





**:: ORDERs IN APPEAL ::**

The above mentioned appeals have been filed by the Appellants (hereinafter referred to as Appellant No.1 to Appellant No.3) as detailed in the table against Order-in-Original No. 581-2024/Income Tax-17 dated 30.03.2017 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner of Central Excise, Bhavnagar District (hereinafter referred to as the lower adjudicating authority)

Sr. No.	Appeal No.	Appellant No.	Name of the Appellant
1	V2/2001/IVR/2017	Appellant No.1	M/s. Bansal Casting P. Ltd. Plot No. 65, Village: Vada, Taluka- Simer
2	V2/2187/IVR/2017	Appellant No.2	Shri Anu Bansal, Director M/s. Bansal Casting P. Ltd. Plot No. 65, Village: Vada, Taluka- Simer
3	V2/346/IVR/2017	Appellant No.3	Shri L. Manisha Nandlal Jagani JE Ahar Complex, Earth Floor near Banker's Hall, Waghawadi Road Bhavnagar.

2. The officers of Bhavnagar Commissionerate acting on an intelligence that some retelling units of Bihar, Varanasi and Showapur were engaged in large scale evasion of Central Excise Duty by way of clandestine removal of Re-rolled products viz. M. S. Round TMT Bars etc. with active support of some brokers, conducted search operations at the premises of Shri L. Manisha Nandlal Jagani and Yogesh K. Sangha both brokers at Round TMT Bars at Bhavnagar and recovered incriminating documents from their going serial. Thereafter, a further round of search operation was conducted at office premises of Appellant No. 1 and various incriminating documents were recovered. Investigation culminated into issuance of a Show Cause Notice dated 16/02/2018 proposing demand of Central Excise duty of Rs.33,90,573/- under Section 114(f) of the Central Excise Act 1944 (hereinafter referred to as the Act) along with interest under Section 117A of the Act and Impeller of penalty under Section 114C of the Act read with rule 23 of the Central Excise Rules, 2002 (hereinafter referred to as the Rules) upon Appellant No.1 personally and upon Appellant No.2 and upon Appellant No.3. The Show Cause Notice was adjudicated by the lower adjudicating authority wherein Central Excise duty of Rs.33,90,573/- was

confirmed under Section 114(1) of the Act along with Interest under Section 114A of the Act and penalty of Rs. 33,60,573/- was imposed under Section 114C of the Act read with Rule 26 of the Rules upon appellant No. 1 with option of reduced penalty 66 per Section 114C(1B) of the Act, Penalty of Rs.23,60,573/- on Appellant No. 2 and Penalty of Rs.10,00,000/- on Appellant No. 3 were imposed under Rule 25(1) of the Rules.

3. Being aggrieved with the impugned order Appellant No.1 to 3 preferred the appeals inter-alia on various grounds as below:-

Appellant No. 1:-

(i) Demand of duty on clandestine clearance of excisable goods is confirmed on the basis of third party evidences i.e. entries found in the private records / note books etc. seized under Panchnama dated 12/08/2012 at the premises of Appellant No. 2 and certain incriminating documents seized from residential premises of Shri Yogesh R. Sangher under Panchnama dated 08/10/2012. That these search records and various statements of Vehicle Owner/ Transport agencies recorded as follow up action are not the direct material evidences to sustain the charges under Central Excise Law without any corroborative evidences pertaining to central excise records maintained by them.

(ii) Appellant No.1 submitted that he has requested for copies of seized upon documents and also wanted them to be examined by the persons and brokers before the adjudicating authority. That adjudicating authority has not considered their defence reply and proceeded the adjudicating process without supplying related such documents and in violation of Section 9D of the Act as no cross examination was allowed to them that they relied upon the Hon'ble CBEIT's order in the case of M/s. Malabar Dying Mill reported as 2013 (343) ELT 452 (Tribunal Madras). Appellant also relied upon following case laws:-

- 2016(328) ELT 749 (Tribunal) - M/s. Alliance Alloys Pvt. Ltd.
- 2016 (340) ELT 67 (Tribunal) - M/s. Central Drugs Pvt. Ltd.

