

आयुग्त (प्रार्थकम्) वर वस्तास्य रोज्योव दस्यु एव ऐवा वस्तु और ५४७८ बुक्कः। १८०४ वर्षे स्थापनाद्व स्थापनाद्व (१५४५), स्टार्थ १५८६ ६ १५८७६,

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BHV-EXCUS-000 APP-062-1/O-063-2018-19

आदिश वर दिस्तवन

01.052019

लाई। काने की ताईक र

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Date in Author

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कुमार कर्ताप आस्तरत (अगास्त्र) भवनीय करण गरिन : Describing Shift Komer Gentoch, Commissioner (Appeals), Pajkali

हरें । असे अहारते बहार अनुभार अनुभार अहार अहार, काहर समाय हात्राचा, तमकार साम्राज्य, असीरिका हारह हाई विकास हा समाय आप सहस्र के

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- रा । अभिन्नती के अस्तिके के नार का NarroSeAuss of the Appellante A Despoissor
 - 1, 919 R (mestivor Steel Re Rolling Mill, Plot No. 166, CFDC Martej, Diat Blackugar,
 - 2. Shri Himanaba Namilul dagani, 3R, Vilene Consley. Waghoonti Rend, Hhaypaghe

ত্য প্ৰচাণ পৰিলেক আমিল কাই কাৰীয়া কিন্তাই জিলা (এই নাজ্যন্ত্ৰ, আৰু নিন্তাই নাজ্যন্ত কৰি নাজ্য কৰা কৰে। ই নাজ্ উপন্ত সংগোধন কৰা পৰিলেক উপন্ত Crest কিন্তাই লোক বিজ্ঞান এই কৰা ২০ চিনা একুমত্ব কৰে কৰা কৰে। ই নাজ্যন্ত কৰু কৰ

্ত্ৰ কৰিব মুখ্য কৈইল কথাৰ দুল্ল কৰা বজনৰ জনিবিত কৰাজনিবক বা এটা পোনে কৈইছে এন কৰা এছা কিনা এইছা লাখ্য। এনা স্থ পাৰ্কে কি কিয়ে মান্তিৰ সংখ্যা নিম্নান্ত কৰা এই সংখ্যালয় লাখ্যালয় কৰা হয়।

Figure 6.6. The first r_{ij} which is described Table 8 to an expectation of the state r_{ij} is a positive r_{ij} of r_{ij} and r_{ij} a

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है। अनुसर प्रतिक्रिया पुरू के दूसर पर कार्यों के भवाब की उसी आहेंग जीवा से के के अध्यक्त का ते हुए उसी कार्या क जिल्हा कि में कि में कि में कि के किया है किया जा मून के बान उसने के सम्बद्धानक प्रभाव जा समाने किया है

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- क्षेत्र कुल्य केल्प्रेट, लाव कुल पर रेडकर भरिकेट साविकार एउटका के प्रीत कोटी के उसार पर केल्प्रेट एउट कर पहिस्तान सुद्धा के इस उपलब्ध के केल्प्रेट केल्प्रेट क्षेत्रिकार पात्र के प्रतास कार्य के प्रतास के प्रतास केल्प्रेट केल्प्र केल्प्रेट केल्प्रेट केल्प्रेट केल्प्रेट केल्प्रेट केल्प्रेट केल्प्रेट केल्प्रेट केल्प्रेट केल्प्र केल्प्);

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समार कर-कर्णा विकास कर्माला.

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- কৰা বাবি নিৰ্ভাৱ হৈ যা বাবি লি ভাৰত কৰা চাইটিটো বা অধুকোন ইন্টান যে ইনিং টোইটো বাবি আধুকা লি কুলা টেইটো আ সমাসান, আনমান ইন্তান বিকলি আৰু জনাৰ বিভিন্ন কি নাই কি । আনমান বিভাগত বিভিন্ন কামবাহিত কৰ্মকাৰ চাইটো বিভাগ আৰু বিভাগত কৰিবলৈ কৰাইছিল বিভাগত ভাৰত ভাৰত সভাৱতি হৈছিল। আন বিভাগত হৈছিল বিভিন্ন কৰাইছিল কৰাই চাইনিং কৰিবলৈ বিভাগত বাবি বিভাগত বাবি বিভাগত কৰাইছিল। ıIı
- දුරු දැනක අද යා කාර්යාලය. එම විශාල විශාල විශාල විශාල විශාල දැන්නේ අවසා වෙන දැන්නේ දැන්නේ දැන්නේ විශාල දින්නේ ව අවසාවේ සම්බුල්ලයේ අතුරුත් සම්බන්ධ මෙන අතර සංක්ෂාවේ විශාල වෙන වෙන වෙන අතර අතර දැන්නේ දැන්නේ දැන්නේ දැන්නේ සිටි 18 1
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- क्षी के के कि साम में महत्वेद किया कि कुछ के अध्यक्षी के अभी 1 देखा। अभी नामके पान पान के नाम के नाम कि कि का कि का कि को प्रकार किया जान की अभि संनास करा जा कर करा करों में सकताओं है अभी देखा कहा किया है है। जिस अभी का कुछ आदेश की कि के अध्यक्षित के कि अध्यक्षित के अध्यक्षित को अध्यक्षित के अध्य 141
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- নাএই বিভিন্ন স্থানাকৰ একে প্ৰতিষ্ঠিত। 140% কা প্ৰয়ুক্তি কি তত্ত্বা হয়ৰ প্ৰদাধ কে তিয়া কিছি কি ইমানিক ১৮০ কি কা বিষয়ক কোন বিষয়ে স্থানিক কিছিল। Characopy of soprodon or Curu, we discuss make the promote state of the stiff four curvature, and in all such a few states and the such appears to the curvature of the San Character of San Characte
- ाम पाना केंद्रीर इत्याद हुन्दर पानर वा नाहरे हुन्य किया उक्षण होता विकास का किया में पहिला पानर आहे के आसते की जीवादीय करा कही दिख्या के भीच के बाद्या आसीच किया जाता है । :11 Calle Bern i Help Brother, dies, dies die schie spracher en er gebied versen, des abhait die de Cautoma, Costa Brother Appellan Effecte and Cautoma (Costa Brother Appellan Effecte and Cautoma (Costa Brother Brother Brother and Cautoma (Costa Brother Brot
- हात प्रतिकेच क्रिकेट के होते. हिंदा करा () होशेंट अबट हिंदू, 10 कि कार 4 कि 1 d ()) (seed filtings and 5 c considering the fill of the fill? In the extreme was a major or property receptor to a surely a time region age we see the expedit may the british beginning as a first party. 1.:

