



राज्य (अपील) व. व. विभाग, प्रथम अपील केन्द्र, अहमदाबाद, गुजरात  
 STATE (APPEALS) V.V. DEPARTMENT, FIRST APPEALS CENTRE, AHMEDABAD, GUJARAT

पत्तिका सं. १७, १९, २०, २१, २२, २३, २४, २५, २६, २७, २८, २९, ३०, ३१, ३२, ३३, ३४, ३५, ३६, ३७, ३८, ३९, ४०, ४१, ४२, ४३, ४४, ४५, ४६, ४७, ४८, ४९, ५०, ५१, ५२, ५३, ५४, ५५, ५६, ५७, ५८, ५९, ६०, ६१, ६२, ६३, ६४, ६५, ६६, ६७, ६८, ६९, ७०, ७१, ७२, ७३, ७४, ७५, ७६, ७७, ७८, ७९, ८०, ८१, ८२, ८३, ८४, ८५, ८६, ८७, ८८, ८९, ९०, ९१, ९२, ९३, ९४, ९५, ९६, ९७, ९८, ९९, १००

सक. कार्य दिनांक: 12.09.2018

संख्या: 172-10-175-2018-19

Tax Ref No: 001-1725700-4142 Email: appeals@nata.gov.in

सिद्धांत अन्तर्गत सूचना :-

A. अपील संख्या: 172-10-175-2018-19  
 अपील संख्या: 172-10-175-2018-19  
 अपील संख्या: 172-10-175-2018-19

B. अपील संख्या: 172-10-175-2018-19

**BHV-EXCUS-000-APP-172-10-175-2018-19**

अपील का दिनांक: 12.09.2018 जारी किया का दिनांक: 12.09.2018  
 Date: 12/09/2018 Date: 12/09/2018

कृपया ध्यान दें, अधिकांश अपीलें 12.09.2018 को जारी की गईं।  
 Please be aware that most of the appeals were issued on 12.09.2018.

1. अपील संख्या: 172-10-175-2018-19  
 Appeal No: 172-10-175-2018-19

अपील संख्या: 172-10-175-2018-19  
 Appeal No: 172-10-175-2018-19

2. अपील संख्या: 172-10-175-2018-19  
 Appeal No: 172-10-175-2018-19
1. M/s Jai Bharat Steel Industries, 204 GIDR-II E/II, Dist. Bhavnagar-364 247
  2. Shri Pravin Bhandal Partner of M/s Jai Bharat Steel Industries, Bhavnagar
  3. Shri Prakashshubhai Bhandal Capital, M. Vikas Complex 4<sup>th</sup> floor, Bhavnagar 364 001
  4. Shri Vishalshubhai Bhandal Capital, M. Vikas Complex 4<sup>th</sup> floor, Bhavnagar

अपील संख्या: 172-10-175-2018-19  
 Appeal No: 172-10-175-2018-19

3. अपील संख्या: 172-10-175-2018-19  
 Appeal No: 172-10-175-2018-19

4. अपील संख्या: 172-10-175-2018-19  
 Appeal No: 172-10-175-2018-19

अपील संख्या: 172-10-175-2018-19  
 Appeal No: 172-10-175-2018-19

5. अपील संख्या: 172-10-175-2018-19  
 Appeal No: 172-10-175-2018-19

अपील संख्या: 172-10-175-2018-19  
 Appeal No: 172-10-175-2018-19

6. अपील संख्या: 172-10-175-2018-19  
 Appeal No: 172-10-175-2018-19

अपील संख्या: 172-10-175-2018-19  
 Appeal No: 172-10-175-2018-19

7. अपील संख्या: 172-10-175-2018-19  
 Appeal No: 172-10-175-2018-19

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 Appeal No: 172-10-175-2018-19





**IN ORDER IN APPEAL :**

The above mentioned appeals have been filed by the Appellants (hereinafter referred to as "Appellant No.1 to Appellant No.4") as detailed in the Table against Order-in-Original No. 24/Excise/Den and 20/118/Comd/2014/2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central Excise, Gandhinagar Division, Surinagar (hereinafter referred to as "the lower adjudicating authority").

Sr. No.	Appeal No.	Appellant No.	Name of the Appellant
1.	V2/344/BVR/2017	Appellant No.1	M/s. Jai Bharat Steel Industries, 204, G-20-II, Sahar, Distt: Kharagpur.
2.	V2/345/BVR/2017	Appellant No.2	Shri Pravin Bansal, Partner of M/s. Jai Bharat Steel Industries, 204, G-20-II, Sahar, Distt: Kharagpur.
3.	V2/346/BVR/2017	Appellant No.3	Shri Himanshu Verma, Leghari, 38, Vihar Complex, 4 <sup>th</sup> Floor, Near Sahakar Hat, Waghosedi Road, Kharagpur.
4.	V2/347/BVR/2017	Appellant No.4	Shri Virsingh Bhadaniya, Broker (firm), C/ M/s. Radhe Steel Kharagpur 3, Biteran Chamber, 1 <sup>st</sup> Floor, Top Haka Station Road, Kharagpur.

