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to have clandestinely cleared the excisable goods and evaded payment of Central Excise duty. Appellants No. 3 to 5 were brokers through whom clandestine goods were allegedly cleared. By Appellant No. 1 and Appellant No. 2 it was alleged to be known that such clandestine cleared goods, were alleged to have paid excise duty on excisable goods, which they had reasons to believe that these goods were liable to confiscation under Central Excise Law.

2.1 The officers of the Directorate General of Central Excise Intelligence (herein after referred to as "DGCI") has gathered intelligence which indicated that some ship breaking units of Alang/Coirva were engaged in large scale evasion of Central Excise duty by way of clandestine removal of plates to the Rolling Mills, diversion of goods, inter-shipment of goods etc. and that most of such illicit activities were being carried out by the Ship Breakers with the support of some brokers. These brokers were obtaining orders from different Rolling Mills and Furnace units and many times were getting the material dispatched through some Transporters without Central Excise invoices and without payment of Central Excise duty. These brokers were also procuring orders from Un-registered Dealers and Registered Dealers for supply of Central Invoices without any physical supply of goods. The DGCI conducted a thorough study and a search operation, which confirmed that some brokers were the main executives/facilitators of such illicit transactions, who were acting as illegal contacts among ship breakers, Rolling Mills, Furnace etc. Registered Dealers, Traders, Transporters, Agencies, Shippers etc. to ensure proper execution of the fraud. DGCI conducted coordinated search of the premises of major brokers at Bhavnagar and recovered several incriminating documents substantiating the intelligence. Thereafter, another round of search operation was conducted at transporters whose documents were available on the records of recipient furnace units, premises of various Ship Breaking Units and Rolling Mills. The intelligence indicated that Appellant No.3 to Appellant No. 6 were major Brokers at Bhavnagar involved in large scale illicit activities of a long, cheating and facilitating Ship Breaking Units, Furnace Units and Rolling Mills in clandestine removal of excisable goods and fraudulently passing of Central invoice without physical supply of goods etc. A search operation was also conducted at the residence of an office premises of Appellant No.2 & Appellant No. 5 in which incriminating documents were recovered.

WINDWARD

2.2 The above led to issuance of Show Cause Notice No. DGC200-2010-222013-14 dated 11.03.2013 proceeding recovery of Central Excise duty of Rs. 49,31,454/- from Appellant No. 1 under section 11A (i) of the Central Excise Act, 1944 (the matter referred to as "the Act") and appropriation of Rs. 10,00,000/- paid during investigation, recovery of interest under Section 114B of the Act and imposition of penalty under section 114C of the Act and issuance of penalty for passing on the illicit benefit credit by issuing only invoices without

appellant. Once this responsibility is cast upon the department, it cannot be discharged by shifting the burden of the appellant by saying that their request for hard copy of documents is a dilatory tactic.

(d) With regard to findings recorded at Para 3.5.1 of the impugned order appellant submitted that there is no evidence except the statement of the transporters and brokers as discussed in the SCN; that no statements of vehicle owners or their drivers or buyers of the goods have been recorded and no corroborative evidence are available on record about the amount of any cash amount. With regard to findings recorded at Para 3.5.2 of the impugned order, appellant submitted that it is well settled principle of law that charges of clandestine removals are serious charges and cannot be established on the basis of some receipts of unrecorded nature. The appellant relied on decision of the Honble CBE&IT, Ahmedabad in the case of 'Ajwal Dyeing' Industries reported as 2007 (218) ELT 312 (Trib. - Chand.) affirmed by the Honble Gujarat High Court reported as 2008 (234) HLT 442 (G.J.). With regard to findings recorded at Para 3.5.4 of the impugned order, appellant submitted that the investigation in the present case did not go to the logical end and does not result in the alleged clandestine activities on the part of the appellant. Apart from registers of transporters, which is not carrying much evidentiary value, there is actually no evidence on record to establish clandestine activities of the appellant.

(e) With regard to findings recorded at Para 3.6.1 of the impugned order, it is that the documents and diaries seized from Shri. Bharat Singh is thus merely evidence. However, the appellant explains at length on some write up of Shri. Bharat Singh and his accountants. Thus, there is no such concrete removals which are held under the impugned order and therefore, continuation of demands of duty and penalty imposed under the impugned order is not tenable. With regard to findings recorded at Para 3.6.2 of the impugned order, the appellant submitted that SCN neither provided any list, nor relied in SCN in which they have listed date/serial numbers seized from the brokers. There is no evidence whatsoever produced by the department to alleged that transaction through burden of proof is shifted on the appellant. The appellant deny all the charges leveled against them and allegation made against him in the Para. The appellant cited an judgment of the Honble Supreme Court in the case of 'Arbu La' reported as 1983 (15) ELT 137 (SC).

(f) With regard to findings recorded at Para 3.6.8 of the impugned order, it is submitted that the brokers through whom it is alleged that the appellant has cleared these goods clandestinely have not admitted to the fact nor any documentary evidence even remotely suggesting that the appellant was involved in clandestine

channel. There is no evidence or record to show that the appellant was connected with the purchaser through Shri Vinod Patel and Shri. Kishor Patel by issuing duty paying purchase order. The entire alleged action of issuing impugned order is being considered in an arbitrary manner and not based on legal basis and without authority of law rendering the impugned order liable to be quashed.

(x) The penalty imposed under Section 11AC of the Act is illegal. It is established principle that no person can be held liable for commission of any offence in absence of any evidence that excisable goods manufactured by the appellant had in fact been cleared without payment of duty, the allegation of a concealed removal and undervaluation of excisable goods did not arise at all. No evidence was adduced in the SCN to establish that the alleged acts or omissions had been committed by the appellant deliberately or contumaciously or in flagrant violation of provision of law or with intention to evade duty. No penalty was imposed when there was no overt act intended to evade payment of duty.

(xi) As regard to penalty of Rs. 1,63,500/- imposed on the appellant under Rule 25(2) of the Rules, it is submitted that the adjudicating authority has treated beyond the scope of SCN as there is no provision to impose penalty under Rule 25(2) of the Rules on the appellant.

Appellant No. 2:

(i) The appellant's Director of Appellant No. 1 and had no contact with any persons, money or benefit and thereby the question of any personal penalty upon him is not proper. Moreover, a penalty could be imposed on a person who acquires possession of, or otherwise physically dealt with, any excisable goods which, according to his actual or knowledge, was liable to confiscation. The department has no case that the appellant had a belief or knowledge that the goods were liable to confiscation. It is settled law that personal penalty on Director in addition to the company not liable. Hence, Rule 25 was not applicable against the appellant.

The appellant relied on following decisions:

- Right Brothers (C) - 2008 (100) ELT 59 (Trib. Mumbai)
- National Plastics (I) Ltd. - 2004 (100) ELT 199 (Trib. - Mumbai)
- Ken Corp-Marketing Pvt Ltd - 2012 (165) ELT 206 (Tri - Guj)
- Shri. Subaskumar Textiles - 2015 (188) ELT 354 (Trib. - Gujrat)

(ii) There is no evidence on record to show his involvement in evasion of Central Excise duty or was one of the beneficiaries. As held by the CESTAT, Kolkata in the case of Keshav Kumar Tharad reported as 2000 (158) ELT 211 (Tri. - Kolkata) penalty cannot be imposed. The judicial pronouncements relied upon by the lower adjudicating authority are not applicable being different set of evidences and circumstances in the cases.