13 :: Order in Appeal ::

The below mentioned appeals have been filled by the Appellants (hereinafter referred to as "Appellant No.1 and Appellant No.2") as detailed in the Table against Order in Original No. Advisorise/Remands(SI10-17 dated 30.03.2017 (hereinafter referred to as "the impugnee order") passed by the Assistant Commissioner of Central Excise, Surendranagar Division (hereinafter referred to establish Surendranagar Division (hereinafter referred to establish).

. 5r. . No.	Appeal No.	Appellant Nn.	Name of the Appellant
	V7754376VR7Z317	Appellant No. 1	M/s. Rameshvor Steel Re Rolling Mill Plot No. 10b. GIDC. Vertej, Distr: Hhavrage.
7.	V2/34///SVR///SVT	Appetian i Na. 2	Smillt manshu Nandlal Jagam, 38. Viliar Complex, Forth Flact, Mear Sahkan Hat, Wagbawarti Roac, Bhavhayar.

- The diffuence Blackmagar Commissionerate on thirt igning that some remoting units of Short, Verter, and Bhavhagar were engaged to large scale eveston of Central Excise Duty by way or claridestine removal of Re-rotted products viz.

 M. S. Rotalez TMT Bars of a with active support of Brokers, conducted coordinated search operation at the premises of StShm Himanshu Kandial Jagani, broker of Round/TMT Bars of Bhavhagar and incriminating documents were recovered from third during search.
- 2.1 Show Cause Notice No. M/15-108/Bern/HQ/2015 to rather 76.07.7(ns) proposing demand of recovery or Central Excise duty of Rs.12,87,617/- under the provise to Section 15 A/4) of the Central Excise duty of Rs.12,87,617/- under the provise to Section 15 A/4 of the Act and Also proposing imposition of penalty under Section 15 A/4 of the Act and Also proposing imposition of penalty under Section 15 A/2 of the Act and Also proposing imposition of penalty under Section 15 A/2 (heroine/for referred to as the Ricest) upon Appellant No.1 and personal penalty under Rule 26(1) of the Rules upon Appellant No. 2. The Show Cause Notice was adjustanted by the Towar adjustanting authority vice the in pagned order, in which (3) Central Excise duty of Rs.12,87,617/- was continued under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section 11 A/4 of the Act and penalty of Rs.12,87,617/- was imposed under Section

3. Roung aggridwed with the impugned order, Appellant Ne.1 and 2 have arrifected the appeals on various smaller, intervalle, as below:

<u>Appellant No. 1 : </u>

- In allegation of chaft removal of emissable goods on the basis or ontres found in the private records 7 note backs etc. serzed under Panchusina dated 12.09.2012 at the premises of Appellant No. 2) that these seized records had not been preved as "authoriticated decuments" to sustain the charge of \$0.42.40 dilett removal as no direct evidences have been placed as records with Central Excise Records maintained by Appellant No. 1. no weightnent stips taken on record to sistain the entry of weight shown in the sale private note book as well as no material evidences placed on record regarding means of transport; that the vehicle numbers have been shown as "G.-4, GJ-1, GJ-1 etc."; that such entries have not been found in Seizeu private records to continue the transportation to the excitable goods.
- (ii) The relied upon decomests have been provided to farm of *CD" and not in hard form as required to mee. The principles of natural justice read with provisions of Section 33 of the Act; that the private records/ note books were not available for defending the case; that they rely an decision in the case of M/s. Shiwam Sweet Corporation reported as 2016 (CDS) CLT 310; that when the relied upon decisions supplied to room of *CD" not ferred to accords we with the conditions (and sown under Section 36B of the Act read with Section 65B of the indian Evidence Act, such decisions cannot be accopted as revidence; to transpla charge against such person of party; that no such evidence has been placed on record that the relied upon occuments had been supplied in CD form to accordance with the provisions of Section 36 or the Act, and bonne the impugned order has been passed beyond the scope of Show Cause Notice and on the Leasis of third party evidences, which is not propor to demand and conditing Control Excise duty.
- (iii) The adjudicating authority failed to establish that they had clandestinely produced the low materials and manufactured the monstable goods from such lifetit producement of raw material and sold the said excisable goods illicitly; that in absence of clandestine producement of low material, manufacture or excisable goods from such raw material and transportation of the good without recording statement of volucio owner, the charge or clandestine removal of the excisable goods cannot be just field in the eyes of law.