The brief facts of the case are that Show Cause Notice F.No. V2/117/Den/1-0/14/16 dated 26.02.2016 was issued to Appellant No.1 to Appellant No. 4 for clearances of M.S. Ingots clandestinely to various customers as lying as under :

- Appellant No.1 had clandestinely manufactured and cleared their finished extruded goods, namely, C/ M/s. Himanshu Verma involving Central Excise duty of Rs. 17,50,202/- without issuing the invoices and without payment of Central Excise duty;
- Appellant No. 2 (Partner of Appellant No. 1), had concerned himself in selling, storing, keeping, and removing of the extruded goods without the knowledge and had reason to believe that the same were liable to confiscation, which made him liable to penalty under Rule 26 of the Central Excise Rules, 2002 (hereinafter referred to as "the Rules").
- Appellant No. 3 and Appellant No. 4 are brokers and had concerned themselves in selling the extruded goods on commission basis in clandestine manner. They knew and had reason to believe that the same were liable to confiscation and hence, they were liable to penalty under Rule 26 of the Rules.



21. The above SCN was adjudicated by the lower adjudicating authority into the impugned order, which confirmed demand of Central Excise duty of Rs. 17,50,202/- on Appellant No.1 under Section 11A(1) of the Central Excise Act, 1944 (hereinafter referred to as "the Act") along with interest on the confirmed demand under 11A(4) of the Act and also imposed penalty of Rs. 17,50,202/- upon Appellant No.1 under Section 11A(3)(c) of the Act read with Rule 25(1) of the Rules; imposed penalty of Rs. 17,50,202/- upon Appellant No. 2; imposed penalty of Rs. 17,50,202/- upon Appellant No.3 and penalty of Rs. 10,000/- upon Appellant No. 4 under Rule 25 of the Rules.

3. Being aggrieved with the impugned order, Appellant No. 1 to Appellant No. 4 have preferred present appeals, inter alia, on the following grounds:-

Appellant No. 1 :-

(i) The impugned order has been passed ignoring the principles of natural justice inasmuch as due consideration has not been given to the case laws cited by them;

(ii) The allegation of illicit removal of excisable goods is on the basis of entries found in the private records / note books etc. seized under Paragraph dated 16.08.2012 from the premises of Appellant No. 2; that these seized records had not been proved as 'business' documents' to sustain the charge of so-called 'illicit removal as no such direct material evidences have been placed on records of Central Excise Records maintained by Appellant No. 1, weight receipts have been taken on letters to sustain the entry of weight shown in the said invoice and books as well as no material evidences had been placed on record regarding means of transport; that the vehicle numbers have been shown as 'G-1, G-3, G-4 etc.?' that such entries have not been found in seized private records to confirm the transportation of the excisable goods;

(iii) The relied upon documents have been produced 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 detaching the case and they rely on the precedent in case of *M/s. Shyam Steel Corporation* reported at 2016 (332) E.T. 310; that when the relied upon documents supplied in form of "CD" not found in accordance with the conditions laid down under Section 35B of the Act read with Section 63B of the Indian Evidence Act, such documents cannot be accepted as 'evidence' to

name stamps against such person or party; that no such marksmen has been placed on record that the relied upon documents had been supplied in CD form in accordance with the provisions of Section 46 of the Act and hence the impugned order has been passed beyond Show Cause Notice and on the basis of third party evidences is not proper and need to demand and maintain the Central Excise duty.

(iii) The adjudicating authority failed to establish that Jee had clandestinely procured the raw material and manufactured the excisable goods from such illicit procurement of raw material and sold the said excisable goods illicitly; that in absence of clandestine procurement of raw material, manufacture of excisable goods from such raw material and transaction of the goods without recording statement of vehicle owner, the charge of clandestine removal of the excisable goods cannot be justified in the eyes of law.

(iv) This case has been made out only on the basis of assumptions and presumptions as the adjudicating authority has failed to establish that coding name i.e. "K.B." mentioned in the said seized permits manifest record was pertaining to Appellant No. 1 and no such question has been asked by the Central Excise officer establishing that the coding name "K.B." was name of Appellant No. 1; that without such verification of the genuineness of the name of the retelling unit mentioned in the so called seized series, it is not justifiable that the so called coding name as deciphered by the master is the name of Appellant No. 1; that quantity of illicit removal had been worked out only on the basis of entries found in the seized seizure series and not established the quantity on the basis of weighments etc.

(v) No master of trucks has not stated that all transactions as mentioned in Annexure-E had been carried out by him through his above trucks; that statements of the truck owners have been recorded in some master and signatures have been obtained on such statements; that the third party evidences based which the impugned order has been passed do not the direct evidences to confirm the charge of clandestine removal;

(vi) The promissories on which bills Annexure-F was prepared, were not the authenticated one and the same were not got perused by Appellant No. 1; that the comparison of such promissory notes with the sales summary & register of Appellant No. 1 is not sufficient without any corroborative evidences viz. daily stock account maintained by them wherein such particular of removal of excisable goods are being shown; that no such records pertaining to receipt and consumption of raw material are taken on record; that the goods received by



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the non-payment of Central Excise duty and confession statement of partner is not alone the evidence to prove the charge.

(41) The so called financial transactions taken place in so called third removal had not been proved by producing corroborative evidences on record in such as money flow book had also not been placed on record to substantiate the charges for illicit removal of Central Excise goods without payment of Central Excise duty; that the so-called transactions corroborated by the adjudicating authority on the basis of private note books & records seized from the broker cannot be said as corroborative evidences as the said theory was not extended to the end of agent/purchaser and no records were placed on record regarding payment of freight charges; that transaction value has also not been ascertained.