(ii) As regard to penalty of Rs. 1,08,000/- imposed on Appellant No. 2 under Rule 25(2) of the Rules, it is submitted that the adjudicating authority has travelled beyond the scope of SCN as there is no provision to impose penalty on appellant No. 2 under Rule 25(2) of the Rules.

(iii) The appellant had not made clearances as mentioned in Annexure - A/KP E to SCN to M/s. Shree Krishna Enterprises or to other buyers through Sh. J. Vinod Kate and Shri Kshar Patel without supply of corresponding goods resulting in fraudulent procurement of credit worth of Rs. 1,36,800/- by the appellant. The appellant removed submissions made by the company of the appellant vide Para 6.5 & 6.6 of copy to SCN and adopted and reiterated the same for the purpose of present appeal as if the same are specifically summarized herein.

Appellant No. 3:

(i) The impugned order is based on surmises and conjectures of the adjudicating authority and is against the canon of natural justice as the defence submissions made by him based on the facts and circumstances were not considered. The impugned order is set functional and therefore, it is required to be quashed and set aside.

(ii) The adjudicating authority had not supplied the relief upon documents along with the SCN. It was not proper and legal but supplied some copies of documents after request made by him. There were huge numbers of documents had been relied upon which were mainly in the form of recorded statements. For preparing defence reply each and every document was required to be studied by comparing the verifications accorded in the statements of the respective persons namely Manoh Patel whose statements had been enclosed in the SCN. This important work could not be done from the relied upon documents supplied in CD. Therefore, it is clearly established that the adjudicating authority has grossly violated the principle of natural justice. He relied upon the settled case laws *Secure Industries Ltd* [2003 (155) ELT 559 (MESTAT)], wherein it has been laid down that regularization order was set aside when copies of documents relied upon were not supplied to Assessee. Even if it was given opportunity and months prior to hearing to take photo copies. It was held that department was obliged to supply all documents. Otherwise, there is violation of principle of natural justice. In the case of *P&G Processor* [2020 (112) ELT 26], the Hon'ble Divisional Bench of High Court, Rajasthan 198 held that authorized copies of documents relied upon are required to be supplied. Mere opportunity to inspect the documents and to certified photocopy thereof is not sufficient. In the present case, the adjudicating authority has failed to supply the complete set of relied upon documents through requester. Therefore, the impugned order is not proper and legal but deserves to be set aside.

(j) The Sub Rule (1) of Rule 26 is pertaining to the circumstances under which circumstances such penalty is imposed. In the provision, it has been specified that when any person is concerned in transportation, concealment, deposit, lending, conveying, selling or otherwise any excisable goods which he knows or reasons to believe are liable to confiscation under the Act or Rules framed thereunder in the present case, no such charge of transportation has been made in the ACN. Therefore, it is clearly established that the adjudicating authority has wrongly and without authority of law has imposed penalty under Sub Rule (1) of Rule 26 of the CTR. Sub Rule (2) of Rule 23 provides for imposing penal action against a person who has acted in selling, conveying, conveying or illicit removal of excisable goods under reasonable belief that the excisable goods are liable for confiscation. Appellant had acted only in the limited capacity to recognize the seller and buyer in such other with the availability of M.S. scrap. The payment of sale proceeds has also been materialized by the consumer buyer to the Applicant No. 1. The transportation in the present case had been made by the buyer. It is not an event that applicant was involved in transportation of the excisable goods cleared without payment of central excise duty. Therefore, it is clearly established that the adjudicating authority has wrongly and without authority of law has imposed penalty under Sub Rule (1) & (2) of Rule 26 of the CTR.

(k) The impugned order is not self-sustaining order. In the findings the adjudicating authority has mainly repeated the facts stated in the ACN. To sustain such charges of clandestine removal, such Central Excise records would have been verified. In the present case, no such verification has been taken on record. Only on the basis of such statements, such clandestine removal cannot be sustained. Therefore, the impugned order is not correct and it is in absence of such verification of the statutory records pertaining to the Act and Rules framed thereunder. The sales details submitted by the unit with clandestine removal cannot be sustained on the basis of the above sales particulars without corroborative evidences such reference to the Central Excise records. Therefore, appellant is not correct to sustain the charge of clandestine removal. Further, he had acted in limited role to recognize the buyer and seller to each other and fixed the price of the goods on the basis of the market rate prevailing at the material time. He was not used to go to the ship tracking unit for managing loading of the dutiable goods, he was not remained present at the time of presentation of Central Excise invoice and at the time of receiving of the dutiable goods from the factory premises of the unit. Moreover, the findings of the impugned order, has it been said that he was present at the time of removal of such dutiable goods clandestinely etc. Further, it was also the fact that the freight charges have been paid by the buyer of the excisable goods. Therefore, he was not at all involved in any way as provided under Rule 25 (1) & (2) of the CTR.

(vi) The adjudicating authority has simply related the events mentioned in the SCN but failed to establish the charges framed in the SCN. The adjudicating authority has simply proved the charge by importing the facts and circumstances narrated in the SCN. He has not given his own findings which are required to be given being a quasi-judicial authority.

(vii) Hence, no such question of the appellant was taken in token of having the information shown in the said Annexure was correct and genuine. Therefore, the impugned order is not sustainable in the eyes of law in the circumstances when the worksheet of demand of SCN appears had been prepared on the basis of such particulars mentioned in the seized Diaries which were the records pertaining to the business carried out by him and not pertaining to the business carried out by the unit against whom the charge of contraband removal was framed.

(viii) It is observed that the subject SCN had been issued on the basis of the say and assumptions made by Sh. Manish Patel, especially with regard to the use of name of each party in "short name". But such provisions are silent about any codes or secret data, if any, mentioned in the Diary and decoded whether the said person under pressure. This "decoded" explained by said Sh. Manish Patel has not been demonstrated before the unit or before the authorized person of unit. Therefore, the way of the investigation carried out by the DGO is appears to be doubtful without acceptance such document seen by the law, such order is not tenable within the eyes of law.

(ix) The present case is covered under provisions of the Act which is an Act for collection of tax i.e. Central Excise duty. Therefore, for making such allegations or evasion of Central Excise duty, a document showing the Bill manufactured of excisable goods and document pertaining to their removal of excisable goods without payment of duty are to be produced by the department. In the present case, only the seized Diaries had been taken as evidence for demanding such duty. But these Diaries cannot be said as a "legal document" to frame a charge of demanding of duty unless and until it is corroborated by any of the Central Excise documents prescribed under provisions of CER. Therefore, the impugned order ceases to be valid.

(x) It is further to submit that the buyer was always been analyzing their own known as Calalwaia for loading of the required Central Excise goods to the concerned unit, ship breaking unit. But though the Calalwaia was the only person to store within the goods under reference had been removed clandestinely, or not there is no mention in this regard. Therefore, the finding of the adjudicating authority that the excisable goods have been removed clandestinely is not correct and legal.

(xi) In the SCN, it was also stated that the Angadisa have stayed away from the "case" under reference. However, no SCN had been issued to the Angadisa. The

22.01.2015. Again, it is relying upon the said case laws which are reproduced here under as the same are squarely applicable in the present case.