Pege 2 of 12

- (iv) The case has been made out only on hasts of assumations and presimptions as the adjudicating authority has totled to establish that the coding name mentioned in the said solved private diamos/month was portaining to Appellant No. 1 and no such question has been asked by the Central Excise officer establishing that the coding name "RW" was name of Apprilant No. 1; that without such vertification of the genuineness of the name of the re-rotting unit mentioned in the so called seized climies, it is not justifiable that the so called coding name as deciphored by the broken is the name of Appril ant No. 1; that quantity of short removal had been worked out only on the basis of onlines found in the seized private diames but not established the quantity on the basis of weighness is jps etc.
- (v) Shri Hardevshili 8. Gahil, Owner of Truck No. GJ-3Y-9044, GJ-4X-9044 and SJ 4W 9404 had not stated in his statement based Ch.C4.2015 that all disputed transactions had been certified out by him through his above rink as; that he had schedines received payment of freight in cash from Shri H. N. Jagari and sometimes from purchaser; that the said truck owner has not specifically stated that the quantities mentioned against such entries jound to the said setted private records from the said broken.
- (vi) The entries/hotes on which basis Annakure-Elwas propared, were not authoriticated and the same were not got betased by Appellant No. 1, that the comparison of such entries/ notes with the sales summary / register of Appellant No. 1 is not sufficient without any compountative evidences vizi daily stock account maintained by them wherein such partnership or receipt and consumption of law material were taken on receipt that the goods removed by them payment of Central Excise duty and confessional statement of partner was not sufficient evidence to prove the charge.
- (vri) The so-called financial transactions taked place in so called illicit removal had not been proved by providing corroborative evidences on record in much as money flow back had also not been placed on record to substantiate the charges the cluent removal of Central Excise goods without payment of Central Excise duty: that the so-called transactions corroborated by the adjudicating anthority on the basis at pitvate nath beoks a records selved from the broken carried be said as complorative evidences as the said inquity was not excepted to the end of broken payment of freight chasen and no records were placed on record regarding payment of freight charges.

- In This recovery of some documents cannot be the basis to establish the Charge of clairdestine removal unless to is proved with comobinative evidences, namely, fullot receipt of raw materials and manufacture of excisule goods from such allock receipt and marufacture of excisule goods from such allock receipt and marufactures viz. Inoney flow back: that in absence of statement/confession of costomers/outgers with reference to so called fluctionized of excisable goods, such transaction value cannot be assertained; that the Gentral Excise duty I ad been worked but on the basis of the sale price shown in the sale served private rate books a records of the didd party and therefore, duty demanded on the value shown in the sale served private records is not properly genuine.
- (ix) The case laws energibly the active cating authority are not applicable, the adjudicating authority failed to give the respect to the case laws effect by Appellant No. 1 and thus failed to observe the judicial discipline in as much as the has not proved the clands stine receipt and consumption of raw material, not extended the logury at the end of buyers to sustain charge of Illicit perioval etc.: But they retire on decision of W/s. Ann Aluminum Pvt. Ltd. reported as 2014 (311) Etc. 394 (Tit.-Ahda). W/s. Adeni Enterprises Ltd reported as 2015 (124) -ttl. 461 (Wod.) and the Herribio CES AT Ahmedanes (Incom No. A/1103)-11034/2015 dated 17.07.2015 in case of M/s. Bajrang Castings Pvt. Ltd. which were applicable in the present case; that the adjudicating authority has wrongly and without authority of law configured the duty which they are not required to pay and thus they are not required to
- the confessional statement dated ab. 12.2015 at Stati-Temant Astrok Dixis, Proprietor of Appellant No. 1 can not be considered the sale basis as evidence to prove the charges of clarifestine perioval; that no other person whose statements have been recorded has stated that the said partner (sig) is revolved to the clarifest to comoval of the exclsable (bods; that the said partner (sig) shiply perused the statements and Panchnama and work shoot partner (sig) shiply perused the statements and Panchnama and work shoot partner (sig) entertiation for Central Excise duty on the basis of entries found in the served private note books from the brokers; that hardsing documents are not direct material. Evidences private note books from the brokers; that hardsing documents are not affect pertaining to the fluorit producement of raw material, fluor, metalacture of the goods; that since they had not cleared excisable goods without payment of Central Excise duty. Shey are not liable to possible.