(iii) Annexure E to the show cause notice does not contain corroborative evidences like details of Vehicle Number, Names of buyers and quantity of goods; that the Appraiser was not appraiser himself. Since Appellant No.1 has stated that purchase amount was taken from the seized private documents and Appellant No.1 has stated that rate of goods was being fixed looking to cost of materials and hence purchase amount shown in Annexure-F is not

genuine in terms of Section 4 of the Act as it is not established that whether purchase amount was 'transaction value' or 'whole Sale' value, that quantity of goods has not been verified from the Daily Production Register maintained by Appellant No.1 and private records can not be relied upon in absence of Cross examination by Appellant No.1

(iv) Shri Vikram Jain, Proprietor of M/s. Sai Corporation, Binswaganj has stated that Shri Yogesh R Sanghal was working for their firm on Commission basis as a "Chhantwala"; that the work of Chhantwala is relating to manage loading of such agreed upon goods in to the trucks in the presence and in confirmation statement is given by Shri Yogesh Sanghal

(v) Appellant No 2 who is a director of Appellant No.1 had a ready perusal the seized documents and various statements; that Panchanama drawn at the office premises of Appellant No.1 in pursuance of summons issued 26.03.2012 wherein time of visiting office is mentioned at 13:30 hrs of 24.03.2013 whereas Panchanama was completed at 14:30 hrs on the same day i.e. on 28.03.2013 that it is not possible to verify each and every entry of Annexure B consisting of 161 entries in one hour which also included the time of searching of the office and taking the statement of Appellant No.2, that 131 entries were consisting of serials of date, vehicle number, weight and the name of the rolling mill or rolling system; that all process were done in haste and statement of Appellant No 2 was recorded without proper verification of seized documents and each and every seized private note book was not verified, that statement of Appellant No 2 was recorded on 28.03.2013 in very short time and proper opportunity to verify the correctness of seized documents was not given at any time of investigation; that no inquiry was extended to the persons whose statements were recorded to justify the genuineness of the diaries; that Shri. Anil Bansal has already perused the Panchanama and seized documents and never criticised the removal of assignments consisting of 161 entries from the factory, that no inquiry was conducted with the creditor with regard to correctness of the documents seized under Panchanama;

*(Signature)*

(vi) No evidences in respect of purchase of raw material without receipts, excess employments or excess consumption of electricity were adduced.

(vii) Findings of the adjudicating authority are given only on the basis of say evi

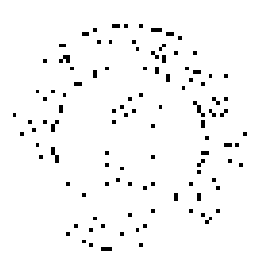
submission of books and entries of the books without corroborating evidence relating to entries, entries, entries viz raw material register, daily production register, money flow in cash, etc and without granting permission to cross examination of the witnesses.

(vii) The said such documents had been provided in the form of CD and not in hard form as required to meet with the principles of natural justice read with provisions of Section 53 of the Act; that the private records/ note books were not available for deposing the case; that they rely on the entries in case of M/s. Shivam Steel Corporation reported as 2016 (332) ELT 310 that when they relied upon documents supplied in form of CD not found in accordance with the conditions laid down under Section 163 of the Act, read with Section 85D of the Indian Evidence Act, such documents cannot be accepted as evidence in frame charges; that no evidence has been placed on record that the relied upon documents had been supplied in accordance with the provisions of Section 26 of the Act.

(viii) The adjudicating authority has not appreciated the case laws relied upon by Appellant No. 1 that they relied on the entries in the books of M/s. Om Aluminium Pvt. Ltd. reported as 2014 (311) ELT 654 (Til. App.); M/s. Adani Enterprises Ltd reported as 2015 (224) E-1 406 (Mha.); and the Honble CBEIT, Ahmedabad Order No. A/1265/11064/2015 dated 17.07.2015 in case of M/s. Sakang Castings Pvt. Ltd. which were applicable in the present case; that the adjudicating authority has wrongly and without authority of law confirmed the CE duty, which they are not required to pay and thus they are also not liable to pay any penalty imposed.