- k) *Milind Limited* - 2007 (131) L.L. 121
- l) *Ipsit Green Textile* - 2007 (131) L.L. 242
- m) *Metal Shil* - 2007 (131) L.L. 125
- n) *S.R. Manjharwala* - 1999 (114) L.L. 969
- o) *S.L. Khaleka* - 1998 (98) F.T. 533 (Bom HC), 1999(99) L.L. 5 248(90)
- p) *Gopal Dattal* - 2001 (21) L.L. 93 (CSTAT)
- q) *Amrit Foods Co. Ltd.* - 2002 (130) L.L. 190 (1) (SC)
- r) *Om Ais Mishra Pvt Ltd* - 2004 (141) F.T. 354 (H.Cha)
- s) Order No. 611333-11(24/2015 dated 17.07.2015 CSTAT Amritsar
- t) Order-Original No. 51L=KUS/000/2017/24-17 dated 28.03.2017 passed by the Commissioner, Central Excise, Bikaner

Appellant No. 4 & Appellant No. 5:

(i) The lower adjudicating authority has not dealt with the pleas made in written reply by the appellants and judgments referred to and relied upon have been completely ignored by the lower adjudicating authority while passing the impugned order which is non-speaking and non-reasoned order. It had not recorded any finding on the arguments raised during personal hearing and have cursorily and mechanically dealt with pleas of the appellant.

(ii) The appellants made request for supply of sealed upto documents so as to defend their case which were rejected at Para 2.8.1 and Para 2.8.3 of the impugned order. The said request of appellants was not entertained and order not being passed imposing penalty and thereby sanctioned the principles of natural justice. With regard to findings recorded at Para 3.7.3.1 and Para 3.7.3.2 of the impugned order, appellants submitted that they had not received soft copy of Sealed Upto Documents. If RUC has been provided in soft copy then the lower adjudicating authority has to record its findings regarding receipt issued by the appellants. Therefore, findings of the lower adjudicating authority are vague. Once the responsibility to provide copy of relied upon documents is casted upon the department, it cannot be charged by shifting the burden of appellants by saying that their request for hard copy of documents is only a directory matter.

(iii) The facts narrated at Para 3.7.2 and Para 3.7.3.1 of the impugned order are vague. Appellants always co-operated with the investigation and as per the availability and their summons remained present and had never provided excessive replies and gave true statements regarding its business as they never indulged themselves in any illicit activities and no such evidence was brought by the

investigating officer and a search made and seized in SCN's which they are listed therein in the stock diary notebooks seized from their residence. The burden of proof is lying on the department. Appellants deny all findings recorded against them and allegation made against them. Appellants referred to the submissions made in detail vide their reply to SCN vide Para 27 and Para 27.1 and reiterate the same for the purpose of present appeals as if the same are specifically canvassed herein so as to assist the Hon'ble.

(ii) With regard to findings recorded at Para 27.3.3 and Para 2.12 of the impugned order, appellants submitted that the ship broker from whom it is alleged that appellants had engaged in clandestine clearance of value-adding material involving duty of Rs. 6,51,081/- have not admitted to this fact nor any documentary evidence even remotely suggesting that appellants were involved in clearance of the goods by the ship broker as shown at Para 11.15.1 in the SCN were not produced by the department. There is no evidence, neither documentary nor otherwise available on record regarding non-transport of goods cleared by the ship broker to customers of the appellants. There had to be an evidence regarding transaction of Rs. 20,21,944/- for purchase of non-ferrous scrap without receipt of the goods. The lower adjudicating authority has not recorded any findings on this point and the appellants had completely ignored the same. Appellants referred to the submissions made in detail vide their reply to SCN vide Para 9 to Para 14 and Para 18 to Para 20.3 and reiterate the same for the purpose of present appeals as if the same are specifically canvassed herein so as to assist the Hon'ble.

(iii) The case of appellants is not covered under Rule 25(1) of the Rules as appellants has not dealt with excisable goods in any manner whatsoever. The proviso therein for penalty or any other mode under said Rule is that either he has acquired possession of any excisable goods with the knowledge or belief that the goods are liable to assessment under the Act or the Sutas or he has been in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or has in any other manner dealt with any excisable goods with such knowledge or belief. Acquisition of possession of goods is a physical act and so in each of the various ways of dealing will goods, specifically mentioned in the Act. The expression 'any other manner' should be understood in accordance with the scheme or quantum of goods and would then, mean 'any other mode of physical dealing with the goods' as recognized by CESTAT. In the case of *Shree Haryana & Mfg. Co.* reported as 2002 (149) E.L.T. 131 (T) followed in the cases of *A.M. Kulkarni* reported as 2002 (81) E.L.T. 103 (12-127) - (Mum.) and *Ram Narain Singh* reported as 2002 (151) E.L.T. 451 (T) - (Del.)

Appellant No. 6 to 9:

(f) The impugned order has been passed in a mechanical way without applying mind and without considering proper submissions without supplying relied upon documents even without supplying the copy of statement. Appellants were registered with Officer Fardas Banga, Main Godanagara Division, Mandi Gobindgarh under Central Excise, Chandigarh I Commissionerate. Central Excise Manager has no territorial jurisdiction to adjudicate the impugned order. The impugned order is liable to be quashed on this ground since as held in judgment in the case of T.L. Equatorial Systems, It. reported as 2001 (108) ELT 186 (Tri.) - Chemicals, Sunestone Aero Based Controls Sys (P) Ltd. reported as 2000 (115) EIT 185 (Chhimg).

(g) Appellants had requested to supply Relied Upon Documents which include statement of the Manager of The Road Company - the detail of statements of Mrs. New Jai Shankar Transport Co. mentioned in the SCN has no concern with the allegation made against the appellants. It has been mentioned that the department has recorded statement of Sh. Maljindi Swanki, Proprietor of M/s. Gura Nank Road Carriers on 24.07.2011 and 08.08.2011. These statements were not incorporated in the SCN. Appellants had not been supplied yet the copies of the statements. Until and unless these copies are not supplied, the appellants are unable to comment on the statements and these statements cannot be relied upon by the department for imposition of penalty on the appellants. There is no evidence in SCN of transport company showing the goods received by appellants from Appellant No. 1. No statement of representative of Dikaraj Punjab Roadways has been stated to be recorded in SCN. It has been mentioned in SCN that statement of Broker Prateep Gupta was recorded on 26.08.2011, however, the said statement was not incorporated in SCN. No evidence in the record of this case has been supplied to appellants showing about said clearance. Copy of the statement incorporated in the SCN with respect to Broker Vinod Bhandari has no concern with the allegation made against appellants. For appellants had also requested to supply the copies of the statements of Luckere which are yet not supplied.

(h) It has been alleged that appellants were agreed in the statements that said purchases were made without cover of invoices and that payment of the bank drafts removal was made by cheques and after receipt of cheque issued by shop broker, appellants had received cash through bankdraft for each said transaction from the broker/ship broker jointly. The facts stated in the statements cannot be believed as no person after 45 years can record statement and can identify the check number, name of seller, name of broker, weight, exact rate of purchase, name of transporter without verifying the record. Thus, all the facts narrated in the statements are categorically denied to have been accepted and agreed by the appellants and it cannot be believed that a person can get such statement recorded without record.

(j) The appellants need to secure affidavits cleared the position about the compelling circumstances to which the statements were got signed without being allowed to read. All the facts and circumstances narrated in the statements are not matching with the factual position.

(k) There is no single document stipulated to the appellants including statement/booklet of transporter, statement/booklet of manufacturer's breaker, statement/booklet of transporter, statement/booklet of Marine Board showing that the disputed goods were received by the appellant's main dealer or merchant except of getting statements signed in hurry which has been rejected by the appellants as has been got signed fraudulently/illegal and in unfair manner.