Appellant No. 2 :-

Appellant No. 2 has stated that the impushed order is non-speaking and 11: non-reasoned one trasmoon as the tower adjudicating authority has not doubt with the blood made by them in their written submission, as well judgments. referred by their were completely ignored; that the impagned order is issued to violation of principle of natural justice as during pursonal hearing they. reducated to supply relied upon documents to defend their bases that the Appellant No. 2 is not tiable to penalty under Rule 26 of the Rules as he had not knowingly and intentionally concepted with the digarages of the gases of engeged from its any ways that he discharged his outlos by introducing the purchaser and therefore, the imposition of penalty on him under Rule 26(1) of the Rules is not proper masmuch as be hoing a proken was rating in by their purchaser of the MIS Bais for purchase of the same: that he being broker had infratiused purchaser to seiler and finalized the deat, it cannot be said that he as a broken had played any rain which would render $N_{
m e}$ St bars etc. Capte for COMPRESSION under the provisions of Rule 25%) of the Rules to order to attract. penal growstans of Rule 76(1) of the Rules; that he had in no way conspired on colluded with the rolling mod to facilitate the evasion of cookse duty by them. and he never asked the colling mill to comove the goods clandes thaty. $\sqrt{2}\sqrt{2} = \sqrt{2}$

That he had only brokered the sale and had nothing to do with the sale of (11) the extinable goods; that he had not asked the salter to sale his goods illigitly. but only introduced the purchasers to the setler ite, reliing will, represented by Shri Dizioja (s.e. Proprietor of Appollant No. 1); (not he $p_{f e}$ t not $q_{f e}$ t, w $f q}_{f e}$ t $q_{f e}$ t, $q_$ goods but was just a link between buyer and seller of the groep that he was not required to get registered with the Sentral Excise authorities and he had not violated and rules or pogulations; that even it this admitted that he had todinged himself in claricostine removal of spous and smalleyer will ten in documents are: details of such filter transactions, then there had to be levicence from set ers. regarding such sale, transport of such goods; that investigation has not been extended tipto boyers end and whether sales proceeds had been received in cash: that this case was not covered in our sub-rule (1) of Rule 26 as he had not dealt with excisable goods in any marrier whatscever and he had only introduced. the purchaser; that for a heralty on any person under Kule 26(1), it is prime. condition that either the said person adquired possession of any excisable group with the knowledge or helder that the goods were liable to configuration under the Act on Rules or had been in any way concerned in transporting, reprovingdepositing, keeping, conceating, setting or purchasing or had in any inthermagnes regult with any excisable godes with such knowledge or Deliël; that 10 á

reuted on the decisions in the case of Gacrey Boyco & M/g. Co. reported as 2007 (148) SET 181 followed in A.M. Kutsamin. 2000 (56) KET 570 (CEGA) Member) and decision of Ram Nath Singh - 2003 (151) EET 451 (Tri.-Ce...); that any person to be persuade under the provisions of rule should give be shown to have been concerned in physically deating with excisable goods with the knowledge or behind that the goods are Hable to confiscation under the Act. / Rules; that therefore all deating removes are quasi-criminal and inequired production of positive and tangible evidences as here by the Hombus CESTAT in the case of Chandan Tonacco Co reported as 2011 (270) FLT 87 (1915) and therefore, the case of clandestine removal is not proved; that in view of this he was/fs but hable to personal penalty of Rs. 5,00,000/- as imposed under Rule 25(1) of the Rules.

- finit The altegation of aiding and abelling Appellant No. 1 is not correct. Its smuch as there is no interaction, place and for continuidation with Appellant No. 2 with alleged Kolling Mills on Appellant No. 1: that at the corp removal congoods. Appellant No. 2 had no knowledge that the fooling Mill/Appellant No. 1 was to and tigs in clandescrip electroses of the excisable gasets; that there is no evidence on record to confirm that Appellant No. 2 had in any way, conspired or colluded with the Rotting Mill/Appellant No. 1 and therefore, imposition of periody on non-under Rotting Mill/Appellant No. 1 and therefore, imposition of precision of the Rotting Rotting Rotting Co. reported as 2007 (148) ELT Init (1)c A Mill-Rotting apparted as 2003 (186) RD 1570 (CDSTAT-Mum) and Rom Nath Singh reported as 2002 (151) ELT 451 (Thi-Del) to contend that the ingredients of Role Word the Rotes for imposition of penalty are not available in this case.
- It is Personal Hearing in the matter was ascended by Shrt N. X. Maru, it onsultant on behalf of Appel and No. 1 and he reliefated the grounds of appeal and submitted Written Submissions dated 21.00.2008; submitted rhat no maney flow back on purchase of rew materia, etc. Journal outing investigation; that implighed arcent may be set aside one appeal allowed in view of facts or this case.
- 4.1 Personal hearing in the matter was attended by Shir Machay Vadodanya apacared on achalf of Apachant No. 7 and relicrated grounds of aspeal and also submitted widther submission that the impusped order should be set eside and no penalty should be imposed on Shirl Illinanshi. Nand all Jeger dire. Appellant No. 2, Necalise there is no considerative evidence, that principles of natural justice.