(42) Non-availability of some documents is not the criteria to establish the charge of clandestine removal unless it is proved with corroborative evidences viz. illicit receipt of raw material and manufacture of excisable goods from such illicit receipt and its illicit removal; that the department failed to establish the said transactions with evidences viz. money flow book; that in absence of statement/confession of customer/buyer with reference to so called third removal of excisable goods, such transaction value cannot be ascertained; that the Central Excise duty has been worked out on the basis of the site procedure in the said seized private note books & records of the third party and therefore, duty demanded on the value shown in the said seized private records is not proper/genuine.

(43) The case laws cited by the adjudicating authority are not applicable; the adjudicating authority failed to give due respect to the case laws cited by appellant No. 1 and thus failed to observe the judicial discipline as he has not proved the clandestine receipt and consumption of raw material, but received the inquiry at the end of buyers to sustain charge of third removal. See: 1st Appeal (relaxation decision) of M/s. Am. Aluminium Pvt. Ltd. reported as 2014 (311) E.T.D. - (Trib. Chand.) 303; M/s. Adam Enterprises Ltd. reported as 2015 (324) E.T.D. (Trib. Chand.); M/s. P. D. Industries Pvt. Ltd. reported as 2016 (340) E.T.D. (Trib. Chand.) and the Hon'ble Tribunal's amended Order No. AC11033-11034/7815 dated 17.07.2015 in case of M/s. Rajraj Castings Int. Ltd. which were applicable in the present case; that documents supplied in CP forms cannot be considered to be sufficient evidence upon documents as provided in section 48F of the Act; that the adjudicating authority has wrongly and without authority of law confirmed the duty when they are not required to pay and thus they are not liable to pay any penalty as well.

(b) The names of buyers of the so-called clandestinely removed goods have been mentioned in Annexure III. However, no finding has been made as to whether or not whether the clandestinely removed goods had been received by them or not and whether they have paid sales proceeds or not; that no significance can be given to Annexure I as no signature of Central Excise officer is appearing on it and therefore, such documents cannot be basis for confirming demand of Central Excise duty; that in view of the above Appellant No. 1 is not liable to pay any Central Excise duty and no penalty is applicable on them.

Appellant No. 2 :-

Appellant No. 2 had not involved himself in any manner as provided under Rule 26(1) of the Rules; he has not cleared or lessed anything during investigation; that he reiterated the grounds raised by Appellant No. 1 to contended that penalty of Rs. 11 lacs on him had simply passed Paragraph. Statements, etc. which are relevant documents in this case; that there is nothing on record to suggest that the so-called clandestine removal has been taken place with the aid of Appellant No. 2, partner of Appellant No. 1; that contention raised in respect of the Appellant No. 1 have also been reiterated by Appellant No. 2; that penalty is imposable upon him under Rule 26(1) of the Rules as he has not dealt with the goods liable to confiscation in view of above case laws quoted.

Appellant No. 3:-

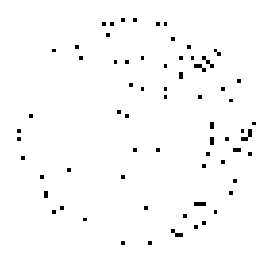
(1) Appellant No. 3 has stated that the impugned order is non-speaking and not reasoned and inasmuch as the lower adjudicating authority has not dealt with the pleas made by them in their written submission, as well judgments referred by them were completely ignored, that the impugned order is issued in violation of principle of natural justice as during personal hearing they requested to supply relied upon documents to defend their case; that the Appellant No. 2 is not liable to penalty under Rule 26 of the Rules as he has not knowingly or intentionally concerned with the clearance of the goods concerned him in any way; that he discharged his duties by introducing the purchaser and therefore, the imposition of penalty on him under Rule 26(1) of the Rules is not proper inasmuch as he being a broker was called in by the purchaser at the M/S Bani for purchase of the same; that he being broker had introduced purchaser to seller and finalized the deal, inasmuch he said that he as a broker had played any role which would render M. S. Bani etc. liable for

confiscation under the provisions of Rule 23(1) of the Rules in order to attract penal provisions of Rule 26(1) of the Rules; that he had in any way conspired or colluded with the rolling mill to facilitate the evasion of excise duty by them and he never asked the rolling mill to remove the goods clandestinely.

(ii) That he has only brooked the sale and has 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 purchaser to the seller i.e. rolling mill, represented by Shri Achal Bansal; that he has not dealt with the goods but was just a link between buyer and seller of the goods that he was not required to deal, registered with the Central Excise authorities and he has not violated any rules or regulations; that even if it is admitted that he had indulged himself in clandestine removal of goods and whatsoever written in documents are details of such illicit transactions, then there has to be evidence from sellers regarding such sale, transport of such goods; that investigation has not been extended upto a year end and whether sales proceeds had been received in cash; that this case was not covered under sub-rule (1) of Rule 25 as he has not dealt with excisable goods in any manner whatsoever and he had only introduced the purchaser; that for a penalty on any person under Rule 26(1), it is a mere condition that either the said person acquired possession of any excisable goods with the knowledge or belief that the goods were liable to confiscation under the Act or Rules or had been in any way concerned in transporting, removing, storing, keeping, concealing, selling or disposing or had in any other manner dealt with any excisable goods with such knowledge or belief.