(l) The scanned copy of record of the transporter has been incorporated in SCN to get certain particulars of the goods in dispute to have been received by the appellants. The department failed to supply evidence available with them even the record of Maritime Board. It has been mentioned in SCN that some record of Maritime Board is not available, entries of truck having registration of Bhavnagar District are not made as entry permit is issued on monthly basis. The appellant failed to understand the investigation at the end of Maritime Board as no any documents entry has been supplied to the appellant showing alleged clandestine purchase. Without any evidence or proper statements not signed that the appellants purchaser accept receipt of goods. Excise duty and against such purchases such payments in cheque and against payment of cheques the appellants receive back the cash from bankers/bankers through Angadia from locker and this breaker jointly. The statements without any such evidences got signed through a process similar to the same manner and same steps by copying and pasting the para verbatim which shows that whole of the investigation is fake and malicious and cannot be taken upon.

(Handwritten signature)

(m) Not a single truck/vehicle can carry goods without valid documents as truck/vehicle from Ahmednagar has to cross Sales Tax (Check post) of Gujarat, Rajasthan, Haryana and Punjab so as to reach appellants premises. The investigation failed to discharge duty as it has not checked the records of State Government Revenue situated at the entry and exit point of territory of Gujarat, Rajasthan, Haryana and Punjab. The department has not summoned the truck owner/truck driver involved in these transactions.

(n) Onus to prove allegation lies on department and the department cannot shift the same to appellants without evidence. It is as follows:-

- *Sumit News & Sports Co.* - 2000 (22) 1117 (W-2)
- *Chandan Tobacco Co.* - 2014 (311) ELT 653 (T-1 - Ahmednagar)
- *Synapse International Ltd.* - 2014 (312) ELT 607 (T-1 - Delhi)

(ix) It is well settled law that statement of co-appellant without any corroborative evidence cannot be made the sole basis for imposing penalty on other co-appellants as held in the case of *Siyam Singh Dahiya* reported as 2008 (223) JT 1819.

(x) Some transporters who have agreed in the statements to have supplied the trucks for clandestine removal of goods and some brokers who have agreed in the statements to have supplied trucks for clandestine removal of goods but the SCNs were not vetted by such transporters and brokers, therefore imposition of penalty under Rule 28 of the Rules is not sustainable. No investigation has been done at the premises of the appellants. The Hon'ble High Court of Gujarat in the case of *Mahabhai Iron and Steel Industries* reported as 2015 (315) EIT 374 (Guj.) has quashed the demand and penalty based only on the statement of transporter since party and the premises of the assessee was not visited by the investigating agency.

(xi) Appellants have requested for cross examination of Director of Appellant No. 1 (Appellant No. 2), *Rakesh Shri Praseep Gupta* (Manufacturer Mrs. Gaura Naras Transport Co. and concerned officers of DCCCI, Ahmedabad). Neither cross examination was provided nor any reason was given in the impugned order denying cross examination and therefore the impugned order is liable to be quashed. The appellants relied upon following judgments in this regard:

- *Sudhesh Pyawala* - 2006 (273) EIT 688
- *Supra Systems Ltd.* - 2004 (310) F.T. 225 (Tri - Ahmed.)
- *Awa Fibres Pvt. Ltd.* - 2014 (341) EIT 229 (Tri - Ahmed.)
- *Sawadshi Polyester Ltd.* - 2008 (247) EIT 300 (Tri - Del.)
- *M.V. Steels Pvt. Ltd.* - 2008 (342) EIT 503
- *Hindustan Polyester Lines* - 2008 (338) F.T. 11 (P&H)

(xii) The penalty under Rule 28 of the Rules is impossible where there is confirmation of goods as held in the case of *Siyam Singh Dahiya* reported as 2012 (273) EIT 489 (Tri - Del.)

(xiii) The only evidence available with the department relied upon in the impugned order is the statements of the appellants. The appellants produced material facts which were not pre-printed statements were got signed without showing its contents to the appellants. The lower adjudicating authority has not discussed the submission on these important facts and passed the impugned order by ignoring the same; that such lengthy statements of six persons cannot be recorded within hour as proved from the affidavit duly sworn in by all the Deponents that the statements were typed on computer and e-mails of date and time of creation of file, date and time of saving the file could have proved that the files in the computer were created and saved within minutes only by changing the name of the persons making the statement even

deal with the unit to help the unit for loading payment of Central Excise duty as alleged in the SCN.

(i) The department had not supplied copies of relevant documents along with SCN though he had requested for. CD containing copies of relied upon documents is an absolute necessity in the circumstances that he could not make effective defense copy. If the relevant documents were physically available for referring the contents as scheduled in the respective statements of the respective persons which had been relied upon in the SCN, he would have defended the case strongly as the SCN had been issued only on assumption presuming cases will not affect material corroborative evidences.

(ii) All such confessional statements recorded by the department were not alone to establish such charges as charged. All such confessional statements have been recorded under the provisions of Act only on the basis of the "Private Records" viz seized Diaries which were only pertaining to the business carried out by him with such limited purpose i.e. registers, private records maintained by Angadiah etc. These all private records had not been compared with the Central Excise records maintained by the Ship Breaking unit along as well as Hot Roll Rolling unit/Taco units. Therefore, the impugned order deserves to be set aside.

Remains

(vi) The department has also failed to establish with material evidence that by which truck no. the seized dutiable goods had been transported from the registered premises of the unit. In absence of this evidence, the charge of removal of the dutiable goods without payment of duty is not proved. Further, he had no knowledge of so called clandestine removal of the dutiable goods for which the demand has been assessed by the adjudicating authority. The seized Diaries under reference had been written by him only for his purpose only and not for other purpose. If he was involved in the so called clandestine removal of the dutiable goods, then such vehicle number and weight charges if any, would have been written in the Diaries. The particulars of weightment found in the written Diaries were only "Notes" only which were written during the reception of the seller and buyer with such required quantity of the goods by the seller/buyer. Nowhere, it is alleged that the quantity of dutiable goods (duty exempt) had been actually sold by the unit or otherwise. The same proceedings can be ended when such name of buyer is there. In the present case, no such evidence was regard to the buyers had been taken on record. Therefore, it is clearly seen that he had not been involved in any way in the manner as provided under Sub Rule (1) & (2) of Rule 26 of the CBR.

(vii) From the grounds of appeal, he has proved that he had not concealed (i) transporting, removing (as the removal of the so called dutiable goods had been taken place at the factory premises of unit) and no such evidence had been introduced

was. He was present at the time of the seized removal, concealing the fact no any plans for depositing the goods and no evidence of such effect has been taken or noted by the department, excepting selling or purchasing (these words are not applicable for him as he has not involved in purchase/sale & purchase of the a. specific goods, or any other manner as mentioned in the above Sub Rule (ii). Accordingly, he was not involved in the matter of non-deposit of Central Excise duty as the act of issuing the Central Excise receipt is on the head of the manufacturer only. The department has also not disclosed any facts and circumstances that what amount has been transferred to him. Therefore, it is proved that the adjudicating authority without authority of law has imposed penalty under Rule 28C(1) & (2) of the CEXA.

(v) The so called "financial transaction" taken base from the calculations of cost of the seized Diales cannot be proved without any corroborative evidence. The department had only made the allegation upon him on assumption/assumptions ground and not with any evidence which can and every so called consequent shown in the worksheet attached to the SOA. The authenticity of records taken from the premises has not been proved by material corroborative evidences viz. Central Excise records maintained by the unit. All such evidences taken on records were of only "private record" and these "private records" have not been proved with any kind of Central Excise records viz. Daily Production Register, Duty payment particulars, Central Celli Accounts etc. Therefore, it appears that the adjudicating authority has wrongly and without authority of law has imposed penalty.

