20 के 20 के 20 के 3 Supplied that the second content of the seco
- and the second section of the second secti 241
- ਸ਼ਹਿ ਜਾਂਦੇ ਜੀ ਸ਼ਹਿ ਹਨ। (ਸੰਨੰਦੇ ਜਾਂਦਰਸ਼ਮ ਜਾਂਦਾ ਦਾਸ਼ਸ਼ ਹਨ। ਪ੍ਰਬੰਧ ਦਾ ਜਿਸ ਜਾਣ ਜਾਂਦਰਸ਼ਦਾ ਦਾ ਹੈ ਜਿਸ ਜਾਂਦੇ ਜਾਂਦੇ ਦੀ ਇੱਕ ਇੱਕ ਜਿਸ ਸ਼ਹਿਤ ਜਾਂਦੇ ਦਿੱਤਾ। ਇੱਕ ਇੱਕ ਜਾਂਦੇ ਦੇ ਸ਼ਹਿਤ ਜਾਂਦੇ ਦੇ ਸ਼ਹਿਤ ਜਾਂਦੇ ਦੇ ਸ਼ਹਿਤ ਦੇ ਸ਼ਹਿਤ ਜਾਂਦੇ ਸ਼ਹਿਤ ਜਾਂਦੇ ਸ਼ਹਿਤ ਜਾਂਦੇ ਦੇ ਸ਼ਹਿਤ ਜਾਂਦੇ ਸ਼ਹਿਤ ਜਾਂ
- क्षाहरूको, ज्यादेक्षा सुरक्ष करियोक्ता (१९५) के अलाको । के अलूका दक्ष स्वयुक्त का अलाक आहा। की और अपीध मेर कारी सार्व का ıE; one way to be a first to be a first of the second of the control of the second of the
- हों।' तरह कि हैया हरह क्षेत्रक के हिन्दू अविनेत्र कार्याविकाय को वैदित कि जाततों, 1900 के विनेत्र के अबदा विनेत्र कारण की परिवर्णि कोई को दिवसी की कर के प्रकार अक्टीक किया था-15| के 21 au 19 de 19 au 19 au 19 de 19 au 19 Aquadola Traine (Theoretic) Turo 1936 ш
- रुक्त करिक्क स्थापक है का अवस्थ अभिन्न करने में महिरीन राजन, जिस्हा और नाईन्ट्रेस करोड़ है । हिंद, बर्गनार्थ जीवाईन रिकाहर 136 reserved to the server of the

#### 3 :: ORDER IN APPEAL ::

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The below mentioned improve have been flied by the Aphillants (Revelopment referred to as "Appellant No.1 to Appellant No.3") as detailed in the Table against Order-In-Original No. 32/Exclse/Demand/2017-18 dated 25:04:2017 (Revelopment to as "the impugned order") bassed by the Assistant Commissioner at Contral Lacase, Surendranager Division (Nervelopfser referred to as "the lower adjudicating outhority") :-

<u> </u>	Appeal No.	Appellant No.	Name of the Appellant
Nn. :	V2/235/BVR/2017 V2/254/BVR/2017	Appellant No. I — Appellant No.2	. mas. III - worshmo Blook Sulvey No. 33-3072. Ghanghali Bihar Road, Madle Sinor, Bhashagar. Shri Visha, Nanda, Paniter of M/S. II - worshing Bhook Sulvey No. 20-3124. Ghanghali Shor Read, Vudia.
} - <u>-</u> -	V7/410/0VR) 2017	! Appeliant Na. र	Shor, Bhavhagar. Shri Himanshu Nandlat Javant, 35, whor Complex, Forth Flour, Near Sonkart Hat, Wagnawadi Road, Bhavhagar.

- 2. The officers of Bhavhagar Commissionerate on intelligence that some resoluting infits of Short, Martej and Bhavhagar were engaged in tente state evasion of Central Excess Butty by way or clandosatin removal of Roirolder products viz.

  M. 5. Round/ TMT Bars lets, with active support of brosons, connucted coordinated search operation at the premises of S/Shri Highar sho Handal Jayani and Magesh R. Sangryi, both brokers of Round/ M1 Hars of Bhavhagar and incriminating documents were recovered from them during search. During Investigations, another round of search operation was conducted at the premises of Shri Magesh R. sangryi, incoher and various incrin hatiny, documents were recovered.
- 2.1 Show Cause Natice No. W/15 120/Dem7-E)/2015 16 dated 26,02,2016 was sold proposing demand of Central Eucise datay of Rs.11,01,7397- under proviso to Section 11A(4) of the Sentral Excise Act, 1944 (*Perethaliter* repertor to as "fac Act") along with incerest under Section 11A(4) of the Act and also proposing emposition of penalty under Section 11A(4)(pp) of the Act read with Rule 25 of the Contral Excise Rules. 2002 (*Pereinalise*) referred to ds "the Rules") under Appellant No.1 and penalty appeals and Rule 76(1) of the Rules upon Appellant No.1 and Appellant No. 3. The Show Cause Notice was 8/Junicated by the lower admidicating authority vide the impregated error, in which (i) Cer 98. Excise (city of 3x11,01,7497) was confirmed under Section 11A(10) of the Act along with interest under Section 11AA of the Act and penalty of 8x11.01,735/-agr3c(15).

was imposed under Section 11AC of the Act read with flute 25(1) of the Rules iipon Apartmet No. 1 with option of reduced penalty as envisaged under Section (1AC(1)(b) of the Act. (iii) Penalty of Rs. (is. 11.01.739). Once Rule 26(1) of the Rules upon Appellant No. 2 and (iii) Penalty of Rs. (b,00,000)- and Rs. (55,000)- has been imposed upon the Appellant No. 3. Groken and Shri Yeyesh R. Sarylovi, broker respectively.