**Appellant No. 2:**

Appellant 2 & Director of Appellant No.1 reiterated the grounds raised by Appellant No.1 and also submitted that he has not confessed the facts and circumstances mentioned in the said seized entries and no persons whose statement have been recorded has stated that it was needless to evasive or conceal excise duty, that the statement dated 23.03.2018 was recorded in haste that no person has stated that removal of suspicious goods was made as per the direction of Appellant No.2 that it is not proved that Appellant No.2 are liable for the goods were liable for confiscation; that no such charges were framed in the seizure case notice for illegal removal of goods and for its participation.



Appellant No. 3:

(i) Appellant No. 3 submitted that the impugned order is non-speaking and non-reasoned and hence as the lower adjudicating authority has not dealt with the views made by him in their written submission and also judgments referred by them were completely ignored. That the impugned order has been issued in violation of principle of natural justice as during personal hearing they had requested to reply relied upon documents to defend their case. That Appellant No.3 is not liable to penalty under Rule 26 of the Rules as he has not knowingly and intentionally concealed the clearances of the finished goods or engaged him in any way. That he discharged his functions by introducing the purchaser and therefore, the imposition of penalty under Rule 26(1) of the Rules does not arise inasmuch as he being a broker was called in by the purchaser or M/S Hara for purchase of the same; that as broker he had introduced and finalized the deal and it cannot be said that he being a broker, he had played any role which would render M/S liable to confiscation under the provisions of Rule 26(1) of the Rules in order to attract penal provisions of Rule 26(1) of the Rules; that he had not in any way conspired or colluded with Appellant No.1 to facilitate evasion of excise duty by them and he never asked Appellant No.1 to remove the finished goods clandestinely.

(ii) That he had only arranged the sale and had nothing to do with the sale of the excisable goods. That he had not asked the seller to sale his goods illicitly but only introduced the purchasers to the seller; that brokers have deal with the goods just as his between buyer and seller of the good; that even if it is admitted that he had indulged in clandestine removal of goods and whatever written documents are details of such illicit transactions, then one has to have the evidence from sales regarding such sale, transport of such goods; that this case is not covered under sub-rule (1) of Rule 26 as he has not dealt with excisable finished goods in any manner whatsoever and he has only introduced the purchaser; that for a penalty on any person under Rule 26(1), it is not enough that either he acquired possession of any excisable goods with the knowledge or belief that the goods were liable to confiscation under the Act or had been in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or had in any other manner dealt with any excisable goods with such knowledge or belief, that he rely on the decision in the case of Godrej Deyce & M's. Co. (supra) as 2002 (148) ELT 181 followed in A. M. Kulkarni - 2002 (26) ELT 572 (CEGAT Mumbai) and decision of Hari Nath Singh - 2003 (15) ELT 451 (16-12-01) that

any person to be penalized unless the provisions of rule 21(c) can be shown to have been complied in physical dealing with the excisable goods with the knowledge or belief that the goods were liable to confiscation under the Act/Rules; that it is not liable to personal penalty or Rs 10,00,000/- as imposed under Rule 28(c) of the Rules vide the impugned order.

4. Personal Hearing in the matter was attended to by Shri Ranul Gajera, Advocate on behalf of Appellant No.1 and Appellant No.2 and submitted that no incriminating documents were found from the premises of Appellant No.1 that no excise goods or duty goods were found at the time of search at their end, that Director has never exercised administrative control no manufacturer or clearance but SDA & impugned order mistaken the fact and shown to be otherwise, i.e. this party documents can't be the sole ground in absence of any corroborative evidence or purchase of raw materials or sale of finished goods clandestinely, no copies of relief upon documents not given to them; that even cross-examination of broker & transporter whose statement have been relied upon; was not been granted against legal requirement and also to ascertain that that demand is time barred as extended time not applicable in this case

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4.1 Personal Hearing in the matter was attended by Shri Mahesh Vardasaiya on behalf of Appellant No. 3 and reiterated grounds of appeals and submitted that the impugned order should be set aside and no penalty should be imposed on Shri Jitendra Khandu Jagari i.e. Appellant No. 2, because there is no corroborative evidence; that principles of natural justice have not been followed by the Department. Reasoning of RUDs have not been supplied to them. He files written submission wherein it was inter alia contended that various decisions relied upon by the adjudicating authority was not applicable in this case.

