

1. Order-in-Appeal:

S. No.	Name of the Assessee	Address	Appellate No.	Appellate No.
01	M/s. Goyal Traders, Dhasnagar	Plot No. 7, Ship Docking Yard, Along, Dist. Dhasnagar 394001. And Plot No. 2222/A, Vansalval, IEL Drive, Kandi Dist. Dhasnagar 394001.	No. 1	286-DVB/2017
02	Shri. Kishan Bhai Shri	Plot No. 619-42, Chhatra, Dhasnagar, Dhasnagar-394001.	No. 2	287-DVB/2017
03	Shri. Anandbhai, Proprietor of M/s. Kailash Enterprise	Plot No. 20, Sankh Dora, Buzary, Subhash Nagar, Dhasnagar. And 221, Sirooper's Dora, Darimal Chowk, Waghewadi Road, Dhasnagar 394001.	No. 3	268-DVB/2017
04	Shri. Anand Bhai	Plot No. 30, Sankh Dora, Buzary, Subhash Nagar, Dhasnagar. And Plot No. 107, Dhasnagar, Dist. Dhasnagar.	No. 4	264-DVB/2017

The present appeals have been filed by the above mentioned assessees against the Order in Original (No. 286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000/1001/1002/1003/1004/1005/1006/1007/1008/1009/1010/1011/1012/1013/1014/1015/1016/1017/1018/1019/1020/1021/1022/1023/1024/1025/1026/1027/1028/1029/1030/1031/1032/1033/1034/1035/1036/1037/1038/1039/1040/1041/1042/1043/1044/1045/1046/1047/1048/1049/1050/1051/1052/1053/1054/1055/1056/1057/1058/1059/1060/1061/1062/1063/1064/1065/1066/1067/1068/1069/1070/1071/1072/1073/1074/1075/1076/1077/1078/1079/1080/1081/1082/1083/1084/1085/1086/1087/1088/1089/1090/1091/1092/1093/1094/1095/1096/1097/1098/1099/1100/1101/1102/1103/1104/1105/1106/1107/1108/1109/1110/1111/1112/1113/1114/1115/1116/1117/1118/1119/1120/1121/1122/1123/1124/1125/1126/1127/1128/1129/1130/1131/1132/1133/1134/1135/1136/1137/1138/1139/1140/1141/1142/1143/1144/1145/1146/1147/1148/1149/1150/1151/1152/1153/1154/1155/1156/1157/1158/1159/1160/1161/1162/1163/1164/1165/1166/1167/1168/1169/1170/1171/1172/1173/1174/1175/1176/1177/1178/1179/1180/1181/1182/1183/1184/1185/1186/1187/1188/1189/1190/1191/1192/1193/1194/1195/1196/1197/1198/1199/1200/1201/1202/1203/1204/1205/1206/1207/1208/1209/1210/1211/1212/1213/1214/1215/1216/1217/1218/1219/1220/1221/1222/1223/1224/1225/1226/1227/1228/1229/1230/1231/1232/1233/1234/1235/1236/1237/1238/1239/1240/1241/1242/1243/1244/1245/1246/1247/1248/1249/1250/1251/1252/1253/1254/1255/1256/1257/1258/1259/1260/1261/1262/1263/1264/1265/1266/1267/1268/1269/1270/1271/1272/1273/1274/1275/1276/1277/1278/1279/1280/1281/1282/1283/1284/1285/1286/1287/1288/1289/1290/1291/1292/1293/1294/1295/1296/1297/1298/1299/1300/1301/1302/1303/1304/1305/1306/1307/1308/1309/1310/1311/1312/1313/1314/1315/1316/1317/1318/1319/1320/1321/1322/1323/1324/1325/1326/1327/1328/1329/1330/1331/1332/1333/1334/1335/1336/1337/1338/1339/1340/1341/1342/1343/1344/1345/1346/1347/1348/1349/1350/1351/1352/1353/1354/1355/1356/1357/1358/1359/1360/1361/1362/1363/1364/1365/1366/1367/1368/1369/1370/1371/1372/1373/1374/1375/1376/1377/1378/1379/1380/1381/1382/1383/1384/1385/1386/1387/1388/1389/1390/1391/1392/1393/1394/1395/1396/1397/1398/1399/1400/1401/1402/1403/1404/1405/1406/1407/1408/1409/1410/1411/1412/1413/1414/1415/1416/1417/1418/1419/1420/1421/1422/1423/1424/1425/1426/1427/1428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1944 and rule 7 of the Central Excise Rules, 2002 (ii) Shri Kant Arya, Managing Partner of M/s. Central Finance and Services Merchants' Society, Maharashtra, who is a law officer, a law case as to why the Penalty under Rule 201F and 201G of the Central Excise Rules, 2002 should not be imposed upon the appellant in the Excise Act. An affidavit filed in favour of Shri Viced Antrikshai Patel, both of Excise Officer were called upon to show cause as to why the Penalty under Rule 201F of the Central Excise Rules, 2002 should not be imposed upon appellant. The SCN issued by the Assistant Commissioner, Central Excise, Dhule major vide Order in Original No. SF/02/Bard/173/02/2016 dated 16.06.2016, was confirmed the demand of duty alongwith interest and also penalty as proposed in the SCN. However, the above mentioned appellants aggrieved by the impugned order. Hence these appeals.