3. Being aggrieved with the Impugned order, the Appellant Na.1 to a have preferred the appeals as various grounds as below:

### Appellant No. 1 :-

- (i) The allegation of illital removal of expisable goods on the basis of entires found in the private records / data books atc. selzed under Panchhama dated 12.09.2012, at the premises of Appellant No. 0 under Panchhama dated 06.10.2012 and from 5hrl Yogesh R. Sang withouter Panchhama dated 06.10.2012 and from 5hrl Ashish Trivedi under Panchhama dated 12.03.2013; that these seized records one not been proved as fauthenticated comments! to sustain the charge of solutiled illicit removal as no such direct evaterial evidences have been placed on necords vizi. Certral Extice Reports meintained by the Audeliana No. 1, weighment slips had been taken on record to sustain the analy of weight shown in the said private note back as well as no material evidences had been placed on record regarding means of ususport.
- (if) I the rection upon documents has been provided in the term of "CD" and not to hard form as required to meet with the principles of sature, justice read with provisions of Section 33 of the Act; that the private records/ note book were not made evaluable for defending the case and they rely on the decision in case of W(s. Sharom Sheel Corporation reported as 2016 (339) (LT 3)(s that when the relied upon documents supplied in form of "CD" not found in accordance with the conditions tald down under Scotling 366 or the Act mad with Section 658 of the Indian Exidence Act, such polyments extend to accordance in the frame ordinary against such person of painty; that he such exidence has been blocked on remove that the reflect upon continents had been supplied in CD form in accordance with the provisions of Section 36 of the basis of third party evidences is not propor and legal to demand and confirm the Control Excise of ty.
- (iii) The adjunicating authority failed to assessed that they had concesturely produced that raw materials and manufactured the excisable goods from such several of the excisable goods.

iBicit producement or raw material and sold the said excisable goods iBicIUy: that in absence of clandestine producement of raw material, availablable of excisable goods from such raw material and transportation of the good without mounting statement of vehicle owner, the charge of clandestine removal of the excisable goods cannot be justified in the eyes of law.

- (N) The case had been made out only on basis of assumption and presumption as the adjudicating authority failed to establish that the coding monitored in the said setzed private configs/record, was pertaining to Appellant No. 1 and action question has been based by the Control Excise officer establishing that the coding name "Aversiae (Eversine)" was name of Appellant No. 1: that without such varioustion of the genuineness of the name of the re-rotting unit mentioned in the so called artifed diames, "I is not justificable that the so called coding ratio as peciphered by Appellant No. 3 is the name of Appellant No. 1; that quantity of SIGI removal had been worked out on the hasis of entries found in the seized private creates but not established the quantity on the basis of weight ent situs etc.
- That transporters have stated in their statement that all such disputed transactions had been carried out by him. I pupply his track so ranks the charge of alltest corroval was framed agricult. Appeller in No. 15 he also stated that his received payments of freight for such transportation in cash, sometimes from Appeller No. 2 and sometimes from the purchaser but this tack had now been correctionable. By the independent evidences viz. specific recording a statement of the said brover as well purchaser; that no such Twestigation had been carried out at the end of the buyer/purchaser; that the said track owner had not stated that such quantities incontinued against such entries found in the said served private records from Appellant No. 3 and Shri Yogesh R. Sanghyu, had norm loaded from the factory premises of Appellant No. 1 and sherefore, the statement of the owner of trucks cannot be taken as correlative evidences an establish the charge of illicit removal of the excessible goods.
- (vi) The entries/neces on which basis Annoxime Flwak prepared, we empt the authoritication and the same were not perused by Appollant Na. 1; that the companison of such entries/ notes with the sales suntharry/ register of Appellant Na. 1 is not sufficient without any corresponding extremes with darty stock account maintained by their wherein such particular of removal of excisable goods are being shown; that no such records pertaining to compit and consumption of naw material are taken on record; that the goods removed by them on payment of Lentral Excise thity are contession statement of printing not slone the evicence to prove the charge.