*M. S. ...*

(iii) The allegation of aiding and abetting Appellant No. 1 is not correct, inasmuch as there is no interaction, close and/or communication with Appellant No. 2 with alleged Rolling Mills (Appellant No. 1) that at the time of removal of goods, Appellant No. 2 had no knowledge that the Rolling Mill/Appellant No. 1 was to facilitate in clandestine clearance of excisable goods; that there is no evidence on record to confirm that Appellant No. 2 had in any way, conspired or colluded with the Rolling Mill/Appellant No. 1 and therefore, imposition of penalty on him under Rule 26 of the Rules is neither proper nor legal; that he relied upon the cases of *M/s. Godey, Bawa & Sh. Co.* reported as 2002 (148) ELT 161 (11 p. A) & *UCCM* reported as 2003 (56) ELT 573 (205 AT-90.0m) and *Ram Hari Singh* reported as 2005 (151) ELT 451 (71 Dec) to contend that the ingredients of Rule 25 of the Rules for imposition of penalty are not available in this case.





Appellant No. 1:-

Appellant No. 1, in fact, contented in the grounds of appeal that the lower adjudicative authority has failed to establish that the mentioned goods under consideration were liable to confiscation; that the case has been made out only on assumption and presumption without any corroborative evidence and there is no direct material evidence as specified under Rule 26(1) of the Rules and therefore personal verity of Rs. 15,000/- imposed is required to be set aside.

Personal Hearing.

4. Personal Hearing in the matter in respect of Appellant No. 1 and appellant No. 2 had been waived by their vide letter dated 17.06.2018 and they requested to decide their appeals on the basis of the grounds submitted in Appeal Memoranda. Appellant No. 4 had also waived personal hearing vide letter dated 21.06.2018 (received on 24.06.2018) and requested to decide the case on the basis of grounds submitted in appeal memorandum.

4.1 Personal hearing in respect of Appellant No. 3 was attended by Mr. Madhav Veddesaria and he reiterated grounds of appeal and also submitted that Shri Himanshu Patel is a broker and; that he only arranged meeting of purchaser with sellers; that what have been done by them was not known to him; that the activities of clandestine dealers of gold and silver purchasers are not within his knowledge etc.

4.2 Despite personal hearing notices sent to the Department, no other reply / response received from them nor any one appeared for personal hearing from Division / Commissioner's.

Findings:

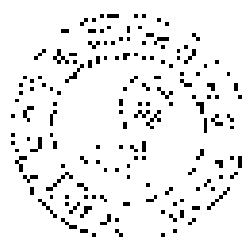
5. I have carefully gone through the facts of the case, the impugned order and written as well as oral submissions made by the Appellants. The issues to be decided in these appeals are whether in facts and circumstances of the case :-

- (1) confirmation of demand of Central Excise duty of Rs.17,59,200/- under Section 11A of the Act and interest thereon under Section 11AA of the Act against Appellant No.1 are correct, legal and proper or not;
- (2) imposing penalty equal to duty under Section 113B of the Act on Appellant No. 1 is correct or not;
- (3) imposing penalty upon Appellant No. 2 to Appellant No. 4 under Rule 26 of the Rules is correct or otherwise.

5. That last the officers of Central office, Bangalore conducted coordinated search operations at various places including at the premises of Appellant No. 4 and incriminating documents like notes, cheques, files, loose papers etc. were recovered. The statements of Appellant No. 2 (partner of Appellant No. 1); Appellant No. 3 (Sri Hiranish Chandra, broker) and Appellant No. 4 (Sri V. Singh Bhaskaraya, broker) were recorded by confronting them with recovered and seized records and the entries recorded in the moujoo diaries (summary under Panchnama proceedings), which revealed clandestine manufacture and clearances of M. S. Round/BMF bars to buyers against cash transaction without CE invoices and without payment of CE duty as seen from Para 63 to 6.17 and Para 9 to 6.10. At Para 8.7 to 8.5 of the impugned order, Appellant No. 2 in detailed manner explained the codes used and the transactions recorded in the said moujoo diaries.

7. On the grounds of appeal, it is submitted that the lower adjudicative authority while passing the impugned order has ignored the submissions made by them, whereas it is that the adjudicating authority has categorically mentioned the relevant submissions in detailed the impugned order, and has also discussed the same giving his findings. Thus, this argument put forth by the appellants is devoid of merits.

7.1 And that demand of Rs. 17,00,000/- was duly computed as per Annexure E to the Show Cause Notice and Before recording statement of Appellant No. 2 documentary evidences recovered from the premises of Appellant No. 1, Appellant No. 3 and Appellant No. 4 were placed before him and shown to him. Appellant No. 2 (Partner of Appellant No. 1) in his confirmatory statement dated 20.01.2013, dated 12.10.2015 and dated 01.11.2015 recorded under Section 14 of the Act had gone through all Panchnamas drawn at the above said premises and all the statements tendered by Appellants No. 1 & 4, respectively, etc. Appellant No. 2 was also given full opportunity to peruse incriminating documents, statements and duty calculation worksheet among giving testimony about the truth and correctness thereof. He was shown duty calculation Annexure-E prepared on the basis of investigation showing transactions carried out through Appellant No. 4, broker of Appellant No. 1. Thus the documentary evidences and statements of the brokers, transaction and Appellant No. 2 have been discussed and deliberated upon in a very elaborate manner in the impugned order and many transactions recorded in the seized private records were found tallying with the statutory records/transactions of Appellant No.1 which proves authenticity of transactions



and details contained in sales upon documents and relevance of those for duty liability of Appellant No. 1.