2. The Dy. Excise Officers, Dhule, who have mainly submitted their

(a) The fact is demand of Rs. 970,134/- vide No. 2857474 (pre-quantum) filed in OIO - B-327/02 and No. 240320, they submitted that the adjudicating authority has failed to exercise its complete jurisdiction to appraise the facts of case and to discuss the case. The OIO has been passed without considering and discussing the facts as well as circumstances. The appellate has never indulged into a routine removal and the subject case is purely based on imaginary grounds and has no basis in fact and law.

(b) The subject case is purely based upon the records of documents of entries of mis-declarations filed by the petitioner in the name of Shri Antrikshai Patel and his statement, as well as statement of his statement, Shri Viced Antrikshai Patel and his statement and other documents obtained from the files of Shri Vishnu Antrikshai Patel and Shri Viced Antrikshai Patel. The demand made on the basis of assumption and presumption is not sustainable and liable to set aside. Hence these objections in this regard.

(c) The penalty under Rule 201F is imposed on the basis of the facts and circumstances of the case and evidence. They submitted their arguments in this regard.

(d) The SCN and OIO is a trial proceedings upon various documents, diaries, bills, receipts, papers, etc. received from the possession of the respondents, M/s. City Bank and other statements of various persons, etc. rate of prices / valuation obtained from the various instances. Some of the documents are not at all relevant to the appellants or with their business activities. It is the duty of the appellants that such records should have been maintained by the appellants and others as a prudent business man and to keep accurate their false business records and their business dealings as well as their legal activities. There is no provision in the Central Excise Act or laws made there under to rely upon simply on such private records. Such books, diaries, etc. have and also such records in order to keep up with their business activities and for the purpose of saving or suppressing their false business activities. The charge of the appellants must be corroborated by independent documentary evidence which express the material facts and consumption of the goods, etc. of persons before the appellant and evidence. They relied upon the decisions in this regard.

(e) The respondents, M/s. City Bank, who whose statements were examined, have no direct or indirect knowledge of the appellants. Therefore, they have accepted the statements of fact from them by the respondents. They have signed their statements with a certificate against their facts and with

(f) The adjudicating authority has conclusively relied upon the statements of brokers, his accountants, managers, agents from etc. But merely confirmative statements by such other persons should not be sole basis and ground for confirmation of clandestine removal and to confirm the duty demand and also imposition of penalty.

(g) They have cleared all goods under proper and valid invoice after payment of proper excise duty. Not using the goods and not bringing them to terminal, transit and bonded delivery of excisable goods only from approved premises, area. They regularly received the goods for issue and sale of goods. They have given all documents for the said the clearing returns / reports filed by them have not been challenged by the central excise authorities. Further, during audit also the transactions held by them were not objects of the department.