- (Vii) The so-called financial transactions taken place in solutiled ifficil romayal had not been proved by providing compharation ovidences on record in much as madely flaw back had not been placed on record to charge the fillialt romayal of Contral Excise goods without payment of Central Excise cuty; that the solet had transactions completed by the adjudicating authority on the basis of the private note books/ records solved from the traver cannot be said as completative evidences as the said mounty was not extended to the end of trayer/purchaser and his records were placed on record regarding payment of freight charges.
- (viti) that recovery of some documents is not the uniteria to establish the charge of clandos the removal, unless this proved with correborative evidences you. Illustrates provided the material and manufacture of excisable goods from sigh illicit recorpt and its illicit removal; that the department failed to establish the said preparations with evidences viz. Incomey flow looks, that in absenue of statement/confession of pustomers/buyers with reference to so called illicit removal of excisable goods, such transaction value cannot be ascertained; that the Contin. Excise duty had been worked out on the basis of the sale price shown in the said seized private nate books / records of the third party and therefore, duty demanded on the value shown in the said seized private netords is not proper/ gent the
- The case-tax's citic (by the adjustanting authority are not applicable; the adjudicating authority fasted to give due respect to the case tax's cited by Appellant No. 1 and thus falled to (Exercicitien) isotrouch distribution in as much as the has not proved the clandostone receipt and consumption of ray material, not extended the inquiry at the end of puyers to sustain charge of thinh removal etc.; that they retied on decision of was. Alim Aluminum Pvt. Etd. reported as 2014 (311) at 1,354 (34). About M/s. About Enterprises and reported as 2015 (324) ELT 461 (Match and the Hunfule CESTAT Atmendiand Order No. Additional 10034/2006 ceited (7,07/201) in case of was. Raylong Castengs Pvt. Edd. which were applicable in the present case; that the adjudicating authority has wrough and without authority of law confinites. Use duty within they are not required to pay and thus they are not hable to gay any penalty as well.
- (x) The confessional statements slated 25.03,7013 and cated 15.16.7015 of Shri Visha. Nanda: Pertner/Appellant No. 1 can not be considered alone as evidence to prove the charge against appoilant No. 1; that he simply perused the statements and Panchinama and work sheet perushing to calculation of Central Exclad duty on the basis of entries tound in the several provide note basks.

from the brokers; that perusing documents are not direct material evidences unless such entries are componingled with the documents pertaining to the IMMIT procurement of raw material, their manufacture of the goods; that since tony had not elected excisable goods without payment of Central Excise city, they are not fiable to penalty.

#### Appellant No. 2 :-

Appellant 2, Milthretted Person of Appellant No. 1 resterated the same arounds as have been raised by Appellant No. 1 to the Appeal Morno.

## Appellant No. 3:

- 1:: Appellant No. 3 stated that the impugned order is non-speaking and nonreasoned inasmuch as the lower adjudicating authority has not dealt with the ploas made by them in their written submission as woull judgmonts rejersed by him were completely ignored; that the impugued projects assued in violation of uring ble of natural justice as guiding personal hearing they requested to supply relied upon documents to defend their case; that  $\lambda$ ppollant No. 3 is not liable to pand by under Rule 26 of the Rules as no had not knowingly and intensionally concerned with the strangings of the goods or engaged fam in any way: that he discharged his cuties by introducing the numbaser and therefore, the imposition of accordy under Rule 26(1) of the Rules cods not asiso massiven as he having  $q_{
  m i}$ broker was called in by the purchaser of the M 5 Bars for porchase of the same: that since being broker had introduced and finalized the deal, it cannot be said. that he being a proken lie had played any role which would render M. S. bars. liable to confiscation under of Rule 25(1) of the Rules in order to zuriaca benzil provisions of Rule 25(1) of the Rules: that he had get to any way conspired or colleded with the rothing mill to facilitate evasion of excise curv by them and he reven asked the rolling fall, to remove the goods clandestinely.
- In) That he had only brokered the sale and had nothing to do with the spic of the excisable goods, that he had not asked the soller to sale his goods illicitly or a drift introduced the purchasers to the seller ite, rothin, ntill, represented by Shri Ashren Tirtvedr; that he was just a less unit between ouyer and seller of the good; shat he was not required to be, registered with the Central Particle supportings and they had not violated any rules or regulations; that even if it is admitted that he had included in clancestine removal of goods and whatever written in documents are details of such falce by isactions, then one has to have the evidence from sollers regarding such sale, transport of such goods; that

this case is not covered under sub-mito (1) of killo 26 as he has not deal, with excitable goods in any manner whatshever and he only introduced the purchaser; that loss a penalty on any person under Ride 26(1), it is prime condition that ofther he acquired passession of any excitable goods with the knowledge or holder that the goods are hable to updiscation under the act or Rules or has been in any way concerned in transporting, removing, depositing, keeping, concepting, setting or purchasing or has in any other manner dent with any excitable goods with such knowledge or better; that he rely on the decision in the case of Godrej Boyce (1 Mfg. Co. reported as 2002 (148) ELT 161 (oldewed in A. M. Kulkarni - 2003 (56) RLT 573 (CEDAT Mumbar) and confistancy Ram Nath-Magh. (2004 (151) ELT 451 (Trit-Delli); that any person to be penaltyed under the provisions of rule should also no shown to have been concerned in physically dealing with excisable goods with the provision or have been concerned in physically dealing with excisable goods with the provision or holds that the goods are public to conflictation under the Actif Rules: that he is not liable to personal provision to the Rules in posed or humander Rule 26(1) of the Rules.