7.2. Before proceedings, I would like to reproduce some relevant and important paragraphs of the impugned order, which are important to decide these Appeals as under :-

(a) Para 8.7 of the impugned order - Appellant No. 3 (broker) explaining code used in diary and confirming removal of the finished goods without payment of duty and without issuance of invoices :-

"8.7. As per the statement dated 02.04.2013 of the Notice No. 3 (i.e. No. 3) of answer to question No. 2) wherever shortcode name 'L.B.' was written in the contract received under purchase dated 13.06.2012, it refers to M/s. Lal Unnat Steel Industries, Shop No. the Notice No. 1. He further explained by giving an example how the transactions of purchase of goods from a reselling M/s. take place i.e. when amount payable to reselling M/s. and payment made to reselling M/s. etc. were made. It is noted that the documents no. 12 and 14 are not retained by the Notice No. 2 for recording the details of goods purchased by him such as Date, Description of goods, Name of Seller & Buyer, etc. i.e. no. total amount etc. and the same sequence was followed by the Notice No. 2 for removal of goods from all the other selling M/s. including the Notice No. 1. For example, the complete page of page no. 1 of diary entry 11 is reproduced in WD for the date 04.09.2012 as containing the Notice No. 3. Accordingly, it transpires that the Notice No. 2 has purchased goods etc. amounting to Rs. 1,24,210/- from the Notice No. 1 on 04.09.2012."

(b) Para 9.7 of the impugned order : The Appellant No. 2 portion of the Appellant No. 1 objection, final duty worksheet and clearance removal during the investigation in his statement dated 26.03.2013 :

"Q. No. 10: How you are aware Appellant completed in the diary by above documents shown to you in Question No. 9 answer for details containing to goods sold by you firm only through the documents before me reviewed. Please review the same and put your dated signature or token of diary verified its correctness. Statement dated 25.09.2012, 02.04.2013 and 17.07.2013 of Arun Kumar Shrivastava, Broker of M. S. Durg:

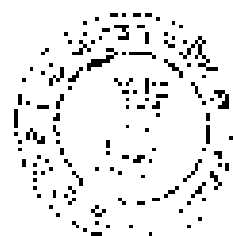
Answer: "I have perused said documents and put my dated signature."

Q. No. 12: Is it true that the copies in respect of which no invoice or sales bill have been issued by you, the goods mentioned in the said entries have been removed without payment of duty and without issue of invoice?

Answer: Yes.

Q. No. 12: How did you receive payment of the goods sold/removed without payment of duty?

Answer: "I do not remember and I would not like to say anything."



(c) Para no. 9.8 : The Appellant No. 3 order of the Appellate No. 1 accepting clandestine removal by Appellant No. 1 :

"..... The Notice No.2 clearly admitted in his defence submission dated 17.07.2013 that -

"8. Therefore, it is requested to condone this act being a first law and drop the charges alleged against our client and refrain them from imposing a penalty."

(d) Para 8.9 & 8.10 : Commencement from the transporters regarding goods transported without documents & payment of transportation charges in cash regarding clandestine removal of the goods :

"8.9 I find that as deposed by Notice No. 2 during his statement dated 05.07.2013, in the documents (annexure) mentioned at Sr. No 12 and 14 of the Annexure to the Petition dated 12.07.2012 (i.e. the vehicle number), in some places full registration no. and at some places only no. and last were written though which the goods purchased from a re-rolling mill were transported to their customers. Accordingly, the said cases were decided the copy of the various transporters statements of following truck Owners/Drivers was retained under Section 15 of the Act.

Sr. No.	Name of Transporter through whom the goods were transported whose Truck Number was mentioned in the seized documents Sr. No.	Date of Statement
17.07.13		
1	Sri Chakrasaheb Suresh Gadhil	05.12.2012
2	Sri Vijaya'sinh Suresh'sinh Gadhil	04.12.2012
4	Sri Hanuman Singh (Sri Jijee Naithra)	01.04.2012

8.10 During the course of recording of statement of the above transporters/truck owners/drivers clearly depicted in their statement that they were loading the goods from various Birla Mills (Laxmi, Anand, Sagar, Vardar, Bhasmagar etc) and they know Sri Hanuman Singh (Sri Jijee Naithra) (Name of the transporter) mentioned at Sr. No. 12 and 14 of the Annexure to the Petition dated 12.07.2012 (i.e. the vehicle number of Notice No. 2) they accepted that where ever these vehicle numbers are mentioned, they have loaded the goods as per the details of quantity shown in the seized documents. From the records it is clear that they purchased and transported/delivered the same to the respective buyers. Their misdeeds have been given in the Annexure which they have given to the receiver and their direct being uncovered did not know that what documents were there. The fact of the case had been paid in cash either by the receiver of the goods or by the shippers."

(e) Para no. 8.14 of the Impugned order : The Appellant No. 4, brother of the Appellant No. 1 accepting clandestine removal by Appellant No. 1 :

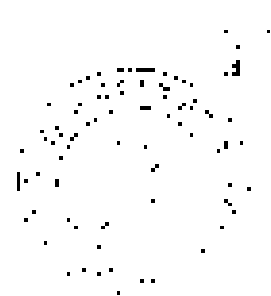
"8.14 A statement of the Notice No.2 was also received to ascertain the details mentioned in the seized documents (i.e. in his statement, dated 21.05.2013, he stated that he was doing the business of Birla's Mills for the last 15/20 years since the name of M/s Birla Steel, but he knew that the destination of the goods to their receiver of anyone was kept but he was doing

such activities in view of market conditions and his financial requirements. I also examined the details contained in the various documents seized under para no. 4 dated 21.05.2013. Further statement dated 28.07.2013 was recorded of the Appellant No. 3 wherein he inter alia after referring his earlier statement dated 21.03.2013, said "me and the broker shared 50:50."