(h) During search of their premises no cash amount was seized and searched such seizure and final entry remains in the statement of the alleged one partner. But the appellant had dealt with excisable goods in illicit manner without payment of duty. It is the responsibility of the brokers, transporter etc. to maintain the accounts in detail and report of for the purpose of appellant cannot be charged. And for all these reasons the appellant cannot be penalized.

(i) They cited the judgments in this respect and stated that the burden of proof is on the revenue to adduce evidence to prove that the excess goods are not smuggled and the private transaction is only a pious wish of mine and not be a sole factor in deciding the prosecution. If thus, the authority did not care to note the version of the appellant and taken and recorded his statements as per the law and to treat as a duty.

(j) With regard to demand of Rs. 656102/- on account of undervaluation, it was submitted that all agencies listed in the 80B and 80C provisions and also registered with govt. for doing such work. The Central basic value fixation rules does not indicate and suggest that assessment is to be declared by such intermediaries. The 80B, 80C, 80C(1)(ii) or local Central Excise authorities have not issued any direction to follow such pricing. The sale price of goods depends upon several elements. The monthly / quarterly reports returns filed by the appellant were never challenged by the department. Whereas prices declared by them were their transaction price, which was verified by the Central Excise laws and the assessment is challenging is itself proper valid and unimpeachable. Thus, penalty is not proper.

(k) Every case in the given circumstances or common law must be exercised by the authority lawfully, reasonably and in good faith. Here before continuing any penal action the vital elements viz. (i) means described in (a) to (j) and (ii) deliberate defiance of law to defraud govt. revenues. No witness is found or accused that the appellant or his agent or the appellant or partner had acted with guilty mind or wicked mind. Therefore, no penalty can be imposed under Section 11A(1) of the Central Excise Act. They need save of judgments in their favour and requested to drop the proceedings initiate against them.

8. Sri. Manoj Kumar Chandra Sheel, Bangalore - 560012

(l) That the appellant was a middleman who appeared the sellers of excisable goods, selling services, etc. and the buyers viz. the selling to the license holder.

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was used including TMT, DDT, Angles, etc. Section 174 Ingot etc. The appellant was used to transport from over the place for said said goods. The price of the goods were fixed by the respective sales and buyers as per the market conditions, as much as necessary to bring in fixing of price. That the transportation of the goods was arranged by the buyers and the rolling times to meet the time further loading of goods were done in the ports as all persons from the Christian etc. who segregated the transport job was done in the ports of ship loading units. That as a broker he got commission of Rs. 150 to Rs. 200 per bill. There was no written contract made entered into by him for this job.

(c) Tax, he maintained diaries wherein he used to detail about deals of his own purchases. However, he was not concerned, whether such deals were actually been realized or not. That during recording of his statements, Sri Mani Parel, explained these transactions concerned to him in Sri Mani Parel and Sri Mani Parel said also that he had worked for the bank, preparation of book entry in books etc. The appellant had prepared all statements of Sri Mani Parel. Further, the statements of receipts were made by the appellant and all such transactions were carried out. Also, statements of Sri. H. Mani Murdhar approved. Authorized Signatures of Mrs. Goyal Traders. The charges were also received, wherein he stated that they were sweep through bank and all invoice were they sold such items directly to the buyers.

(d) Section 174, issued by the appellant having authority was not registered in the name was passed on the basis of sample and copy of the officers of DDO. It was issued on the basis of assumption and presumptions and submissions made by the appellant, were not checked. The appellant was not provided copies of all bills by the administering authority. No checking demand he was made available with some documents only. Section 174, issued by the appellant, but it is not enough and is in gross violation of Section 65D of the Central Excise Act.

(e) The charges of bank statement, followed by third party evidence, he cannot found in the diaries, trip registers received by the appellant and registered by the DDO. The charges of narrative evidence. The appellant's role was very limited in recognizing of buyers and seller. The payment was received by Mrs. Goyal Traders itself. Further, the transportation were arranged by the buyers. And in imposing penalty under Rule 26, it is to be proved that the person was involved in the goods. Evidence in compliance under the Central Excise Act, whereas in such a situation were made in the Section 174.