The allegation of ziting and abotton, Appellant Na. 1 to not correct, leasment as there is nothing alleged regarding interection, place and communication of Appellant No. 3 with Rolling Mills or Appellant No. 1; that at the thre remarks of youls, Appellant No. 3 had no knowledge that the figure  $\epsilon$ 20 D'Anpedant No. 1 Was to include in the action of clandestine clearances of the excisable godes; that imposition of populty is quasi-criminal in character and therefore, penalty can be imposed only the case of sufficient evidence to oppoantiwellful nature of the offences; there is no evidence on record to confirm that the Appellant No. 3 had in any way, conspired on sollisted with the  $f_{\rm Oo, ing}$ M(M) impossion of density and therefore, impossion of density under Rule 26 of the Rules is any propor and logal; that they relied upon the cases of M/s. Courej. Boyde E. Mig. Co. reported as 2002 (148) u.i.f for (1) and Nam Nath Single reported as 2002 (151) ELT 451 (Tri-Del) to contend that the tagracticity contained in Rule 26 of the Rules continposition of perality are not satisfied in insi-⊟as⊓. Section 1

4. Personal Hearing in the matter was attended by Shri N, K. Waru, Consultant on behalf of Appellant No. 1 and Appellant No. 2 and resterance the grounds of appeals and submitted that the case taws of Horibin CESTATT, Order No. A/11033-11636/2015 bated 17.07.000% in the case of W/s. Dajrang Cashings Pvt. Utc. and Aum Aluminum Pvt. Ltd. reported as 2014(811)FFT354(Tri-A)rd; have held that third party evicences can; he retied upon I not corroborated in the case of the appellant, Utc. there is no manny flow back established by the department in this case; that demand can't be upheld in absence of endorces.

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Remainal Hearing in the matter was attended by Shri Madillav Vallocative appeared on behalf of Appellant No. ) and reiterated grounds of appeals and submitted that the impogned order should be set as de and no appeals should be imposed on Shri Mimorshic Handlal Jaszani i.e. Appellant No. 2, because there is no complicative evidence; that principles of natural justice have not been subplied to show.

### Findings:-

- 5. I have carefully game through the facts of the case, impugated order and written as well as draft submissions made by the Appellants. The issue to be decided is whether the improgned error, to the facts of this case, confiding demand and imposing herality is correct, legal and proper or otherwise.
- A. I find that the officers of Corura, Excise, Bhaviagai conducted coordinated search operations at various places including (\*Apa(Cant No. ! and recovered theriphoating cognitions) like districts, not checks, fluts, large papers are. It is an record that statements of Shr Himanshu Nardial Jayani, and Shri Yogesh R. Sangho, both prokers were recorded by controlling them with recovered records and the entires recorded in the nutribuck/covies resumed under Parichaenia proceedings revealed manufacture and clanicestine Clearances of M. S. Brund/ IMT Bars to boyers against cash transaction without (El tivoloss and without payment of CE duty. As seen from Para 24 of the impugned order Appellant No. 3 has in a detailed manner explained the codes (\*AVER. AVER SINE, EVER\*) used and the transactions recorded in the safe hatchpooks/ctarics.
- 6.1. In the spounds of apocal, it is submitted that the adjudicating authority with passing the impugned order has 'graced the submissions made by them. On perusal of the impugned order, it is noticed that the adjudicating outhority has categorically mentioned the celense submissions at various sub-parais) of the impugned areas, and had also discussed the same giving his sindings. Thus, this argument put forth by the appellants is revoic of cents.
- 6.2 If find that demand of Rs. 11,01,7397- combrises of three Annextres 97. Appearance E (FINAL) / Appearance HJ / Appearance YS / Appearance C. i find that defore recording statement of Appealant No. 7. Authorised Person of Appealant No. 1, al. documentary evidences monorance from the promises of Appealant No. 3 and 5hm Yogosh R. Sanghyi (Broker) were placed before 10%.

Page 9 or 10.

Appellant No. X in his confirmatory statement dated 29,03,2016 recorded under Section 14 of the Activiacy also gone through all Panch almas drawn at the promises and all the statements tendered by Appellant No. 3 and Smill Yearsh 3. SatKJWi, Broker. Shri Vikram A. Jam, Proprietor of M/s. Shree Shr Corporation. Hhavnagan coted 13,08,7015, itransporters etc., Appellant No. 2, was also given. full epopularity to perese incriminaring documents, statements and gutyoptimization workshoet before giving testimony about the truth and correctness. thereof. He was duly shown cuty calculation Americas HJ, Y5 and E prepared. on the besis of investigation showing transactions confide out through Appellant. No.3 and 5hi Tyogest: R. Sanghvil, both brokers of Appellant No.1. I find that the documentary cylclandes and statements of the prokers, gates inchesor, transporcers have been discussed and reproduced to a very lighthograph manner in U.O. https://ied-brider and many increasurables recorded in the served private. recents were cound tailying, with the statutory records/transections of Appellant. No.1 which proves authoritially of transactions and details contained in relied. upon ducuments and relevance of these for duty imbility on Appellant No. 1.

- 6.3 Before proceedings, would like to reproduce some relevant and important paragraphs of she impugned order, which are important to dedice these Appeals as under .-
  - (a) Para 29.1 of the impugned order. The Aspellant No. 7 conforming the duty calculation sheet after comparing them with involces and other statutory documents (  $\frac{1}{\sqrt{2\pi}} e^{-\frac{2\pi i}{2\pi}} e^{-\frac{2\pi i}{2\pi}}$

\*Q.No. c. Please peruse Amuscore \*Hi\* prepared on the balance confidents mentioned at 5c. No. 15 and 10 acts for Amelia managed (2.10.2103 from the perceises is 56.1 Himmesh, Jogas, and talked the same with the original documents.