(vi) The adjudicating authority failed to give due respect to the various case laws cited by him during the course of deciding the SOA. Therefore, he again notes the said case laws which are squarely applicable and prayed to consider the same so as to his legitimate right may not get damaged.

(Handwritten signature)

(vii) In short, it is to say and submit that the present case has any been made only on "Assumption/Presumption grounds" without direct corroborative evidences which were maintained under the Central Excise Law and in pursuance thereof, the charge of clandestine removal without payment of duty is not set at basis facts and accordingly he is not liable for penal action as the present case has been built up only on "Private Record". Therefore, the impugned order deserves to be set aside.

(viii) So far as the present case is concerned, kind attention is invited to Annexure B pertaining to the duty calculation of the clandestine removal of finished goods i.e. coil & 1340 plates, waste and scrap of iron and Steel products prepared on the basis of the seized Diales. On going through these Annexure, it is found that the so called scrap/plates of iron and Steel product alleged to have been cleared clandestinely to his various calling wife/family wife and names to that effect

have also been disclosed under column No. 3 of the said Annex. 6. But no such records are available in the SCN itself regarding such inquiry had been carried out or not.

(x) In addition to this, there are no statements of the concerned persons of the concerned units (re-rolling unit/furnace unit) appears to have been recorded. Thus, it is clearly found that since there is no corroborative evidence regarding the receipt of the so called clandestine consignments. Thus, it is ultimately proved that the charge of clandestine removal of the dutiable goods under reference is not sustainable. Therefore, the way is open and liable for penalty order as penalized in the impugned order.

(xi) The main issue came into an issue on seizure of private stock book maintained by the appellant for carrying out business. It is much so appellant has played limited role to recognize the seller and purchaser to each other with regard to availability of the required taxable goods. The appellant had never managed the transportation of vehicles and no evidences were on record that sale proceeds for the disputed consignments were made through appellant. No money flow back has been proved on record. The impugned order has been passed on assumption and presumption and on third party evidences without corroborative evidences. The lower adjudicating authority failed to analyze the charge of clandestine removal of excisable goods as well as involvement of appellant. Appellant requests to fence back the case to the lower adjudicating authority as held by the Hon'ble CESTAT vide Final Order No. M1107/1207/2017 dated 20/11/2017 passed in similar matters.

4.2 Personal hearing in the matter was allowed by Shri M.N. Vaidyanya, Chartered Accountant, on behalf of Appellant No. 4 and Appellant No. 5 and reiterated the grounds of appeals and submitted written U.H. submissions valuing as jointly penalty under Rule 22 is not impossible on them. Then he requested to set aside the penalty imposed on them.

4.2.1 He submitted additional written submissions, varying as under:-

(i) As per Para 13.3 of SCN, Appellants No. 4 & 5 have booked clandestine clearance of goods by Appellant No. 1 whereas in concluding para 13.3 and 13.4 of SCN, it is stated that appellants committed the offence of abatement in making false invoices without delivery of goods and issuing an fraudulent credit note. It is clearly evident from above that involvement is not sure whether appellants were duly involved in so called fraudulent transaction.

(ii) Merely a fact that two brothers living in a same house will their parents would mean that they are conducting their business together. Appellants have clearly

mentioned and revealed their business activity and that they do not undertake Business jointly. Neither SON nor impugned order confirms this fact and therefore in order to impose penalty under Rule 26 of the Rules, it has to be clearly established that they had played different roles independently of each other.

(ii) The only so called evidence for alleged clandestine removal & seized diaries. The lower adjudicating authority has ignored the submission of the appellants that many entries were entries/responses of the governing at various dates of Ship Breaking Yard. It is not denied that the adjudicating authority has power to not to accept the submission but dated 06 June 2007, the respondents and speaking order. It is surprising that the lower adjudicating authority has considered merely copying of some dates in diaries will those a storage service as collaboration? How can making some entries in records seized from the same person can be considered as collaboration?

(iii) Penalty can be imposed under Rule 26 of the Rules only if a person knowingly deals with any goods which he knows are liable for confiscation. The appellants had neither purchased nor dealt with the goods knowingly that these were liable for confiscation and as such no penalty is imposable under Rule 26 of the Rules. The appellants had never arranged supply of goods clandestinely cleared by Appellant No. 1 as alleged in the SON and had nothing to do with sale of exposable goods. The appellants had nothing to gain by arranging several exposable invoices without physical delivery of exposable goods and there is no such discussion in SON as well as in the impugned order. The appellant relied on decisions in the cases of Nagpur Alloy Castings Limited reported as 2002 (142) ELT 515 (SC). The judgments relied upon by the lower adjudicating authority at Para 31 & 2 to 3 (iii) are not relevant with the facts of the case.

(Signature)

4.4. Personal hearing in the matter was conducted by Shriha Rakshit K. Ghani, Advocate and Sanyashayam Prasadkar of Mrs. Jothi Lal Madan Case on behalf of Appellant No. 2 vs Appellant No. 0 and mentioned the grounds of appeals and submitted that copies of statements relied upon in the SON were not given to them; that request of cross-examination of persons who made statements not granted though CDEC has mandated this in Para 14 B of CBEI Circular No. 1100222L17 CX dated 09.3.2017; that Shri Ganjeep Gupta in 2008-10 was a college going student and not a prop (shop only in 2017) attendance of his father are Shri R.C. Gupta, yet his statement was recorded by CBEI Ahmedabad on same date because all statements were pre-printed types and only signatures were obtained; that no Bank and cheque details given by CBEI as to how have they made the payments to brokers; no details of agents given as to how they obtained cash in lieu of cheques; that there have been contradictions in statements as detailed in Para 11, 12 & 13 of

Appellate dated 20.7.2019; that their appeals may be allowed in view of above facts.

Findings:

5. I have carefully gone through the facts of the case, the impugned order and written as well as oral submissions made by the appellants. The issue to be decided in the present appeals is whether the impugned order in the facts and circumstances of this case, confirming demand and imposing penalty is correct or otherwise.

5.1. Appellant Nos. 1, 2, 4 & 5 filed appeals beyond period of 60 days but within further period of 90 days by stating reasons that their consultants were busy with work related to adjudicating proceedings of various authorities; that their consultant being chartered accountant was busy with work related to reply to notices of income tax assessment due to demonetization of currency and statutory audit nationalized banks as well as migration and consultancy of GST work. Since these appeals have been filed within further period of 90 days as prescribed under the Act, no adverse delay in filing these appeals and process to decide the appeals on merits.

3. I find that the officers of DCIT-1, Amritsar conducted coordinated searches at the offices of targeted brokers and transparent from where various incriminating documents like books, files, loose papers, computer peripherals, etc. and other materials including flip registers etc. were recovered. Further searches were also conducted at the premises of ship broking units and milling mills.