(f) As the issuing authority had not any financial record and therefore duplicate demand was not maintained. The appellant was not present at the time of loading, preparation of invoice and removal of goods. The freight charges were arranged by the buyers. Therefore, the appellant was not involved and not liable for imposition of penalty. The demand of duty is disputed and no inquiry was made at the end of buyers. The whole case showed an assumption and presumption of fact, and the appellant was not involved in any manner. He is not liable for imposition of any penalty under Section 26(1) of the Central Excise Rules, 1961.

(g) It was not a mere the worksheet of demand of duty, which were prepared on the basis of particular merchandise in the seized diaries, and his signature was not taken on the bill. Further, the DDO was issued by the appellant and decided by Sri Mani Parel. The appellant was not involved in any manner. He is not liable for imposition of any penalty under Section 26(1) of the Central Excise Rules, 1961.

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Uthwaragar and jointly notified to file an appeal against the CIO. On looking to the nature of the order under order impugned, Partner reportedly returned to Uthwaragar under office second week of June 17 and did not cross country and requested to draft an appeal and arrange to file appeal. Accordingly, the notification was to the effect that every day from tomorrow he would be in the office and the appeal will be filed at my residence.

14. It is to above adverse information and unexplained absence is slight delay of nearly 20 to 25 days which may be owing to usual office situation. Hence is considered...

15. Furthermore, a copy of the order of the CIO DUE of the impugned order was received by the appellant no. 1 on 21.06.2019 and was immediately handed over to the senior most belonging Partner who was engaged after Customs & Excise related work, for his personal and necessary further action and consultation-guidance. Thus, issue was made known to the highest level of management immediately thereafter. The senior most belonging partner is said to have worked by the said senior most Managing Partner, he is based in Mumbai and outside Gujarat region, with original copy of impugned CIO for the company pre-scheduled marketing and other work. Further, it is admitted that the belonging Partner was requested to Mumbai to meet the excise consultant to seek his advice, but unfortunately the excise consultant proceeded to Gujarat. At the same time that the marketing of multiple products, including, notably, mainly to include (especially) products like excise consultants without getting the confirmation of availability. Even after being the duty of the appellant to have the belonging Partner in spite of being aware of filing of appeal within or verified time limit, he remained in Mumbai and also visited other places for his company's pre-scheduled marketing and other work. Not only this, a partner of senior rank of Managing Partner connected working with the Gujarat Excise & Customs officers, did not even inform his employees or other excise consultants to look into the matter and file the appeal within time limit. Thus, this act of the senior Managing Partner in increase workload and as mismanagement, was committed, quite on his part. Further, it stated in the CIO application, at the expiry period of 60 days to file appeal was approaching fast, even after reminding by the excise stake holding, delay from 13.06.19 to 13.07.19, (Nearer vicinity) and, needless to talk to their excise consultant, based at Uthwaragar from Mumbai and returned to Uthwaragar very late after second week of June 17 after attending to a certain social, personal and domestic work at Mumbai as well as outside Mumbai for marketing and other products. By the excise clerk well before the expiry of time limit, of 60 days, the senior Managing Partner, neither rushed to Uthwaragar immediately and remained at state to file the second week of June 17 on return of the partner after filing of appeal. Thus, 17 days delay in filing appeal, in the present case, has occurred due to severe negligence on the part of the top level management official, which cannot be termed as force majeure, misfeasance and misfeasance in a high, as alleged by the appellant. And thus, it cannot, in any case, be considered as sufficient cause which prevented the appellant from filing the appeal within time limit.