7.3 I also find that on being confronted with the incriminating documents seized during the searches, Appellant No. 2, Appellant No. 4 as well as Appellant No. 7 (partner of Appellant No. 4) in their respective statements recorded by the Central Excise Officers during investigation have categorically admitted that Appellant No. 1 had cleared goods without CE invoices and without payment of Central Excise duty as per the entries in duty calculation worksheet. Statements of various transactors also corroborate the clearances of goods in clandestine manner by the Appellant No. 1.

7.4 I further find that these are substantive evidences duly corroborated which have not been retracted at any stage and therefore, as per the settled legal position sanctity of the same cannot be undermined by said arguments only. I also find that authenticity of records seized from the premises of Appellant No. 1, Appellant No. 2 (partner) and brokers have been duly corroborated and relied upon. Records seized from Appellant No. 1 before notifying Central Excise duty liable to be paid by Appellant No. 1. The Appellant No. 2 in its statements dated 20.03.2013, 16.11.2013 and 31.11.2013 as referred to in para 3.4 of the impugned order have clearly annexed comparing duty calculations with comparing the duty calculation, some entries found to be tallying with the statutory records of Appellant No. 1 were also excluded.

7.5 Appellants No. 1 has questioned the demand of duty cannot be confirmed on the basis of diaries and records recovered from the third party like brokers Sun Kamran, N. Jagani (Appellant No. 3) and Hari Krishna Bhaagwalya (Appellant No. 5) and hence, demand made on the basis of third party documents is not sustainable. In this regard, I find that the diaries maintained by the broker recorded below, as well as their transactions of Appellant No. 1. I also find that many transactions recorded in private records called work invoices were actually issued by Appellant No. 1. Thus, truthfulness of diaries/notebooks and other private records recovered from the brokers during search is clearly established also because brokers and Appellant No. 2 have admitted to have dealt with the goods belonging to Appellant No. 1 without Central Excise invoices and to have sold such goods without CE invoices. I also find that demand has been computed on the basis of duty computation Annexures prepared on the basis of private



records recovered from the broker and Appellant No. 1. I also find that all links involved in the case, i.e. brokers, Appellant No. 1, Appellant No. 2, transporters etc. were corroborative evidences gathered during searches and therefore, demand of duty can be said to be based upon third party evidences only. The case in fact is not based only on third party documents but duly corroborated by host of other evidences also. It is that multiplicity of party would itself negate the concept of the third party. In the instant case, the evidences of clandestine removal have been gathered by the investigating officers successfully from many places and therefore, it can not be said that third party evidences but corroborative and supporting evidences against Appellant No. 1.

2.6 Further, Appellant No. 2 (and Partner of Appellant No. 1) has in its statement dated 26.03.2013 rendered during the investigation, on being confronted with the documentary and oral evidences along with duty calculation Annexure, admitted that they cleared excisable goods without payment of duty and no CE notices raised for such transactions. This statement dated 26.03.2013 of Appellant No. 2 dated 26.03.2013 has not been refuted. U. Sale and Service, have sufficient pecuniary value, which cannot be brushed off by any means. The cumulative effect of all such corroborative evidences confirm that the duty evasion has indeed taken place and Appellant No. 1 has indulged in it. It, therefore, is that all these are required to be considered as vital and hard evidences and are sufficient to prove the case against the appellants. In this regard, I also rely upon the decision of the Hon'ble CESTAT in the case of On Petition Aggravated (1406/04 vs 2017 (14-5) ELT 129 (Trib. Del) wherein it has been held as under:-

*Handwritten note:* Section 14B

*"5. I was able to find the proceedings almost identical set of facts were involved. The allegations were based on evidence collected from the importer and manufacturer and not on the manufacturer of taxable items. In the appellant was sought to be distinguished. Similarly, the facts and law, based on the material evidence collected from the importer and not from the manufacturer by the respective persons of the manufacturer. The receipts and use of the stock was granted and warrants for further manufacture has apparently been obtained by the appellants and due duty there had also been discharged through the course of investigation itself. The appellants get caught on account of the further considerations in view of details of transport, duty receipt, etc. In the present case, the evidence collected from the importer and manufacturer and not from the manufacturer of taxable goods. The persons who were involved in the importer and manufacturer evidence was brought before the person of the appellant and he subsequently admitted and received clearance of taxable items. However, he did not give the details of where such goods were sold, in such situation, if it appears that the conditions have been also met, the appellant has not established the burden of proving and discharge of the duties upon it. Such cases are different to the present one where the manufacturer of taxable items is not involved in the proceedings which were offered to the person bringing goods to the market etc."*



of the appellants that the suppliers simultaneously each received order to fabricate duplicate the appellants. In fact, the supply of unexamined and marked has been demonstrated by the purchase of the appellants' bills in such situation it is not feasible for the appellants to run in the appeal stage, since the point of commencement of cross examination, etc. simultaneously from of the police records of the statements given from given recorded or were presented for their authentications. In the appeal before the Tribunal the appellants is seeking a relief against that the statement is the opinion of the appellants from their voluntary. Various cases have cited upon by the appellants are not of any support in the present case. In the cases involving trademarked manufacture, the evidence of such case are to be presented for consideration. At some instances, the third party's records of the supplies have been affected by the person in charge and another corroborated by the appellants cannot be disregarded and on the ground of justice to supply the the operation and receipt of money has not been proved. In a trademarked manufacture and operation, each stage of operation cannot be simultaneously and it has been careful consideration of the grounds of appeal and the findings in the impugned order. Finding no reason to interfere with the findings recorded by the lower authority. Accordingly, the appeals are dismissed."