3.1. The appellants have submitted that copy of all the 1900 documents were not provided to them. I find that the appellants had also made such contention before the lower adjudicating authority who vide Para No. 27 & 28 of the impugned order held as under:

As regards the request for providing copy of RDU and Amritsar, I find that they did not ask even at the time of issuing adjournment for eventual hearing. And whenever this issue was raised during the course of adjudication, the Appellee Nos. 4 & 5 have not claimed that CD containing RDU have not been received by them. They were able to provide the copies of RDU and Amritsar Software and were storing their data in their own offices and CD's. Therefore, it would not be difficult for them to make them copy available. The claim of non-availability of material Appellate No. 504 of some months ago is rather surprising in view of their reference during the process of investigation and subsequent issuance of Show Cause Notice. It is also not the case that these two addresses have provided their complete documents periodically and copy was not legible or not working. Further, it is noted that copies of these documents that were furnished were in fact, were provided in soft copy and not ready to access. Thus, the plea of these two addresses in this regard is nothing but an attempt to frustrate the

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transporters etc. who have also admitted transfer of cash amount as well as excisable goods. These are substantiated evidences in the form of documentary and oral evidence (in event) resumed from the firm and persons involved in transaction with Appellant No.1. I find that the investigation has corroborated various evidences and established evasion of Central Excise duty and fraudulent passing of Central Credit by Appellant No.1. Therefore, it is proved beyond doubt that Appellant No.1 has evaded duty of Central Excise of Rs.19,00,60/- as detailed in relevant Annexure (s) of the Show Cause Notice and has fraudulently passed on Central Credit of Rs.1,58,806/- as worked out in Annexure to SCN. The records also show that Appellant No.2 and the respondent Appellant No.4 & 5 whose statements were perused by Appellant No.2 before granting his own statements, never filed any retraction at any point of time. Therefore, all these evidences substantiate the charges against the appellants and are valid, admissible and legal evidences in the eyes of law.

8.5 It is an irony that DCEI proved the authenticity of records seized from various transporters and Appellant No. 3 to Appellant No. 5 and duly corroborated the same with records seized from other merchants. Regarding demand of duty based on booking register of the transporter, it has been contended by the appellant that Department has not adduced evidence with regard to quantity of goods and freight of the goods. They have also raised question regarding accuracy of the register maintained by GMR at the gate of ship breaking yard. In this regard, I find that all of GMR entries found in the booking register of the transporter, except for 27 entries Appellant No. 1 had raised questions. Thus, authenticity of the booking register is beyond doubt. During investigation, statements of Director of Appellant No. 1 (Appellant No. 2) were recorded in which he failed to produce copy of central excise invoices in respect of details of clearance mentioned therein and admitted to have cleared goods without issue of invoices. Regarding register maintained by the GMR at the gate of ship breaking yard, I find that, such register provides corroborative evidence to establish that the truck number mentioned in the booking register of the transporter usually entered the premises of ship breaking yard on the given date and time. Though it has been contended by the appellant, that the truck might have gone to some other place for loading, they have not challenged the fact that only after finalization of deal, the trucks are engaged, in order to save money pertaining to cancellation or loading of truck. Therefore, there is no doubt that both the registers, viz. booking register of the transporter as well as register maintained by GMR are authentic. Regarding freight of such goods, it is seen that the booking register does not show name of the buyer. It shows only destination for which truck was hired. It is settled law that in cases of commercial removal department is not required to prove the case with mathematical precision as laid by the Apex Court in the case of D. D. Choudhary (1995 (19) ELT 1546 (SC)), wherein it was held that -

21. The other cardinal principle relating to important bearing on the evidence or weight of proof is that sufficiency and weight of the evidence is to be conditioned to use the words of Lord Macleod in *White & Carter (Councils) Ltd. v. McGregor* (1962) 1 All ER 413 at p. 415 "Allowing to the Court which it was in the power of the State to place him in the power of the offer to have contradicted" since it is necessarily difficult for a court to be responsible for the possibility of some facts which are essential which are knowledge of the appellant or the accused, it is not required to show them as part of the ordinary burden".

58. And that the department has adduced enough evidences to establish that Appellant No. 1 was engaged in clandestine removal of the goods and therefore, the case facts cited by them are of no help to them as facts of the present case being a case concerning that Appellant No. 1 was engaged in evasion of duty by way of clandestine removal of the excisable goods.

7. Regarding denial of duty on the basis of diaries maintained by brokers Shri Bharat Manharlal Shelh, Shri Vinod Anantlal Patel and Shri Kishore Anantlal Patel, it has been contended by the appellant that the denial made on the basis of third party documents is not sustainable. I find that in the diaries maintained by the brokers for all the transactions of the appellant are recorded. It is found that in case of many such transactions, invoices have been issued by the appellant. Thus, the authenticity of the diaries and other records recovered from the brokers is established. Further, the brokers have admitted to have received the goods from appellant without invoices and sold the same without invoices. They have also admitted that in many cases, in order to pass or conceal credit fraudulently, they had supplied invoices to one party and the goods of that nature to another party. Thus, the case is based not only on third party documents but also corroborated by other evidences. The Director of the appellant (Appellant No. 2) has not furnished any satisfactory explanation in respect of details available in the seized diaries showing premises of the appellant from where goods loaded and could not produce corresponding contra invoice invoices in this regard. The statements have never been retracted by Appellant No. 2 and hence have evidentiary value. The combined effect of all such evidences reflect that the evasion has taken place and Appellant No. 1 and Appellant No. 2 have indulged themselves in such duty evasion. Hence, in this case third party evidences backed by professional statements of brokers are admissible. The contention made by Shri Manohar Patel were confirmed by Shri Bharat Manharlal Shelh and they never retracted their statements. It is on record that all transactions were recorded in original and coded manner and the case was made out after deciphering and deciphering it a same even when Shri Vinod Anantlal Patel and Shri Kishore Anantlal Patel did not cooperate during enquiry. The transactions recorded in diaries and storage documents seized from Shri Bharat Manharlal Shelh and Shri Vinod Anantlal Patel and

Section 11A(4) of the Act is a natural consequence. The confirmed dues are required to be paid along with interest at applicable rate upon the provisions of Section 11A(4) of the Act. And by seeing in this manner, the appellant No. 1 is liable for penalty equal to the duty under rule 25 of the Rules read with Section 11A(4) of the Act.

6. Appellant No. 2 has contended that the lower adjudicating authority failed to establish as to how has he obtained the so-called evasion of Central Excise duty and thus, wrongly imposed penalty on him under Rule 25(1) & 25(2) of the Rules. I find that the facts of this case have manifest that he was the key person of Appellant No. 1 and was directly involved in clandestine removal of goods as well as fraudulent supply of deceptible invoices without payment of duty of goods by Appellant No. 1 and in collusion with the deceptible goods manufacturer and dealer by Appellant No. 1. He was looking after day to day functions of Appellant No. 1 and had concerned himself in all matters related to the excisable goods including manufacture, storage, removal, transportation, selling etc. of such goods and hence, was knowing or had reason to believe that these goods were liable to confiscation under the Central Excise Act, 1944 and Rules made thereunder, in respect and that imposition of penalty of Rs. 41,00,000/- and penalty of Rs. 1,65,063/- upon Appellant No. 2 under Rule 25(1) & 25(2) of the Rules is correct, proper and justified.