Findings:-

- I have carefully gone through the tacts of the case, impugned order, writter as well as oral submissions made by the Appellants. The issue to be decided as whether the impugned order, in the lasts of this case, confirming demand and imposing hemoity on both appellants is democt, legal and proper or otherwise.
- 5. If the that the difficers of Central Expice, Bhavnagar conducted search operations at various places including that of broken and recovered incriminating documents like diames, potetooks, files, code papers etc. I also find that the statements of Shri Himanshu Abandal Jagani, Appellant No. 2, were recorded by conflorting him and others with recovered records and the entries made to the notribook (forles etc. resulted under Parichiania proceedings, which revealed manufacture and clainestine a corondes of their finished goods to hityers against teach transactions without CE invoices and without payment of CE outy. As seen more Paris 22 of the impugned order, Appellant No. 2 has in a detailed manner explanted the cases (FR.W / Him) written in (dagles etc.)
- full. It is submitted that the adjudicating authority white passing the impugned order has ignored the submissions made by them. On period or the impugned order. I find that the adjudicating authority has mentioned the defense submissions to details in the impugned order. Hence, this argument advanced by the appealants is peroid of morits.
- 6.2 If the Abot Cemend of Rs. 12,87,617% comprises of three Annexines viz. Annexure EliffhAL) / Annexure Hill / Annexure C. It forther Tital Ithat before 1900(Chig the statements all documentary evidences recovered from the promises of Appellant No. 7, were shown to Jean. Sini Heliam. A. Bik'i, Proprietor of Appellant No. 1 in his confirmatory statement (later 26.12.2016) respected under Section 14 of the Act had gone through all Panchaama drawn at the processes and all statements tendered by Appellant No. 2, it respectes etc. Appellant No. 1 was given full appartunity to peruse inorthinating comments, statements and duty calculation worksheets before giving systements about the truth and correctness thereof. The was shown duty calculation Annexings Hil, I and Elifebrared showing Canadams camed but through Appellant No. 7. I find that the documentary evidences and statements of the broker, transporters, etc. nove been a soussed and reproduced in claborate manner in the impulsion order.

and many transactions reported to the select private records were found follying With the Statutory records/transactions of Appellant No.1 Which acroly prove authoritisty or transactions and details contained in the select upon documents and relevance of shase for duty Pablithy (I) Appellant No. 1.

- 6.3 Before prospectings, would like to discuss relevant and important parassaults of the impugnes order, which are important to decide these two Appears as under :-
- (a) Para 29 of the impligned order Proprietor of the Appellant No. 1 confirming the duty calculation sheet after comparing them with lavolces and other statutory documents :
 - ²Q. No. 12 Photse perment to nexture "HII" propored on the both of documents mentioned of the No. 12 and 14 select coaler Parchhamo dated 10.00,2012 from the premises of Shii Hing being Jagan and talked for some will be configural documents.

Answer: I peruse Annexore [11] promoted on the basis of documents mentioned at Schöol 12 & 14 secret under Pareto and (later, [2:09.2012) from paste asset Shell Himmsho Tegara. On reliving the same with the original documents, i remodulpent tallied. In token of perush-constabilitying the <u>symo</u>. put in § 2x ed eignstore on Annexore [5]].

(4) No. 15. Please period Announce 10.7 per boost on the pagis of condition a one index at Sr. No. 5 and 8 secred under Pagelinance Japan. 12.09.2012 Announce of Store on misser of Plan Himanaha Jagan; Droker of Mississ and talked the same with the original demonstration.

Answers — parties Azurentine "C" propanti on In tensi- or documents men inner al School & & seized under Paschnama data? (2.08.2812 dezver, at of its premises to Stef Hillian star Jageri, Broker of MS. Bere and ground all the cotton to the wj. b. Inno. et al decomments just 10.000 of its hours thees, i put my dated signature on "Annesa rest.".

Q 5-9. By It is observed that in respect of notices once in within above our line of An issues, where no invertees or Sales in I have permissued by you, the goods mentioned in the tail or jugs have been removed by your than seithful payment of only and without issuemes of Control House theory is \$11 and?

Answere, Yes.

184 N. S. . . .

- Q. No. 19: Here did you therive payment is the preconsolid / removed by your firm, without assumes of revolve and we have payment of the y?

 Answer: a <u>new vell payment of goods and / removed by my formatilihout issument of its exact without respect to day by ask.</u>
- 0.21. Please project A not since the present on the basis of Armstone III after removing the embres in respect of which C out of exclusions in the been issued.?

Answer t - Liperuse, Annexure Planding $(\log_2 u)$ its endestroes, Liperuse, detect $\log_2 u$ and the same, "

TEmphasis supplied li

- (b) Part 30 of the importance order a Seeking partion for their first mistake ***0 —— In term of the above and categorism admission by the Academism person of Matters No. 7 of between no seape that the notices on. 7 or make a their therefore make their moment the position and propagation of increase and arithmet payment of duty and received smooth in each for such dendestine riserance. The Matters Mo. 1 fally admitted the only station of No. 79,87,517/4 as rehighed and some fact transfer of the fally admitted the other of the date, perduse answer and the total duty inhibitor of Ro. 1 of Editor (Academy) and processed and they signed by him ander the plantament dated 25 12.2015. The Matters Mo. 2 disorby admitted in his definite submission dated 20 02.2017 date.
- d. "Therefore, it is removable to consider this aid being a from our one dron the charges wheleyet og sinst our chart and referen from imposing a panelty."

 [Limited supplied]
- (c) Para No. 17 of the impligned order :-
- "IT The personnal neuring for Notices 2 and Inia on 06.93-2017 added any attended by Sixi Madian M. Indicator, Conferral Accountant and naturated finite representation 27.62.2912 and admitted input written submission should 66.25-2014. See plantal first incident tensus graph with mean real results."