[Emphasis supplied]

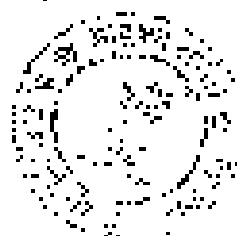
7.7 Appellant No. 1 has cited First Order No. A/11055-11034/2013 dated 17.07.2015 of the Hon'ble CESTAT in the case *M/s. Rajrang Castings Pvt. Ltd. and others* in support of their contentions. I find that the order of Hon'ble CESTAT held as under :-

"In view of above provisions of law, a claim recovered from the broker and few statements alone cannot be made the basis for denying CESTAT credit to the appellants in the absence of cross examination of the third party witness given. Further, there is no evidence of alternative purchase of raw material by the appellants for manufacture of goods claimed on payment of duty during the relevant period. ...."

[Emphasis supplied]

7.7.1 On going through the grounds of appeals, as also the written submissions made before the lower adjudicating authority, as discussed at Para 07 of the impugned order, I find that no request for cross examining any of the witnesses has been made by the appellants in the present case and therefore, the order of the Hon'ble CESTAT in the case of *M/s. Rajrang Castings Pvt. Ltd. and others supra* is not applicable to the instant case.

7.8 It is settled law that in cases of discharge removal, department is not required to prove the case with mathematical precision. By this view is duly supported by judgments of the Hon'ble Supreme Court in the case of *Santh Gurban Ma.* reported as 1963 (13) ELT 1631 (SC) & *Andhra Pradesh (P. Ltd.* reported as 2005 (275) ELT 584 (SC).



7.3.1 The statements, if not true, are by and valid evidences in the eyes of law and have to be considered as corroborative evidences as held in the cases of (i) Naresh J. Sulkhiani (1996 (83) ELT 236 (SC)) (ii) Rakesh Kumar Gang (2016 (33) 111 (M) 4 (Delhi)). Finda that statement of Partner / Director authorized persons of assessee admitting existence of goods without payment of Central Excise duty and without issuing invoice (whenever and wherever and not retracted) is admissible as held in the case of Hi Tech Appliances Ltd., reported as 2017 (141) ELT 606 (Tri.-Del.)

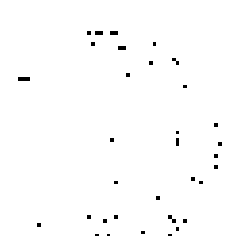
14. On careful consideration of the facts and circumstances as outlined above, I find that the statement of Director is the basis for the demand. The statement is voluntary and is specific. The Director clearly admitted that the documents/private records recovered by the officers contained details of procurement of raw materials as well as clearance of finished goods with and without payment of duty. This fact is further strengthened by the observation that many entries in the private documents are covered by the invoices issued by the assessee on which duty stands paid. The Director has clearly admitted the truth of the charts as well as clearing clearance of goods covered by the entries in the private notebooks 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 activities of clandestine nature is required to be proved by sufficient positive evidence. However, the facts presented in each individual case are required to be scrutinized and examined independently. The department in this case has relied upon the confessional statement of the Director which is also supported by the mentioned entries in the private records. There is no argument that the statement has been taken under duress. The assessee also does not appear to have asked for cross examination during the process of adjudication.

15. In view of the foregoing, I find that the Commissioner (Appraisals) has erred in taking the view that there is not enough evidence of clandestine removal of goods even though the statement of Shri. Sanjay Kejriwal, who is said to be the author of the private records recovered has not been recorded. It stands admitted by Shri. Tejinder, Director about the truth of the contents of the private notebooks. Consequently, I find no reason to exclude this piece of evidence.

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

[Emphasis supplied]

7.9 I also rely on the decision in the case of Mrs. Lavanya Steel & Alloys Ltd reported as 2017 (355) ELT 431 (Tri.-Del.) wherein it has been held that





(notebooks/diaries) seized from the possession of appellant's employee at the time of search showing entries for accounted as well as unaccounted goods which have been explained in detail and explained by GM of the factory duly with invoices/gate pass etc. is trustworthy. The statement of an employee running into several pages and containing detailed knowledge to be considered reliable. I also rely on the decision in the case of Ramabandha Reains Pvt. Ltd. reported as 2014 (20) H.T. 261 (S.C.) wherein similar view has been taken by the Hon'ble Supreme Court.

7.10 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 Aux Industries reported as 2008 (20) H.T. 1003 (Trib. Mumbai) and Divine Solutions reported as 2008 (23) E.L.T. 1003 (Tri-Chennai). Hon'ble CESTAT in the case of Karan Engg. Works reported as 2004 (166) E.L.T. 373 (Tri. Del.) has also held that Admission/Confirmation is a substantial piece of evidence, which can be used against the trader. Therefore, the Appellant's reliance on various case laws are not applicable in light of the positive evidences available in this case as discussed above and in the impugned order. Hon'ble FyLal in the case of R & S Spring F. Ltd. reported as 2015 (329) E.L.T. 153 (Tri-Ors) has also held that when preponderance of probability was against the Appellant, pleading of no statements received from buyers, no excise documents, consumption form, no raw material purchase form, no account entry in sub-output also prescribed by law is of no use.