3.1. Shri Dilip Manoharai Shelke (Appellant No. 3) has contended that his role was limited as middleman and he was not concerned with the goods and therefore, penalty is not imposable on him. In this regard, I find that as admitted by Shri Manohar Shelke, he was the key person who arranged for producing goods from Appellant No. 1 without issue of Central Excise invoices and get them supplied without issue of invoice. He and Appellant No. 1 (under his instructions) recorded all these transactions in his diary, which contained details of cash payments received and made to respective parties. He was the person who supplied Bill to some other units for facilitating availing of fraudulent Central Excise credit and supplied the goods to some other units without any Central Excise invoices and his role is very clearly and conclusively established in the Show Cause Notice and the Impugned order and therefore, he cannot now plead that his role was limited. I find that his role was crucial in the whole episode of clandestine removal of goods as well as facilitating fraudulent availing of credit. Therefore, I find that penalty of Rs. 25,388/- imposed on him under Rule 25(1) of Central Excise Rules, 2002 is correctly imposed and there is no need to interfere with the order of adjudicating authority.

3.2. Shri Vinod Anantnisha Pate and Shri Kisnu Anantnisha Pate, partners (Appellant No. 4 & 5) have contended that they have not dealt with the goods in the manner prescribed under Rule 25 of the Central Excise Rules, 2002 and therefore, they are not liable to penalty. But that the story remained by Shri Vinod

Apparitional Patel in coded language contained details of both as well as illicit clearances by Appellant No. 1. When asked about the entries in the diaries, he gave evasive replies like the accounts were imaginary, he was facilitating accounts of Sardesai, etc. He never cooperated with the investigation. However, DCCB officers got the coded data restored and the whole chapter of clandestine removals got revealed. The decoded data matched with the data maintained in the computer form and in case of some transactions, Appellant No. 1 had issued Central Excise invoices whereas for many transactions, no Central Excise invoices were issued and no Central Excise duty was paid. This null indicates the data maintained by Sri Vinod Apparitional Patel. His brother, Sanjay Apparitional Patel was handling business of registered dealers and was involved in facilitating clandestine removals through his dealer firm. The records also showed cash transactions for vehicles, tyres and sales through agencies.

4.3 Appellant No. 4 & 5 in their submissions argued that they have not been indulging into clandestine activities but accounts found in Pen Drive/Computer were written for Herring accounting software etc. I also find that they were not only indulging themselves in handling goods cleared clandestinely but were also involved in assisting Appellant No. 1 in clandestine removal of the excisable goods. As far as data recovered from Pen Drive/Computer is concerned, the argument of having accounting/software is nothing but an attempt to get out of culpability. It is a common practice that any software is to be installed either in computer desktop or laptop and not in Pen drive. To do something special with intent to only law in such a way that no one can be detected at later stage about the data, it is a practice to create records in Pen Drive to avoid detection from the computers. The correlation of data recovered by DCCB with the data available in Pen Drive is neither a miracle nor a coincidence.

3.4 Appellant No. 4 & 5 also argued that they have given explanations for the documents to the investigating officers during search made. It is on record, that Appellant No. 4 & 5 had not cooperated with the investigation and has given evasive replies at all. Therefore, their role is very much covered under Rule 26 of the Rules and penalties of Rs. 5,00,000/- for abating Appellant No. 1 in clandestine clearance of the excisable goods and of Rs. 1,56,063/- for abating Appellant No. 1 in fraudulent passing on Central Grant by issuing Central Excise invoices only without physical supply of goods imposed on each of Appellants by the adjudicating authority under Rule 26(1) and 26(2) of the Rules is proper and there is no need to interfere with the same.

4.4 I find that the facts of the case are distinguishable from the judgments relied upon by these two appellants. Inasmuch as the documents, returned, analysis thereof and data storage devices have been corroborated by the statements of Appellant No.

2.3 Shri Manish Hata, Accountant of Appellant No. 3, statements of Appellant No. 4 & 5, statements of transporters, agents and various officials from GMD authorities and the statements have never been received. The persons involved in the case have freely mobilised, arranged and managed all affairs of clandestine clearances made by Appellant No. 1. This material may also be relevant for the present case.

(e) The statements of the appellants if not extracted, the same is legal and valid in the eyes of law. And the same can be considered as corroborative evidence and no further evidence is required. The above has been held in the cases of (i) Nareed J. Burdwan (1996) (33) ELT 258 (SC); (ii) Rakesh Kumar Singh (2013) (101) ELT 107 (SC Delhi)

(f) That the admission or confession is a sufficient piece of evidence, which can be used against the maker of it has been held in the cases of (i) Alex Industries (2008) (230) 273 ELT (Til. Mumbai); (ii) M/s. Jena Solutions (2010) (208) ELT (Til. Chennai); (iii) M/s. Karm Engineering Works (2014) (168) ELT 373 (Til. Delhi)

(g) Statement of director and authorized persons of assessee admitting clearance of goods without payment of Central Excise duty and without issuing Central Excise invoices inculpatory and specific and never retracted after an admission is admissible as held in the case of H Tech Agencies Ltd. (supra) as 2017 (348) ELT 608 (Til. Delh).

7.1 On careful consideration of the facts and circumstances as stated above, I find that the statement of Director is the basis for the findings. The statement is voluntary and is true. The Director has clearly admitted that all documents/invoices entries generated by the office regarding details of movement of raw materials as well as clearance of finished goods with and without payment of duty. This fact is further strengthened by the observation that many entries in the private documents are covered by the invoices issued by the assessee on which duty amount paid. The Director has clearly admitted the fact of the entries in the invoices/invoices covering of goods covered by the entries in the private documents which are not covered by the invoices. Such statement is admissible as evidence as has been held by the Apex Court in the case of Systems & Components Pvt. Ltd. (supra). The entries of documents/invoices is required to be correctly sufficient and the entries/invoices, particularly mentioned in each individual case are required to be analysed and examined independently. The decision in the case has relied upon the confessional statement of the Director which is also supported by the material entries in the private records. There is no admission that the statement has been taken under duress. The respondent also has not appeared to have asked for cross-examination during the pendency of a judicial writ.

7.2 In view of the foregoing, I find that the determination of assessee has erred in taxing the goods and there is an average fulfilment of standardised records of goods. Upon review the statement of Shri Sanjay Khandelwal, who is well known to the office of

The public notice contained the list of goods removed & stands admitted by the Taxpayer. It was about the date of the purchase of the public notice (consequently, I had no reason to disallow this part of evidence)

16. The evidence of clandestine clearance has been brought on record only as a result of investigation undertaken by the department. The evidence unearthed by the department was not primary evidence and could have been established for the investigation. Therefore this is a clear case of suppression of facts from the department and accordingly the no return period of evidence is applicable. In this case and hence the demand cannot be held to be unenforceable.

(d) The primary or director or company is important when he was directly involved in the evasion of Central Excise duty (as been held in the case of P.S. Singhvi reported as 2011 (277) E.L.T. 10 (Sic))

(e) It is settled legal position that once a case of clandestine removal of excisable goods is established, as has been done in the instant under case, it is not necessary to prove the same with mathematical precision as held by the Hon'ble Supreme Court in the cases of (i) Shri. Gurnar Me. reported as 1983 (13) E.L.T. 483 (SC) and (ii) Asifal Textiles (India) Pvt. Ltd. reported as 2009 (206) E.L.T. 637 (SC).

17. I also rely on the decision in the case of Haryana Steel & Alloys Ltd. reported as 2017 (355) E.L.T. 451 (Tri. Del.) wherein it has been held that interlocks (diarces) 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 disposed by 144 of the factory duly with incriminating para 21 & 22 of the statement of employee containing detailed knowledge to be considered as reliable. I also rely on the decision in the case of Ramchandra Kears Pvt. Ltd. reported as 2014 (207) E.L.T. 201 (SC) where a similar view has been adopted by the Hon'ble Apex Court.