**Findings:-**

5. Have carefully gone through the facts of the case, impugned order are written as well as oral submissions made by the Appellants. The issue to be decided is whether the impugned order, on the facts of this case, containing demand and imposing penalty on Appellant No.3 & 5 is correct, legal and proper or otherwise.

6. I find that the officers of Central Excise, Bhavnagar conducted search operations at various places including of brokers and recovered various



incriminating documents like diaries, notebooks, files, loose papers etc. I also find that the statements of Sir Himeshwar Ram a Jeyari and Shri Yogesh R. Sanghvi, both brokers were recorded by confronting them with the recovered records and the entries recorded in the notebooks/diaries recovered under the judicial proceedings reveal manufacture and clandestine clearance of M. S. Round/M.S. bars to buyers against cash transaction without CE notices and without payment of CE duty. Appendix No. 3 has in a detailed manner explained the cases used and the transactions recorded in the said notebooks/diaries.

3.1. In the grounds of appeal, it is submitted that the adjudicating authority while passing the impugned order has ignored the submissions made by them. On a perusal of the impugned order, it is found that the adjudicating authority has detailed the defense submissions at Para 71 to 74 of the impugned order, and has also discussed the same while giving his findings from Para 38 to Para 59 and from Para 41 to Para 45. Thus, it is argued put forth by the two Appellants a demand of note.

*(Signature)*

3.2. I find that before recording statement of Appellant No 2, all documentary evidences recovered from the office premises of Appellant No 1, Appellant No.3 and Sir Yogesh R. Sanghvi (5 near) were shown to him, Appellant No 2 in his statements dated 29.03.2019 and dated 29.10.2016 categorically stated produce adopted by Appellant No.1 relating to sale and clearances of their finished goods and gave detailed explanation after going through all Benchmarks case during the investigation at different premises and all the statements relied upon in the show cause notice which included statement given by Appellant No 3 and Shri Yogesh R. Sanghvi, both Brokers and also owners of the Truck through which transportation of goods was made. Appellant No 2 was also given full opportunity to peruse incriminating documents, statements and duty calculation worksheet before giving statement about the facts and circumstances thereof. He was shown duty calculation Annexures II, IV and X prepared on the basis of investigation showing transactions carried out through Appellant No 3 and Shri Yogesh R. Sanghvi, both brokers of Appellant No 1. I find that the documentary evidences and statements of the brokers and transporters have been discussed and reproduced in a very elaborated manner in the impugned order and many transactions recorded in the seized goods records were found tallying with the statutory records/transactions of Appellant No 1 which prove authenticity of transactions and details contained in the relied upon documents and relevance of

Case for duty liability on Appellant No.1

7. I find that adjudicating authority, in Para 13 has discussed the various seized documents and explanation given by Appellant No.3. 1001 sample copies of diaries have also been placed under Para 3.2.1 of the Show Cause Notice. I find that dispatch and transportation of goods, as discussed in Para 17 of the impugned order, are established by way of confirmation of details mentioned in seized documents by the nature of the Trucks in their respective statements. Also Para 24 of the impugned order, explains the revelations made by Shri Yogesh K. Sanghvi in respect of details written by him in his tax returns from his residence, concerning purchase and sale of finished goods from Appellant No.1 and buyer of the goods. I also find that images or sample copies for such operations have been placed under Para 3.2.4 of the Show Cause Notice. I further find that Shri Vikram A. Jain or Mrs. Shree Sai Corporation, Bhamnagar in the statement dated 10.09.2015 confirmed the veracity of activity of Shri Yogesh K. Sanghvi and stated that he was working as an commission agent and involved in the loading of goods being paid Rs. 100-200 as a fixed amount per vehicle. Thus, contents of the above stands cross checked.

8. I find admission of following questions and answers received in the statement dated 29.10.2015 of Appellant No.2, as below, appropriate to understand facts of the case

Q.1. Please provide documents mentioned at Sr No.12 & 14 seized under Paragraph dated 12.09.12 under the custody of Shri Himanshu, Sr. Deputy Director of IS. Dey

Ans. I provide documents mentioned at Sr No.12 & 14 seized were handwritten notes dated 12.09.12 under the custody of Shri Himanshu, Sr. Deputy Director of IS. Dey. These documents are in form of separate notes prepared by Shri Himanshu, Sr. Deputy Director of IS. Dey and other side of the page, the name of the Recalling Side who have sold/supplied the raw goods is also mentioned in form of providing the same typed by hand signature of Shri Himanshu, Sr. Deputy Director of IS. Dey.