Answer: I persist Armonora "ID" prepared on the basis of documents mentioned at 50 No. 12 & 64 seizes to make Sun basis and dated "2.09.2002 to a prepared of San - Imarchi, Japant. On tallying the same with the oscillate documents, I found them talked in taken of perusing and tribying the same. I put my dated standard on A no suss HJ

Once, 9: Alessa persuse Americano "C" y repered contre la lice de la mondia mondiant St. No. 6 and 8 seizen qualen Per al name asten 12.09.2012 drawn at othice premiera of Smithtonians, Jagoni, Broker & M.S. Berz and indicat he same with the original documents.

Answer: I perize An region "f" compared on the locals of doctine the mentional of 5- No. 6 as 9 several coder (fundamental dated 1206/2012 drawn at office premises of Stati Highestic, Japani, Braken of M.S. Bars and found all the entires of indication of joint documents in toloring) a construction of salt promoved and associated on Archeology.

Q Nor 13. Above because your sales repeat for the year 2021-2010 and 2042-10 and tollical the same with According  $\theta = H_1$  and A message 75 prepared on the pair or due procedure and observe.

Page 10 of 1d

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Assumer: 1 tollied Armestore El and Annexure  $\mathbb{N}^n$  with tales argued for the EV 2011 2012 and 3012-2013

Q No. 17: Please prime: Annexitie if proported on the basis of American H) and Annexities '6 after removing the entities in capacitof which Control basis of Invaloribus beautisside?

Answer: <u>", per se, Armezi ivez ai di a lip</u>kon al ibi correctione.<u>", pat avez bite signaturi e i la same</u>"

## [Emphasis supplied]

(b) Pare 1.3.6: Shii Yegesh R. SzinJivi, Broket in his statement dated. 27.07.2015 admittee that

"1.2.4.7 Fundam, a statement of the Observe No. 3 was recorded in 27.07.2913 for further classifications, wherein he intendin after perusing no statement debut this 50.0002, continued the lower contains them and further stand that the sourt names/coles mentioned in the deciments No. 5(i) and 500 (free Fordes) non-the source of such start names. In topic to quantion on, 5, in the valuation the first time end [A CES, APGE, bable, EVEK," now need by him for this Exception Start, Share or their or No. 1. The scenared image of page no 14 of dominants no 5(ii) has been share in the block. Once Notice pertaining to the Notice has 1 for the date 04.03. "112. Accordingly, it appeared that an 04.04.091a, the Matters No. 3 has purchased qualities. The Octobe No. 1 and solve the same to some Me. Landow Ma Associates in the Intense.

<u> Seller</u>	Gesorișă spiriți goo.15	Quantity (KG)	Mate (8s.70MT)	donamot (#s.)
Ayer	l ar	20 <del>1</del> 0	42776	23799
	10%	41//(/	49/258	15,9045

Purobaser	Description of goods	Quantity (KG)	 Esta (Rs. ([941])	Amount (Rs.)
M/s. Krashna Ma. Asabr	86 100	2060 4090	41000 39250	8 <u>4460</u> (60533

¿Emphasis

y with

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- (c) Para no. 3.3. : Appellant No. 2, Shif Visha, Nando, Partner of the Appellant No. 1 in his statement dated 15.10.2019, *Index office*, admitted that,
- \*\*...... that the enteres of the Associatives on respect of which no becomes or Subs Buildes been fasted as per them saids records, the group mechanistic Processing State in the sociation of the description in the section of the

[Enripodors

#### supplied].

6.4 If find that on bridg confronted with the inclininating documents solved during the searches, both brokers in their respective statements, and Appellant No. 2 partner of the Appellant No. 1 during investigation have categories by

Mar: 11 of 18

admitted that Appellant No. I had cleared goods without CH invoices and without payment of Central Excise ducy and they know because they accord as brokers in such transactions and entries were available in their private records. Some the entries in ducy calculation worksteet which were lound to be fallying with the stabilitory invokes were also comparing it by the Appellant No. 2. Statements of various transporters also comparing the closurances of goods in clandestine manner by the Appellant No. 1.

- 6.5 It is seen that these are substantial evidences duly corroborated which have not been retracted at any stage and therefore, as per the soffied logal position sanctify of the same cannot be undernified by bald arguments only. It also find that authorificity of ractics softed from the premises of Appellant No. 1. Appellant No. 3 (broken), and Shri Yogosh Ru Sanghvi, broken have been study correbonated and tallied with records serzed from Appellant No. 1 (before quantifying) Certifal Escise duty bable to be paid by Appellant No. 1. The Appellant No. 7 in his statement dated 15 16 2015 as referred to at Para 27.1 of the impression error have clearly accepted Annoxures computing cuty calculations. While comparing the duty calculation, some of the end es which found to be fallying with the statutory records of Appellant No. 1 were also excluded and therefore, it is seen that the duty calculations were fine suited so the satisfaction of Appellant No. 2.
- 6.6 As seen from Para 24 of the impugned order, 1 throughout 59 Jerias well as Purchaser noth have noted identified and clandestiac transactions of the excisable godds correlated which demonstrated clearances without bills accounted for in the books of account by Appellar . No. 1.
- 6.7 Appellants No. 1 has argued that demand of dity, cannot be confirmed on the basis of diames and records recovered from the third party like brokers Shri Himanshi, N. Jagani (Appellant No. 3.) and Shri Yogashi fit Sanghyi, and hence, domain made on the basis of chiro party documents is not sustainable. In this regard, I find that the diames maintained by the brokers recorded held, as well as fallot transactions of Appellant No. 1. I also find that many transactions forced in private records tallied with invoices were actually issued by Appellant No. 1. Thus, that fitness of diames/cooleaces and other arrivate records recovered from the brokers during search its steady established, also begins both brokers have admitted to have dealt with the goods belonging to Appellant No. 1 without Central Excise invoices and also sold such goods without the linearies. It also that demand has been combited on the basis at duty computation Amestics prepared on the basis of prévale records recovered from