[Emphasis supplied]

- 6.4 I find that or being confronted with the recovered foothtaating documents, Appellant No. 1 and Apocliant No. 7 in their respective statements, during investigation have categorically admitted that Appellant No. 1 field cleared goods without CE invoices and without payment or 1.4 duty and they know those transportions and montes available in their private records. Many entries in daity colouration workshoot which were found to be tallying with the statutory invoices were removed from the same alter comparing. Statements of various transporters also commontated the clearances of the finished goods in clandestine manner by Appellant No. 1.
- (3)—I find that those substantial evidences daily confounted have not around retracted at any stage and therefore, as per settled logal position, sanctive of the same call but be understand by have arguments only. If also find that authoritisty of records setted from the premises of Appellant No. 3 has been duly completeled and totaled with records setted from Appellant No. 1 below quantifying Control Decise duty hable to be paid by Appellant No. 1. Appellant No. 1 in his statement dated 25.12.2015, referred to at Part 79 of the impulsed once; these also accepted. Appellant computing duty calculations. While sampling the duty calculation, the entries found to be fallying with the stability reductations were fine limed to the setStation of the Proprietar of Appellant No. 1.

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- 6.6 I find that Approlant No. 7 had sought apology, it being dieir fist mistake and had requised and its impose penalty for clandestine transactions at the excessible goods carried out, without bills and without accounting for in the peaks of account.
- $A_{\Phi, P}$ ettants No. 1 has argued that demand of duty learned be confirmed. 5.7 on the hase of diamos and records recovered (usin third party like broke: 5 Yi-Thirmanisho Ne dagani ("Appellant No. 2") and the demand made on the basis of thive party documents is not susteinable. I In this regard, if fine that the crames maintained by Appellant No. 7 recorded conal, as well as claim transactions of Appellant, No. 1 and many transactions recorded in private records tall ed with the involves actually issued by Appellant No. 1. Inus. truthfuness of pravies/natebooks and other private records recovered from Aupellant No. 2. coming search is clearly established, also because Appellant No. 2 has admisted to have dealt with lithe gapids belonging to Appellant No. 2 without 1 - I wolgas. and also sold such goods without payment of CD noty. In also find that domain. has been computed on the basis of duty computation Amexices prepared on the basis of provide records recoveres from Apart and Soul Land 2.1 Lags tipd Dist. all links involved in the case, i.e. prokents, Appellant No. 1, Appellant No. 2, transporters into, have correborated evidences galliered during searches and therefore, periland parabolize said to be based upon third party extremors agily. The case in fact, is not based only on third party accuments but duly correborated by next of other statements and evidences recovered from Appellar . No. 1 lated I find that the fact of many persons involved negate the concept of third party. In the instant case, the evidences of chances no removal. leve been gathered by the investigating praintry successfully from many places. and therefore, it cannot be called unity evidences but compborative and supporting evidences against Appellant No. 1. A September 1
- 6.8 Turbon, Promissor of Appollant No. 1 is his statement dated 25.12.2015 has an being confronted with vital documentary and oral evidences along with outy coldination Amexices, admitted that they cleared finished excisable goods without payment of 1L duty and no 04 involves were issued for 900 himsections. The statement of Appellant No. 2 cauch (5.10.20)5 has not been repracted till date and honce, have sufficient legal evidentiary value, which cannot no brushed aside. The combined appreciation of all corroborative evidences reflect that CL duty evasion has indeed to on place and Appellant No. 1 has indulged in CH outy evasion. It, therefore, find that all vital and hard evidences are required to be considered, are softened to prove the case against

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apprillants. Tely upon the final order of the boutble (ESTAT in the case of Oni Prokash Agarwat reported as 2017 (346) 2LT (25 [Yn-Del], wherein it has been field that:-

 $^{\circ}5-1$ have that in both the proposalizer nimes: which set of facts were $^{\circ}$ misoland. The ollogization must have been increasing enhancing colliging the factors are apppliers their resistant making and further completive of structure nesses by the appellant the analysis to be restained. Admittedly, the case is But all by housed and the sampling engineer and group to an eight population. សារនី នៅការ ការ ដោយការប្រ<u>ទេសថា កំណាមមួយការបានប្រកាសដែល ខា</u>មក្រឡាប្រ ល្បី ម៉ាន សង្គ្រាបែល សមាជា The through and now of the such unaccounted can institutely for faither readilistics from approximity been admired by the appellants and due days where provident when been that have all though the course of his emigration is also The repositions great emphants на нон-азонаbility of the facility monotomical by the of details of theological, average model, see, he dis-<u>per cert cause, the employees</u> collected from the supplies is site is exactly that <u>ими намлюй дв. фарация.</u> Тод дживаю посонал од изи передина наво делен recombinated and admitted for the connections of their contents by the nyrawaa wii o waxa uu changa ah iko sugaban'i malo. Wilan sandi kabumaa man drought deform the partner of the appellant's and, he makes inside relativest amore section elements of auxiliable income continues, in that we <u>nome tils ånners</u> to milam such amdadet hare kold til Fista situation it er <u>situated tight also appealant that failers in privations for the commonwell two rest</u> នូវសុខ្លាំនៅនៅ និង ដី២០៤០ ឡី ម៉ែត្រសា ១១១ ៤០០សុខា ៤ភូមិក ស្រាស់<u>នៅ គួលរប់ ខែ</u>នកា<u>ត់</u> buyers of it is excell that the records walkstaked by the expedient ingredayies. абіджей із, біз разваня іннійстру кысым інстиный ахісы і care of the appellace that the objection valuations raids encore any or hillselv the little that apprehime - in fact, that supply of management of the Materials that here controllerwest by the position of the appellant officer has then small has the world broughly for the approximation was in the appears among Kähk let jariat ily exprimanta aj aron-kramientian dat <u>Halmusetty, som </u> nd the polarity pyrocch <u>or the atomic and given frame her are treated or but a</u> domini desti filio i india <u>producentativa di li the l'amaza i potario tras l'indiana</u>li dia j ក្សាក្នុងជានៅ ២ ខាល់ដែញ ជា ប្រជុំ<u>ចំណើយសមារយាយដែល ម៉ែន រាងមានការនៅ មិន ២០ ប្រជុំដែ</u>នប្រជុំ Die lagge Britisting <u>in mit bedreiterp</u>. Parmier was deuts sellied open by ike appetitions are an of any majors in the present rank to the court bordishy. realition united managinarians. The endderine of each case one to be appreclared. from the straightens of a reconstraint condy, then there is proof a $m{x}$ in the constraint $m{x}$. and the afficient by the previous societies are present recommended by the <u>apprendent a committe a discrepa and confusion descr</u>ip pagest of facilises conductates bilas. <u>removement as and receipt of many few end to see provide their deviations and the commentation of the commentation and the commentation of the co</u> <u>montplenare and classifies are larging of president control of Carblished</u> milit promision. On computerminidensition of the growth of appeal and the Justings by the impagned andry, it journs theorem to interfere with the filmalings becomes no the more unemody, standardingly, the appeals are alianiyaset."