Q.2. Please provide a copy of invoice No.1 prepared on the basis of documents produced on the basis of documents at Sr No.12 and 14 seized under Paragraph dated 12.09.2012 from office premises of Shri Himanshu, Sr. Deputy Director of IS. Dey and other your comments, if any.

Ans. I provide the above 'invoice No.1' prepared on the basis of documents No.12 & 14 seized were handwritten notes dated 12.09.2012 in office premises of Shri

Handwritten Affidavit Booklet of M.S. Deo. I took check of the entries mentioned in this affidavit documents No 12 & 14 and found it satisfactory and to follow the same, I put my dated signature on this affidavit.

Q.7 Please provide statements mentioned at Sr. No 12 stated under Paragraphs dated 12.03.2012 signed at office premises of Sh. Hanuman N. Jaganji, Deokar of M.S. Deo.

Ans: I provide Affidavits mentioned at Sr. No 12 signed under Paragraphs dated 12.03.2012 signed at office premises of Sh. Hanuman N. Jaganji, Deokar of M.S. Deo in letter in person the same. I put my dated signature on this Page No 58 & 59 of documents No 12. These affidavits are submitted to court in this Affidavit for the goods alleged to be sold to my company i.e. M/s. Bharat Castings P. Ltd. State through Sh. Hanuman N. Jaganji, Deokar.

Q.15 Please provide your statements in the page 26.11.12 & 26.12.12 and signed the same with Annexure 10 and Annexure 18 prepared on the basis of documents as mentioned above.

Ans: I signed Annexure 10 and Annexure 18 with my sales register for the T.Y. 2011-12 and 2012-13.

Q.16 Whether any entry recorded in the Annexure 10 and Annexure 18 dated and your sales register for T.Y. 2011-12 and 2012-13.

Ans: No

*[Handwritten signature]*

Q.17 How did you receive payment of the goods sold mentioned by your firm and/or issuance of invoice and without payment of duty?

Ans: Being an old matter, I can not recollect the same.

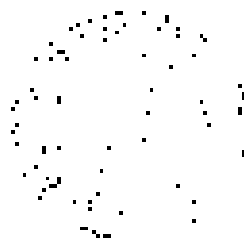
Q.18 Please provide Annexure L prepared on the basis of Annexure 10 and Annexure 18 after removing the entries in respect of which Central Excise demand had been issued?

Ans: I provide Annexure L and copies of sales register with Annexure 10 & 18, I put my dated signature on this affidavit.

Q.19 Do you want to see any other state evidence record?

Ans: No.

7.2 I find that Appellant No. 2 in his earlier statement dated 26.02.2013 after perusing the documents mentioned at Sr. No. 12 & 14 of his Annexure to Paragraphs dated 12.03.2012 drawn at the office premises of Appellant No. 2.



concessed that Appellant No.1 was selling the goods to three persons, however on verification of all entries were found in the books of Appellant No.1. He also attached those documents as 'discreet book' prepared by Appellant No.1 and also explained that name of the Re-Rolling Mills was mentioned to whom goods sold/supplied; that they usually sold these goods to those persons but he has no records in respect of all the entries relating to his firm. I also find that Appellant No.2 has argued that statement dated 28.07.2013 was recorded in Hindi, which I find has no more as authentic statement was also prepared as evidenced herein above. Appellant No.2 has admitted purchases of finished goods recorded in certain records or invoices and thereafter the goods cleared with Central Excise invoices and without CE invoices. I also find that on being confronted with the incriminating documents seized during the searches, both brokers in their respective statements, accepted the purchases of goods claimed by Appellant No.1 without CE invoices and without payment of CE duty and they know because they acted as brokers in such transactions and entries were available in their private records.