the brokers. Palso and Ural all links involved in the case, i.e. brokers. Appellant No. 1, Appellant No. 2, buyer, purchase and timefore, demand cannot be sett to be based upon third party evidences only. The case in fact, is not based only on third party documents but duly combinated by host of inflient evidences a set I find that multiplicity of party would itself negate the concept of the faint party. In the material case, the evidences of clancestine removal have been gathered by the investigating process successfully from many places and therefore, it cannot be called third party evidences but corresponding and supporting evidences against Appellant No. 1.

6.8 Further, Appellant No. 7 and 1 Parmor of Appellant No. 1 Has in his statement dated 15, 10,2015 recorded during final part of the investigation, on being confronted with vital cocumentary and draft evidences along with duty. calculation Anamytes, acmitted that they cleared excisable goods without prayment of duty and no CE involves raised for such transactions. statement or Appellant No. 2 dated 15.10.2015 has not been retracted till date. and hence, have sufficient legal evidentiary value, which cannot be behatied. The combined appreciation of all such comphetative eyidences reflect that CE. buty evasion has indeed taken place and Apacliant No. 1 has indulged in the 1,1 therefore, this that all those are required to be inconsidered vitational name conformes and are sufficient to prove the case against appellants, in this regard, I also rely spoin the decision of  $\Gamma$  the Figurialic CLS $_{1}$ A. In the case of Eq.  $\mathbb{Z}_{12}$   $\mathbb{Z}_{23}$ Ayanwa, reported as 2017 (34A) 617 123 (Tri-Ser) wherein it has been held as under ; Market Same

 $^{2}$ S. It role show in both the proceedings attacks the shoot set of four were immined. The alternation was they based on evidences collected japan the emploister diele, annue outroed totally finalest management of entirelies home by the according was saught to be sustained of <u>decimally the ways by</u> <u>real each flowed on the inspectal anthonic unitaryied from the employing and</u> <u>and also are complemented by the responsitive persons of the supplier's said.</u> The recorpt and two of the rock recording over materials  $ho_{ij}$  product китификате бое вовочение дест одника до зак оружбива с вод изветову. short pend has also been disclared describe the course of intentity arm useful The appellants great engineers on hon-realizability of the purish corresponding by some of densits of management money recope and in the property case. The appliances collected from the supplier's size is comparted. and reason be augusted. The private records of the suppliers have been corresponded and adminolarity plan corresponds of their contains by the <u>persons who perspects of the applier's week. When such embisees.</u> ares brought before the parties of the appellant's unit, he categorically establish was exacted electrons of distrible travel stowers, he did not Here the beserve to whom such provides were said in  $\sup_{t \in \mathbb{R}^n} \sup_{t \in \mathbb{R}^$ smanus tikm the couplines has gainer a plea that the discretional issues. a stabilished the details of her are until terresport of the fine dual courte to such Business. It is soon that the regards paragraph of by the appellent, plants meet

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ryffrendi by the periods fraction  $f_{i}$  and  $f_{i}$  constant the breakers with i which i is i and the రావాల్లి ఇదే లేక్లు స్వాయాలోని ఇది గ్రేమికి కోత్తు మార్ట్యాపైకుకూడి ట్రామ్ విరాష్ట్రవేశికి కొందానీ నిరామాలోని నిరాష్ట్ర సౌక fotoely employeds the appending - in first, the apply of an accommon some uniterate has been consultaneed by the partner of the appellant's first the which directions it is an elemental fraction appointed to, some in the appoint stages, show the pulls by represented if the experience  $x_i$  is the  $x_i$ <u>of the primare consequence the statements about their fixer colours</u> on the removed for their mathematics in the august higher the Tellmant site. apperhaps is an integer a polarised gauge type that the statement <math>L - the norther  $\omega t$ <u>also proportions from a representation.</u> Progress cases trans-ordered space by the  $B_{ij}^{\mu}(p)$  is a function of  $B_{ij}^{\mu}(p)$  in  $B_{ij}^{\mu}(p)$  in  $B_{ij}^{\mu}(p)$  and  $B_{ij}^{\mu}(p)$  in  $B_{ij}^{\mu}(p)$ resignation and magniference, the employees of goods came any to be impreciously for correlation. <u>As reted already the third surrous requests at the singularite</u> <u>ands are attirmed by the pressay or electron and figuriest currence and by the </u> ្នុះប្រាស់ដីស្ថាន ស្មាររបស់ និងស្នាំសេសប្រទេសស្មាន សម្រាស់ស ស្មារបស់ស្បារិសាស់ស្បារិសាស្ត្រិតសម្បារិស្តិស a array session and receipt of respect has not been proved — in a climber are makiifaciista kuuz oluaraksa, uuch staga of operattimi sakiiat ha $_{i,j}$ itab $i_{i,j}$ kad with procings. On careful consideresion of the grounds of appeal and the rindings in the buryagned under, I find up reason to interfere with the jindings recordid by the lawer maillaring. Accordingly, the appeals are  $M_{\rm constant}^{\rm constant}$ 