7.11 In view of above facts, I find that the contentions raised by the appellants are of no help to them as the Department has adduced sufficient oral and documentary corroborative evidences to demonstrate that the Appellants were engaged in clandestine removal of the goods. I, therefore, find that the continuation of demand of Central Excise duty of Rs. 17,50,202/- by the lower adjudicating authority is correct, legal and proper.

7.12 Since demand of duty is confirmed, it is required to be paid along with interest at applicable rate under Section 116A of the Act. I, therefore, uphold the impugned order ordering interest.

8 I find that there is a case of clandestine clearance of the goods without Central Excise levies and without payment of duty and hence, the impugned order has correctly imposed penalty equal to duty at Rs. 17,50,202/- on appellant No. 1 under Section 11A(1) of the Act with option to pay reduced penalty @ 25% of duty confirmed as per provisions of Section 11A(2) of the Act and as per judgements passed by Hon'ble Supreme Court in the case of Rajasthan Spinning



and Wharfedale Mills reported as 2008/2009 - 11-315,01 and CBDO Circulars No. 699/13-2009 OX., dated 14/04/2009 called and No. 009038/09/01 OX. dated 21-5-2009.

5.1 Appellant No. 2 (Partner of Appellant No. 1) has contended that the lower adjudicating authority has failed to ascertain as to how he has evaded the so-called evasion of Central Excise duty and has wrongly imposed penalty on him under Rule 20(1) of the Rules. I find that the facts of this case very clearly establish that he was the partner of Appellant No. 1 and was responsible for clandestine removal of the goods manufactured by Appellant No. 1. He, as partner, was looking after day to day affairs of Appellant No. 1 and had concerned himself in various irregular activities related to excisable goods including manufacture, storage, removal, transportation, etc. of such goods, which he knew and had reason to believe that they were liable to confiscation under the Act and the rules made thereunder. I find that imposition of penalty upon him as partner under Rule 20(1) of the Rules in addition to imposition of penalty on his partnership firm is correct, legal and proper. However, penalty equal to duty imposed on him, even when penalty equal to duty on partnership firm has been imposed a lump sum, I therefore, reduce penalty on Appellant No. 2 to Rs. 5 lakhs to meet the interest of justice.

5.2 Insofar as penalty on Appellant No. 3 is concerned, he contended that his role was limited as link person and not concerned with the goods and therefore, penalty is not imposable upon him. I find that he was the key person and had been dealing with the goods on behalf of Appellant No. 1 without cover of invoices and supplied the same without payment of CE duty. In addition documents essential for clandestine clearances of the goods were also found from the premises of Appellant No. 3 during search proceedings on 12.09.2012. The details of clandestine transactions recorded in his computerized computer records of the goods, truck no., cash payments, etc. Thus, his role is elaborately discussed in the impugned order and in fact, picture has originated based on the documents recovered from his premises and therefore, he cannot now plead that his role was limited as a link person only between buyers and seller. I find that his role was crucial in the clandestine removal of goods and therefore, penalty on him under Rule 20(1) of the Rules is correct, legal and proper. However, penalty of Rs. 5.50 lakhs on him is harsh and hence, I reduce penalty on Appellant No. 3 to Rs. 5 lakhs to meet the interest of justice.

5.3 Insofar as penalty on Appellant No. 4 is concerned, he contended there is no material evidence to prove that Appellant No. 4 was involved in any



in manner as specified in Rule 26(1) of the Rules. I find that he has admitted losses on his part or being part of illegal transactions as recorded at Para 8.14 of the impugned order. He has also explained as to how he got himself indulged in such illegal activities especially due to his financial conditions. I, therefore, find that imposition of penalty of Rs. 10,000/- only by the lower adjudicating authority is very reasonable and there is no case to interfere with the impugned order in this respect.

In view of above, I uphold the impugned order for Appellant No. 1 and Appellant No. 4 and modify the impugned order in respect of Appellant No. 2 and 3 as decided in Para 8.1 & 8.2 above and reject appeals of Appellant No. 1 & Appellant No. 4 but partially allow appeals of Appellant No. 2 and Appellant No. 3.

3.1 श्री जस. श्री. जस. देवी की गई अपीलों का निम्न द्वारा समीक्षा करने से किया जाता है।

3.1 The appeals filed by the Appellants are disposed of in above terms.

  
 ज. पी. सिंग  
 अध्यक्ष, ए. आर. आर.

  
 (जस. देवी)  
 जस. देवी

By J.P.A.O.

To,  
 1. M/s. Jai Bharat Steel Industries,  
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 Distt: Bhavnagar.

2. Shri Pravin Karsa, Partner of  
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 Distt: Bhavnagar.

3. Shri Himanshu Manojal Jangani,  
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 Wagdarwad Road, Bhavnagar.

4. Shri Virsingh Kanchuriya, Partner  
 (Prop. Of M/s. Radha Steel, Bhavnagar)  
 5. Sharan Chamber, 1<sup>st</sup> Floor,  
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Copy for information and necessary action to:-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for I's kind information.
2. The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar.
3. The Assistant Commissioner, GST & Central Excise Division, Surendranagar, Surendranagar.
4.  Contn. file.