7.3 I find that there are substantial evidences duly corroborated which have not been refuted at any stage and therefore as per the settled legal principle sanctity of the same cannot be undermined by arguments only. I also find that the authenticity of records seized from the premises of Appellant No.1 Appellant No.3 (Jaland), and Shri Yogesh K. Sangha, broker have been duly corroborated and called with records seized from other premises before quantifying Central Excise duty liable to be paid by Appellant No.1. Adjudicating Authority at Para 29, Para 31 Para 35.E and Para 3E has elaborately discussed the narration of the evidences available in the case.

7.4 Appellants No.1 has argued that consent of duty cannot be ascertained on the basis of diaries and records recovered from third party like brokers Shri Himanshu N. Jagani (Appellant No. 3) and Shri Yogesh K. Sangha, and hence demand made on the basis of this party documents is not sustainable. In this regard, I find that the diaries maintained by the brokers recorded legal, as well as their transactions of Appellant No.1. I also find that many transactions recorded in proper records billed with invoices actually issued by Appellant No.1. Thus, truthfulness of diaries/notebooks and other private records recovered from the brokers during search is clearly established, also hence as both brokers admitted to have dealt with the goods belonging to Appellant No.1 without CE invoices and

also sold such goods without CE invoice and without payment of CE duty. Notwithstanding above, I also find that demand has been computed on the basis of Annexures prepared on the basis of scrutiny of documents seized at different premises of brokers and at the premises of Appellant No. 1. I also find that all links involved in the case i.e. brokers, Appellant No. 1, transactors etc. have corroborated evidences gathered during searches and therefore, demand cannot be said to be based upon third party evidences only. The case in fact is not based only on third party documents but duly corroborated by host of other evidences. I find that no multiparty or parties itself negates concept of third party. In the instant case, the evidences of clandestine removal have been gathered by the investigating officers from different persons and different places and therefore, it cannot be called third party evidences but actually corroborative and supporting evidences found against Appellant No. 1.

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7.5 Appellant No. 2 has in his statement dated 28/03/2015 admitted during that part of the investigation, on being confronted with vital documentary and oral evidences along with duty calculation Annexures, admitted that they cleared taxable goods without payment of CE duty and without issuing CE invoices for such transactions. The statement of Appellant No. 2 dated 28/10/2015 has not been retracted till date and hence, I am sufficient evidentiary value, which cannot be belated. The remained appreciation of all such corroborative evidences reflect that CE duty evasion has indeed taken place and Appellant No. 1 has indulged in CE duty evasion. I therefore, find that all these vital and hard evidences are sufficient to prove the case against the appellants. In this regard I rely on the final order of the Hon'ble CE-SEI in the case of Gm Prakash Agarwal reported as 2017 (346) FTR 125 (1) (Del) wherein it has been held that:-

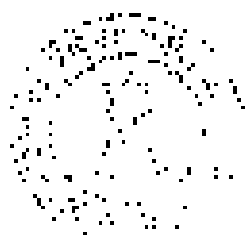
5. I find that in both the cases above, several vital facts were stated. The allegation was that based on witnesses obtained from the supplier side, unaccounted receipt and further manufacturing of taxable items by the appellants was sought to be sustained. Admittedly, the case is not only based on the unaided evidence submitted from the suppliers and and also as corroborated by the reasonable persons of the appellants but the receipt and use of the said unaccounted raw materials in final manufacture has apparently been admitted by the appellants and this day and date has also been discharged during the course of investigation itself. The appellants' good intentions are not verifiably at the further corroborated by way of details of budget, away records etc. In the present case, the evidence gathered from the suppliers side is unimpeached and cannot be doubted. The private records of the appellants have been scrutinized and evidence for the computation of duty leviable by the persons who were members of the supplier side. When such evidence was brought before the parties of the appellants and he categorically admitted unaccounted clearance of taxable items. However, he did not deny the fact that such products were sold in such quantity, the