[Emphasis supplied]

- 6.9 During personal hearing, the consultant has referred to the case of Bharat Shah and Others decided by the Honfble CFSTAL wide Final Order No A/13877 1395178807 whomeny oblicases were remended book to the original adjunicating authority. I find that the facts and originalisating authority in asympthms in these cases involves were issued in the name of regot manufacturers, whoreas inputs were actually diverted to recollers, who altesedly wrongfully utilized Cerval credit which is not the issue in the present appeals.
- 6.10 Appellant No. 1 has also cited Final Order No. A/TIO43-TIO34/2015 dated 17.87/2015 of the Hon'ble CESTAT in the case M/s. Dayrang Sastings Pkt. , Etd. and Others in support of the 2 contentions. I find dist the pricer of Bon'ble CESTAT held as under ;-
  - "5. In view of above proposition of low, a stary recovered transtree broker and few statements alone cannot be inade the basis for denying CENVAT credit to the Appellight in the assence of cross expandation of the third party without given. Further, there is no evidence of alternative parchase of raw material by the Appellant for manufacture of goods closed on payment of daty during the relevant period. ........."

(Emphasis supplied)

6.10.1 On going through the grounds of appeals, as also the written submissions made before the lower adjudicating activities, as discussed at Paral

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By to 10 for the immigred order, if fine shat he request for cross-examining any or the witnesses has been made by the appellants in the present case and therefore, the order of the Herribia CESTAT in the case of M/s. Dayrang Castings Pag. Etd and others stone to not applicable to the instant case.

- 6.5.1 It is settled taw that in cases of clampestine removal, becaute ent is not required to prove the case with mathematical precision. Wy this view is 1000y supported by judgments of the Honfale Supreme Court in the cases 1984 (13) ELT 1631 (SC) E-2009 (226) ELT 587 (SC).
- 5.11.1 The statements. If not retracted, are legal and w, in in the cycli of law and have to be considered as combonative evidences, as field, in the cases of (i) Maresh J. Sukhawauri (1996 (83) ELT 258 (SC) (1) Rakesh Kumar Gorg (2016 (331) ELT 371 HC-Delhij). If the chait Statement of Checkory authorized persons of assessne asimiltang clearances of goods without payment of Central Excise duty and without isoting invoices inclupatory and specific and not retracted is admissible as and in the case of (M/s. H) Tech objectives lite. Incorporatios 2017 (346) ELT 506 (Tri.-Delt.)
  - \*14. On careful coreideration of the facts and circumstances as: authined above. I find that the statement of Pércetor is the basis. for the demond. The statement is luculpatory and is specific. The Director clearly admitted that the documents/pylvate records recovered by the officers contained details of producement of raw. materials as well as clearance of finished goods with and without payment of duty. This fact is further strengthened by the coservation that many entries in the private documents are covered by the invoices issued by the assessee on which duty. stands paid. The Birector has clearly admicted the truth of the thants as well as clandestine elemance of goods covered by the entries in the private notabooks which are not covered by the (profess. <u>Such statement is ed<del>missible as</del> gy</u>idence as has b<del>ee</del>n. held by the Apex Court in the case of Sestems 5. Companents Pvi. <u>(td., (sugre)</u>. The activities of classestine nature is required to be proved by sufficient positive evidence. However, the facts presented in each topicanical case are required to be accuranted and examined independently. The department in this case has relied upon the confessional statement <u>of the Phrector which is</u> also supported by the mentioned e<u>strict in the private rotand</u>s. There is no avenuent that the statement has been taken under auress. The gasessee also abes not appear to have asked for cross-<u>examination alming the process of edjudication.</u>
  - 15. In view of the foregoing. I find that the Commissioner (appeals) has excel in taking the man that there is not enough undence of claudestine remarks of goods. Even though the statement of Shri Sanjay Kejiteri, who is said to be the author of the private seconds recovered has non-been cororded, it soulds admitted by Shri Teknival, Director about the truth of the contents of the private natebacks. Consequently, I find no reason to disallow this piece of evidence.

limitation is invocable in this case and hence the aemand cannot be held to be time-barred "

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[Emphasis supplied]

6.12 I also very on the decision in the case of M/s. Egryona Scool & Alloys Lod. reported as 2647 (355) ELT 451 (Pro-Dell) wherein it has been held that rotebooks (claries) seized from the possession of appellant's employee at the time (disease) showing entires for accounted as well as unaccounted goods which have been explained in detail and disclosed by GM of the factory tally with invoices/gate passed is disseasoffly: that statement of employee running total soveral rages and containing distalled knowledge to be considered reliable. I also rely an the decision in the case of M/s. Ramonandra Rexins Pvc. Ltd. reported as 2014 (302; ELT A61 (3.0.) wherein similar view has been taken by the Hon'ble Suprome Court.