[Limphasis supplied] 📑



- 6.9 Appellant No. 1 has cited Final Order No. AZTROSS 11934/2015 dated 17.97.2015 of the Heribie EdistAT in the case W/s. Bejreng Castings Evol. Etd. and Others in support of their contentions. I find that the order of Hamilton CESTAT he dissipation;
 - 11. In view of above purposition of law, a diary economical from the broken and few statements alone compt be made the basis

for genying CFMVAL credit to the Appellunt in the givence of mass-examination of the third payty values given. Further, there is no evidence of alternative purchase of raw material by the Appellant for manufacture of guess cleared on payment of duty during the relevant period."

Emphasis supplied!

6.9.1 On going through the grounds of appeals, as also the written submissions in adeligation the lower adjudicating authority, as discussed at Paris 07 to 17 of the impugned order. I find that no request for prossessmining any of the witnesses has been made by the appellants in the present case and therefore, the enter of the Homble CESTAT in the case or Mass Isograng Castings Pat. The and others saw as not applicable to the instant case.

6.10. During personal heating, the consultant has referred to the case of Bharat Shah and Others decided by the Hamible SESTAT vide Lina. Order had A/13577-13931/2007 whereby 55 cases were remarded back to the original adjudicating authority. Find that the tacks and circumstances at littlese cases are different, maximum as in these cases invoices were assued in the name of impot manufacturers, whereas inputs were actually diverted to remailers, who allegady wrongfully utilized Canvat credit which its pot the issue to the present appeals.

- 5.11 It is settled law that in cases of clandestine ramoval, Department is not required to prove the case with mathematical production as has been held by the class Stand Remarks (Fig. 1983) (13). FIT 1631 (50) and Aaltoot Textiles (f) F. Ed. reported as 2006 (235) 1.11 587 (90).
- 6.11.1 The statements, if not retracted, are legal and valid and have to be considered as corroborative evidences—as field—in the cases of Narcan J. Sushawani reported as 1990 (8.9) FL 17.8 (80) and Rakean Aurigi Carg reported as 7016 (331) ELT 321 HC-Detail Find that the Statement of Proprietor at Appellant No. 1 admitting elementes of goods without payment of SE duty and Without Issuing CE invoices are incultiatory and not retracted has to be held as admissible as held in the case of Mas, HI-Tech Abrasivas Ltd. required as 2017 (346) ELT 606 (Trit-Det.)
 - "14. On coreful consideration of the facts and channestances as untilized above, I find that the statement of Education is the basis for the demons, the statement is unablactory and is specific. The

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Phrecial clearly admitted that the documents/private removals recovered by the afficers contained details of procurement of new instantals as well as riediscope of finished goods with sea without payment of duty. This fuct is further strengthenen by the sbearcoffee that many couries in the private decompage gresovered by the involves issued by the assesses on which duly stands (void, The Director has clearly adoptiled the trott, of the charts as wel<u>l as thandertine cle</u>stance of group covered by the entries in the private corebooks which are not covered by the iavoires. <u>Such statement is</u> continuible as evidence as <u>has been</u> held by the April Court in the case of Systems & Companions Put. <u>Ltd. (supra)</u> The activities of standarting nature is required to he proved by sufficient positive evidence. However, the facts presented to each individual case are required to be securitized and examined independently. <u>The department to this case</u> has gelled apon the conf<u>essional statement of t</u>he Director which is diso supported by the monthned entitles in the private reports. There is no accoment that the statement has been taken under distribut. The arrestee cits diges had appear to have asked for cross-<u>examination during the</u> process of adjudication.

15. In view of the furegoing, I find that the Commissioner (Appeals) has erred in taking the view that there is not arough endence of claudestine removal of goods, twen though the statement of Shri Sanjay Kajaiwal, who is said to be the author of the private records recovered has not been recorded, it stands admitted by Shri Takawal, Phrector about the trait of the contents of the private interest, Consequently, I find no reason to disallow this place of evidence.