stipulated that the appellant has taken a plea that the statements are not admissible on account of being self-serving and that the investigation of such matters is the responsibility of the suppliers, which says nothing about the accuracy or veracity of the statements. It is my view that the plea of the appellant that the suppliers made their statements in a bona fide manner is not applicable to the appellant. In fact, no way of corroborating the contents has been demonstrated by the parties of the appellant's plea. In such a situation, it is not possible for the appellant to, even at the appeal stage, show the veracity by requirement of cross-examination, and, accordingly, some of the adverse inferences of the statements have been established at least partially for their authenticity. In the appeal before the Tribunal, the appellant is making a factual case for the statements by the manner of the investigation, by not pursuing various case files which were by the appellant and not of any supplier in the relevant case. In the cases involving uncorroborated statements, the reliability of such case are to be ascertained for corroboration. As stated already, the supplier's records or the appellant's file as witness of the person in charge and further corroborated by the supplier cannot be discounted only on the ground of being self-serving. The investigation and receipt of money has not been proved. In a discharge of my duty, I am concluding that each stage of evidence should be considered with care and on careful consideration of the grounds of appeal and the findings of the adjudicator, I find no reason to interfere with the findings recorded by the lower authority. Accordingly, the appeals are dismissed.

(Signature of JUDGE)

*[Handwritten signature]*

8. Appellant No.1 contended that the statements filed upon in show cause notice are not admissible evidence because procedure stipulated under sub-section (1) of Section 9C of the Act has not been followed by the Adjudicating Authority. Appellant also relied upon the Hon'ble High Court's decision in the case of Mrs. Mahabani Dnyang Mills (supra) as 2016 (343) ELT 401 (1) - AIR and several other decisions in the matter. I find that in the case on hand, the facts remain that Appellant No.2 (Clerk of Appellant No.1) has perused the statements relied upon in the show cause notice, perused the document seized and accepted the correctness and genuineness of the facts recorded in it. Thus, statements are not secured at the back of Appellant No.1. The correctness and genuineness of the facts are accepted by the person against whom the said statements were recorded, and hence, close examination of records by Appellant No.1 is not required at all under Section 9C as much as corroborative value is accepted by the person against whom it is used. I find that Appellant No.2 in his statements has accepted the correctness of the statements relied upon, who also deposed categorically that his statements would be utilized as an evidence against him and his company. As discussed in foregoing paras, the contentions made by Appellant No.1 and others are required to be held as misleading and after thought since the truthfulness of the statements of the witnesses and proceedings of investigation are not discredited at any stage in this case. Thus, I find that the correctness of the statements is established in this case and it is not the case that



adjudicating authority was deciding the allegations set out in the show cause notice only on the basis of his statements but it also includes other evidence corroborating the facts of the case where investigation is spread among sources from different places and from different persons. In the facts of this case, CAA's statements relied upon by the Applicant can not be made applicable in this case. I find that the ratio of the judgment of Hon'ble Supreme Court in the case of *CC-1, Mumbai Vs. M/s. Kignat Foods India Pvt. Ltd.* reported as [2011-1101 (6) 50 (SC)], is applicable in the present case, wherein it is held that...

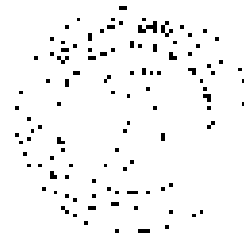
19. During the course of arguments learned counsel appearing for the respondents submitted before us that although the affidavits/statements of Managing Partner of the Company and other persons were recorded during the course of judicial proceedings but the same were recorded sincerely and therefore they cannot be said to be biased and statements were recorded by the Central Board officers and they were not under pressure. Therefore such statements made by the Managing Partner of the Company and other persons contained in the affidavits about the functioning of the company which could be made only with personal knowledge of the respondents and therefore such affidavits were made through coercion or duress or through pressure. We see no reason why the affidavits/statements made in the circumstances of the case should not be considered, looked into and relied upon.

*[Handwritten signature]*

20. We are of the considered opinion that it is established from the record that the affidavits/statements were given by the respondents/ persons and of their own volition and there was no suggestion of threat, undue coercion, duress or pressure being utilized by the officers to secure the statements which contradicted with other findings. The Managing Partner of the Company in his own affidavit, admitted the amount of Rs. 10 lakhs towards excise duty and therefore in the past and circumstances of the present case, the affidavits/statements of the respondents were truthful. The fact itself proves the veracity of the statements of the respondents/ persons were of their own volition and was not made of any duress.

(Respondents appeared)

It is settled law that in cases of mandamus removal, department is not required to prove cases with mathematical precision as held by the Hon'ble Supreme Court in the cases of *Shah Gauran Mal* reported as 1983(3)JIT1921 (SC) and of *M/s. National Textiles (I) P. Ltd.* reported as 1988(2)51ELT537 (SC).