- 6.17.1 If anniof life considered liview that the admitted facts heed not be proved as has been held by the Horristo SPS AT on the cases of ALEX independs reported as 2006 (200) ILT (600) (Thi-Mumbal) and IM/s. Divine Solutions reported as 2006 (206) E.H.T. (605 (Thi. (Chemral), Horristo CESTAT in the case of Mrs. Karom Engg. Works reported as 2004 (166) E.H.T. (273 (Thi. Gel.) has also held that Admission /Confession is a substantial piece of evidence, which can be used against the maker. Therefore, the Apadiant's rehands on various case laws are not applicable in light of the positive evidences available in this case as discussed where and in the impropried artist. Herribia CLSTAT in the case of Mrs. N R Satinge Pitte reported as 2015 (329) ILT 450 (Thi-Del) has also held that when preported from devers, no excess electricity consumption found, no raw material purchase round unaccounted and no month-current ratio prescribed by law is of yours.
- 7. In view of above facts,—find that the contentions raised by the appollants are of no help to them and the Department has acquises sufficient craft and columnitary compound we evidences to demonstrate that the Appollants were engaged in claudestand removal of the goods. I, therefore, find that the confirmation of demand of Geotrei Excise duty of Bs. 10,00,7497, by the lower adjudicating authority is correct, legal and proper.

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- 7.1 It is natural consequence that the confirmed demand is required to be paid along with interest at applicable rate under Scotton 100A of the Act. It therefore, uphoto the imprigned order to this extent.
- I find that this is a case of dendestine pearances or the goods without Corora: Excise invoices and without payment of duty and hence, the impugree order has correctly imposed penalty equal to duty of Ps. 111.01.7397 For Appellant No. 1 under Section 11AC(1) of the Act.
- ō,1. Appellar 1 No. 2 and Partner to Appellant No. 1 has contended that the atwart acqualicating authority has failed to establish as to how he has abased the so-called evasion of Central Firmse disty and thus wrongly imposed penalty on titu ance: Rule 26(1) of the Rules. I find that the facts of this case very clearly establish that the was the key person of Appellant No.1 and was responsible for dandestine removal of the goods manufactured by Appellant No. 1. He, as authorized person, was kacking after day-to-day affairs of AphicPant, No. 1 and nan connermed intrisect in various in equial activities related to extrisable apods. including manufacture, storage, removal, bransportation, ed., of such goods. which he know and had reason to boileve that they were gable to confiscation. upder the Central Excise Act, 1944 and the murs made thereunder. I colong to the toyclyconent of Appeliant No. 2 in this case and gravity thereof, I find that imposition of populty of Hs. 11,01,739/- https://him under rule 26(1) of the Rules is proper and justified.
- nscian as penalty on Appellant No. 3 is concerned, the contembed that his role was limited as link herson and not concerned with the ego/s and therefore, penalty is not imposable upon him. I find that he was the key person and had been desting with the goods on behalf of appellant not  $\epsilon$  without cover. of SI invoices and supplied the same without payment of CS duty, incriminating cocuments establishing clandestine clearances of the goods were also to indirram the premises of Appellant No. 3 during search proceedings on 12.09.2042 . The details of clandestine transactions recorded in his diary/notebooks. contained details of the goods, truck not, cash payments, etc. Thus, his much etaborately discussed in the impugned order and Inject, chaptry has originated based on the cocuments recovered from his arrenters and ancrefore, he cannot now plead that his role was himited as a link densor only between targets and sellor. I find that his role was very crucial in the whole opisode of claridestile. removal, of goods. Tacordore, I find that penalty of Rs. 5.00,0007. Imposed on nim under Rule 26(1) of the Rules is correct and interest is no need to interfere with the impagned order.

- 9. In View of above, I aphold the impulped order and reject all appeals riled by the appellants.
- 9.1 अमीरकतीओं द्वारा तब की गई अलीतों का निम्हादा उनसेका वर्षक से किया बाता है ।
- 9.3 The appeals riled by the Appellants stand disposed off in above terms

 $\int_{\mathbb{R}^{2}} ds \, \frac{g^{(Q_{1}, s_{1}, s_{2})}}{2s^{2}} ds$ 

्रिक्रिया रातीय) आमुक्त (अमीन्या)

<u>Бек.н.</u>А.р.

 this: I vership Speels, Survey No. 30-31/P, Ghanghau-Sihor Road. Vacco, Sihor, Hhavneger.

 Shri Visha, Nanda, Parntenoli W/s. Evershine Steels, Survey No. 20-21/P, Ghanghali-Silien Road, Vactio, Silien, Bhavnegon.

3. Bhid Himanshu Nandlat Jagam, Broken 36, Mhar Compley, Earth Lloce, Near Sahkari Hat, Wagi awadi Read, Bitavreyar.

#### <u>Copy for Information and accessary action to:-</u>

- I) The Obtain Commissioner. GS: A Contral Excise, Ahmesabad Zone, Anmedabad for his kind information.
- 2) The Commissioner, GST E Control Exclad, Bhavragan Commissionerate, Bhavragan
- The Additional Commissioner, GST & Central Excise, Bhashagar Commissionerate, Bhashagar
- The Assistant Commissioner, GST & Contra. Excise Division Surendranager, p. Supendranager.
- ১৮.rendrahar ১৯১) Guard Filo.
  - C No. V2/254/BVR/2017
- 7) T.Na. V2/410/BVR/2017