14. The evidence of cloudestine clearance has been brought on terrors only as a result of investigation undertaken by the department. The evidences unearthed by the department are not statistically documents and would have gone undetected but for the investigation. Therefore, this is a clear case of suppression of faces from the department and containly the extended period of limitation is invacable to this case and hence the demond cannot be fine-barred."

[Limphoras supplied].

6.11.2 If also sely on the decision in the case of M/s. Haryana Stock 9 (Curys Edd. reported as 2017 (355) ELT 451 (Thir-Del.) wherein it has been held that notebooks (craries) selzed from the possession of cape land's employee of the time of search showing entries for accounted as well as palacounted goods which have been explained in detail and disclosed by C/A of the factory tolly vacu invoves/gate passed is trustwerthy; that the statement of smalloyee rounding into several pages and containing detailed knowledge to be considered behandly, whereas in the rostant case it is Proprietor. I also roly on the decision in the case of M/s. Ranichandra Revins Pv., Ltd. reported as 2014 (302) ELT A61 (5.0.) wherein similar view has been taken by the Honfale Apex Court.

- Annual the considered living that the admitted facts need not be proved as has been held by the Hombro (PSIA) in the cases of Alex laduatries reported as 2006 (230) FIT 13074 (Lin Number) and MVs. Divine Solutions reported as 2006 (200) FIT. 1005 (Thi. (Cheman), Howble CESTA) in the case of MVs. Karoni Eng. Works reported as 2004 (156) FIT.1. 375 (Thi. Gol.) has held that the Statement is a substantial piece of extreme, which can be used against the maker. Therefore, the Appellant's relation on various case laws are not applicable in the impulsated order. Homble CESTAT in the case of MVs. NiR Sponge 7 Ecd reported as 2019 (378) FIT 453 (111 Del) has also hold that when preparations of probability was assents the Appellant, pleasings of he statements recorded from payers, no excess electricity consimption found, we way material purchase found unaccounted for and no impulsorial. Table arrestribed by tay etc. are of no use.
- 7. In view of above facts. I find that the various points made by the Apochants are or no original them since the department has addined sufficient dual, and decomenizary combinative evidences to demonstrate that the Apochants were engaged in chancestine removal of the finished goods without proporting Chantworces and without payment of Chauty III, therefore, find that the confinitation of demand of Central Excise duty of ks. 12002.6177- by the lawer adjusticating authority is correct, legal and property
- 7.1 Since demand is confirmed it is natural diet the confirmed command is required to be paid along with interest at applicable rate under Section 115A of the Ast. I, therefore, uphold order to pay interest on confirmed command.
- Fig. 1 and that this is a case of clarificatine diesronices of the finished goods and therefore, the impagned order has correctly imposed ponalty of Rs. 32,87,6177. (i.e., equal to demand or duty conflicted), on Appellant Ro. 1 under Section 11AC(1)(a) of the Axt. $\frac{1}{\sqrt{N}} e^{N} N_{ij}^{N} e^{N}$
- 8.1 Insufar as parally on Appellant No. 2 is concerned, if it contended that his mile was limited to little person and he was not concerned with the goods and therefore, penalty is not imposable upon him. If no that he was the key personand had been liceasing with the goods on behalf of Appellant. No. 1 without cover left CE invoices. Incriminating documents establishing chancesting clearances of the Halsher goods were also recovered. From the premises of Appellant No. 2 during the search operation on 12,09,2012. The details of clearables transportant recovered transportant details of clearables transportant recovered transportant details of the details of the details of the premise transportant recovered.

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goods, trucking, cash payments, etc. Thus, his role cannot be derived campany has difficiented based on the documents recovered from his promises and therefore, he cannot now plead that his role was limited as a link person between the buyer and the seller only. I find that his role was crucial in the whole optable of clandestine removal of goods and hence, imposition of perolity on him londer Rule 26(1) of the Rules by the lower adjudicating authority is correct. However, I find that the quantum of personal penalty on him is very high and pends to be recursed to Rs. A takes to the interest of justice.

- 9. In view of energy I reject enpeat of Appellant No. 1, but partially allow the appeal of Appellant No. 2 by recurring personal penalty on him to Rs. 2 lakl s. 19 to 15 case.
- 10 अमेरिकताओं द्वार दर्ज की गई आगोटी का निगटाम उपरोक्त वर्षके से किया जाता है ।
- 10 The appeals filed by the Appellants are disposed off as above.

WHI

्तुमार संतोप) अत्युक्त (अमीहर)

By_R.P.A.3 To I. M/s Romeshwar Steel Re-Rolling Mili,

Plot No. 106, GIDC, Vartey. Distre Uhavnegar.

2, Shal Himanshu Nandle) Jagan , Ricker , KK. Yihar Lompuck, Forth Pacif, Hear pankari Hat, Wagnawaci Rosa, Bhavilagar ,

Copy for itiformation and necessary action to:

- 1) The Chief Commissioner, 1891 is Central Lacise. Ahmedabad Zone. Ahmedabad for his kind information.
- The Commissioner, GSI at Control Lacise. Bhovmagar Commissionerate, Theories.
- The Adorttonal Commissioner, GST P Control Excise. Above again Commissionerato, Rhave again
- A) The Assistant Commissioner, GST & Central Exclse Division-1, Bhavragar.
- ુરા) Scard Fice.
 - 6) F No. Y2/347/3VIV/2017.