32. I find that the statement of Director authorized persons of the assessor permitting clearance of goods without payment of CE duty and without issuing CE numbers irregular and not correct yet is admissible as held in the case of M/s Hi Tech Agencies Ltd. reported as 2017 (378) ELT 635 (T1-De.)

33. On careful examination of the facts and circumstances as outlined above, I find that the statement of Director is the basis for the demand. The statement is irregular and irregular. The Director already admitted that the documents/records received by the officers contained details of production of raw materials as well as clearance of bonded goods with cost added payment of duty. This fact is further strengthened by the observation that every entry in the private documents are covered by the invoices issued by the assessor on which duty should have been paid. The Director has clearly admitted the fact of the issue as well as clearance of clearance of goods covered by the entries in the private notebooks which are not covered by the invoices. Entry of goods in notebook as evidence has been held to be legal in the case of Sumins & Company vs. CIT. In respect, the nature of documents shown is required to be proved by sufficient positive evidence. However, the facts presented in each individual case are required to be established and examined independently. The department in this case has relied upon the professional statement of the Director which is not supported by the facts and figures of the private records. There is no evidence that the statement has been taken under oath. The assessor also does not appear to have acted for some particulars during the process of duty levy.

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34. In view of the foregoing, I find that the Commissioner expressed has acted in taking the view that there is not enough evidence of declarative amount of goods. Even though the statement of the Director is not correct, it is not the basis of the private records maintained but not recorded details submitted by the Director about the nature of the contents of the private records. Consequently, I find no reason to quash this piece of evidence.

35. The evidence of clearance irregularities has been brought to light only as a result of investigation conducted by the department. The evidence furnished by the department are not primary documents and have not been given credence for the assessment. Therefore, this is a clear case of suppression of facts from the department and thereby the interest portion of valuation is ascertainable in our case and hence the demand cannot be held to be time barred.

(Emphasis supplied)



8.2 I also rely on the Final order of Hon'ble CESTAT in the case of M/s. Haryana Iron & Alloys Ltd. reported as 2017 (205) E.L.T. 400 (1-106) wherein it has been held that materials seized from the possession of appellant's employee at the time of search showing entries for accounted as well as unaccounted goods which have been explained in detail and disclosed by the CEO of the factory and tallying with inventory passes issued is trustworthy. The statement of the employee running from several cages and retaining detained knowledge like in this case also to be considered relevant. I rely on decision in the case of M/s. Ramchandra Ravindra Patil Ltd. reported as 2014(205)-E.L.T. 315 (1-1) wherein similar view has been taken by the Hon'ble Supreme Court.

8.4 I am of the considered view that the admitted facts need not be proved as has been held by the Hon'ble CESTAT in the cases of Alex Industries reported as 2008(205)E.L.T. 1073 (Mumbai) and M/s. Divine Solutions reported as 2006 (206)E.L.T. 1005 (Til.) (Chennai). Hon'ble CESTAT in the case of M/s. Karan Hegg Works reported as 2007(156)E.L.T. 373 (Til.) Dehra has also held that Admission/Confession is a substantial piece of evidence, which can be used against the maker. Therefore, the Appellant's reliance on various other case laws are not applicable in the light of the admitted evidence available in this case as discussed above and in the impugned order of Hon'ble CESTAT in the case of M/s. N R Spangor P. Ltd reported as 2017(205) E.L.T. 400 (1-106) has also held that when precedence of probability was against the Appellant, pleading of no statements recorded from buyers, no excess electricity consumption found, no raw material purchase found, unaccounted for are of no use.

9. In view of the above facts, I find that the contentions raised by the appellants are of no help to them and the Department has adduced sufficient oral and documentary corroborative evidences to demonstrate that the Appellants were engaged in clandestine removal of the machine goods. I therefore find that the confirmation of demand of Central Excise duty of Rs. 33,93,573/- by the name appraising authority is correct, legal and proper.

5.1 It is a natural consequence that the confirmed demand is required to be paid along with interest at applicable rate under Section 116A of the Act and I therefore, uphold the impugned order for payment of interest also.





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