18. I am of the view that admitted facts need not be proved as has been held by C.B. A. in the cases of Alex Industries reported as 2004 (206) E.L.T. 9313 (Tri. Mumbai); M/s. Dine Solutions reported as 2006 (206) E.L.T. 1116 (Tri. Chennai) that Confessional statements would take the field and there is no need to search for evidence. Hence C.B. A. in the case of M/s. Karna - 199. Works reported as 2014 (168) E.L.T. 273 (Tri. Del.) has also held that Admission/Confession is a substantial piece of evidence, which can be used against the maker. Therefore, Appellant's reliance on the 1986 case laws relating to corroborative evidence and establishing clandestine removal cannot be made applicable in light of the positive evidence available in the case as discussed in the findings of the impugned order.

23. Voluntary confessional statement which is retracted after recording without any basis, law or legal ground, for such facts have come on record to justify retraction; when law was just consequent upon confession and facts but Justice Purnanandha's statement recorded by Hon. Justice Kulkarni was also verified by Hon. Justice Kulkarni himself regarding. Considering that recovered records were only referring to purchase and sale facts and not to filed purchase of tobacco as during 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22, 2022-23, 2023-24, 2024-25, 2025-26, 2026-27, 2027-28, 2028-29, 2029-30, 2030-31, 2031-32, 2032-33, 2033-34, 2034-35, 2035-36, 2036-37, 2037-38, 2038-39, 2039-40, 2040-41, 2041-42, 2042-43, 2043-44, 2044-45, 2045-46, 2046-47, 2047-48, 2048-49, 2049-50, 2050-51, 2051-52, 2052-53, 2053-54, 2054-55, 2055-56, 2056-57, 2057-58, 2058-59, 2059-60, 2060-61, 2061-62, 2062-63, 2063-64, 2064-65, 2065-66, 2066-67, 2067-68, 2068-69, 2069-70, 2070-71, 2071-72, 2072-73, 2073-74, 2074-75, 2075-76, 2076-77, 2077-78, 2078-79, 2079-80, 2080-81, 2081-82, 2082-83, 2083-84, 2084-85, 2085-86, 2086-87, 2087-88, 2088-89, 2089-90, 2090-91, 2091-92, 2092-93, 2093-94, 2094-95, 2095-96, 2096-97, 2097-98, 2098-99, 2099-100, 2100-101, 2101-102, 2102-103, 2103-104, 2104-105, 2105-106, 2106-107, 2107-108, 2108-109, 2109-110, 2110-111, 2111-112, 2112-113, 2113-114, 2114-115, 2115-116, 2116-117, 2117-118, 2118-119, 2119-120, 2120-121, 2121-122, 2122-123, 2123-124, 2124-125, 2125-126, 2126-127, 2127-128, 2128-129, 2129-130, 2130-131, 2131-132, 2132-133, 2133-134, 2134-135, 2135-136, 2136-137, 2137-138, 2138-139, 2139-140, 2140-141, 2141-142, 2142-143, 2143-144, 2144-145, 2145-146, 2146-147, 2147-148, 2148-149, 2149-150, 2150-151, 2151-152, 2152-153, 2153-154, 2154-155, 2155-156, 2156-157, 2157-158, 2158-159, 2159-160, 2160-161, 2161-162, 2162-163, 2163-164, 2164-165, 2165-166, 2166-167, 2167-168, 2168-169, 2169-170, 2170-171, 2171-172, 2172-173, 2173-174, 2174-175, 2175-176, 2176-177, 2177-178, 2178-179, 2179-180, 2180-181, 2181-182, 2182-183, 2183-184, 2184-185, 2185-186, 2186-187, 2187-188, 2188-189, 2189-190, 2190-191, 2191-192, 2192-193, 2193-194, 2194-195, 2195-196, 2196-197, 2197-198, 2198-199, 2199-200, 2200-201, 2201-202, 2202-203, 2203-204, 2204-205, 2205-206, 2206-207, 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2607-608, 2608-609, 2609-610, 2610-611, 2611-612, 2612-613, 2613-614, 2614-615, 2615-616, 2616-617, 2617-618, 2618-619, 2619-620, 2620-621, 2621-622, 2622-623, 2623-624, 2624-625, 2625-626, 2626-627, 2627-628, 2628-629, 2629-630, 2630-631, 2631-632, 2632-633, 2633-634, 2634-635, 2635-636, 2636-637, 2637-638, 2638-639, 2639-640, 2640-641, 2641-642, 2642-643, 2643-644, 2644-645, 2645-646, 2646-647, 2647-648, 2648-649, 2649-650, 2650-651, 2651-652, 2652-653, 2653-654, 2654-655, 2655-656, 2656-657, 2657-658, 2658-659, 2659-660, 2660-661, 2661-662, 2662-663, 2663-664, 2664-665, 2665-666, 2666-667, 2667-668, 2668-669, 2669-670, 2670-671, 2671-672, 2672-673, 2673-674, 2674-675, 2675-676, 2676-677, 2677-678, 2678-679, 2679-680, 2680-681, 2681-682, 2682-683, 2683-684, 2684-685, 2685-686, 2686-687, 2687-688, 2688-689, 2689-690, 2690-691, 2691-692, 2692-693, 2693-694, 2694-695, 2695-696, 2696-697, 2697-698, 2698-699, 2699-700, 2700-701, 2701-702, 2702-703, 2703-704, 2704-705, 2705-706, 2706-707, 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Appellants and therefore, I set aside penalty imposed upon them under Rule 23 of the Rules.

10. In view of above I uphold the impugned order except penalty imposed upon Appellant No. 6 to Appellant 8 and accordingly reject appeals filed by Appellant No. 1 to Appellant No. 5 but allow appeals filed by Appellant No. 6 to Appellant No. 9.

11. अतिरिक्त शिप ब्रेकरों के संबंध में निम्नलिखित आदेशों को देकर अंत में है।

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

(Signature)
 (Signature)
 (Signature)

(Signature)
 (Signature)
 (Signature)

By R.F.A.D.

1. M/s. Akera Merchant Ship Breakers Pvt. Ltd.,
D-252, Kalabai,
Ramnagar, District-Bhavnagar.
2. Shri Anil Munshiram Jain,
Director, M/s. Akera Merchant Ship Breakers Pvt. Ltd.,
D-252, Kalabai,
Ramnagar, District-Bhavnagar.
3. Shri Bharat Sheth
Plot No. 517, F-2
Gandha Chaud Jain Temple Road,
Bhavnagar.
4. Shri Vinodkhai Anantlalcha Patel,
Plot No. 20, Sambel Park Society,
Subhasnagar, Bhavnagar.
5. Shri Kishorlal A. Patel,
Proprietor of M/s. Krishna Enterprises,
Plot No. 20, Sambel Park Society,
Subhasnagar, Bhavnagar.
6. Shri Dalvee Krishan Gupta,
Proprietor of M/s. Dalvee Krishan Gupta & Co.,
House No. 70, Sector - 21D,
Belaji Subhasnagar Market, Mandi Gobindgarh
District - Faridkot Sahib, Punjab.
7. Shri Sanjeev Gupta,
Proprietor of M/s. K. S. Gupta & Co.,
House No. 209, Sector 4A,
Mandi Gobindgarh, District - Fatehgarh Sahib,
Punjab.
8. Jitendra Kumar,
Proprietor of M/s. J.K. Jindal & Co.,
House No. 121, Sector - 24D,
Mandi Gobindgarh, District - Fatehgarh Sahib,
Punjab.