16. Further, it is to be noted, apart from the appellant no. 1, Shri. Pooj. Arora, Managing Partner of the appellant no. 1 firm, was also penalized under the impugned order, to whom a copy of impugned order was sent at the same occasion of the appellant no. 1. Thus, it appears that the original copies of impugned CIO were sent to both the appellants no. 1. Further, Item para 3.11.1 of the impugned order, it clearly transpires that Shri. Kar. Arora was engaged with transportation, storage, transportation, removal and selling and disposal of such items & de-stocked & saleable goods on which appropriate amount

authorized signatory of the appellants, transactions, invoices, receipts, and recorded during investigation, not have been retracted and hence they have their evidentiary value. Further examination of all the documents effected that the evasion has taken place and appellants have indulged in it. In this case, the third party witnesses and the admitted transactions made by Shri Manish Patel, were confirmed by Shri Dharam Manbhadra Shukla of new. Documents etc. It appeared that all transactions were retained in registers and coded manner, and the case was made out after careful going through the same. Further, Shri Vinod Ambabhai Patel and Shri Kanhare Ambabhai Patel had also done accounts during the inquiry. As stated above, the transactions recorded in diaries and storage devices seized from Shri Dharam Manbhadra Shukla and Shri Vinod Ambabhai Patel and Shri Kanhare Ambabhai Patel were further corroborated with relevant records. Therefore, these documents as given and used as evidence as per the Indian Evidence Act, 1932 and they are sufficient to prove the case made out against the appellants.

12. Regarding allegation of the appellants, the learned Additional Commissioner has been contended that they were clearing the same as competitive rate and based on quantity of goods emerging from breaking of the bag and that the valuation was done out on many factors which are not price published by the private institution. cannot be taken in the era of assessment based on transaction value. The institutes from which the dealers are purchased, were not eligible to sell the goods to public and also their own reputation is not enough to establish the assessed or accept such prices, as such the CCEC, New Delhi and local Central Excise authorities have not issued any guidelines to do so. The department was permitted to add the value as per the invoice value and above invoice value, during the seizure. In this regard, I find that statements of various agents were recorded wherein it was clearly stated that the appellants are in possession of cash and not that the invoice value was been placed. The app. Court have not challenged receipt of cash either through brokers or through appellants. Thus, the department has proved receipt of money over and above invoice value. Further, the price adopted by DCEC is reasonable as per the rate of 1% for working parts of Alang and the goods emerging out of breaking up of said was sold at or above the same rate. I find that in case of 1% just one day, the interest part has not allowed value but 2% in the price published by such institution. Thus, I find that it is not a case where there lack of money or receipt or consideration over and above invoice value is not established. It is stated that in a case where assessed is subject to deduction of goods as well as consideration of goods purchased by them, so one can establish one to one correlation of goods sold and payments received in case of an agent to get a complete picture. In case of separate work sheet was been prepared during the inquiry, showing details of cash amount transferred from brokers to Shri. Goyal Trade and vice versa have been examined. It is clear, it is sufficient evidence that as per the charges recovered from marks seized, the appellants took place between sale of the goods in terms of units and the appellants through the brokers and hence it can be said that the appellants received some percentage over and above invoice value through agents. The above findings of the learned Additional Commissioner of the inquiry are thus in respect of the placement of the sums by the prices certified by the marks, research agencies / institutes and prevailing at relevant time, is as per in case of the valuation Rules 1972 as Section 4 of the Central Excise Act, 1944.

13. In view of the above, the learned Additional Commissioner has deliberated the law to define the term, have been proved against the M/s. Goyal Trade and vice versa and it is confirmed that they have made a payment of Central Excise duty by way of a bribe in removal of goods as well as by under valuation of the goods and also by way

to prevent passing of Central Excise. Therefore, if it is the order of withdrawing authority is proper and is required to be issued.

In With regard to imposition of penalty on the broker, Sri Dharam Vaidhartha Sheth, I find that the appellants had also appealed on 11/06/2017 vide their appeal memo No. 12/35/2017. But at the time of filing of appeal he had not paid any pre-deposit as required from Section 35B effective from 30/06/2014 of the Central Excise Act, 1944. Therefore, a letter of No. 13025/9-14/6/2017 dt. 10/07/2017 was written to the appellants pointing out that in an entry pre-deposit at the rate of 1.5% of duty and in default the amount to be paid at the time of filing of appeal. And in view of such orders, he suggested Rs. 1,02,227/- vide the letter no. 50301 dt. 12/12/2017 to the 35B of the Act and hence as per the order of the Commissioner (Appeals), in the case, by law, the amount is not to be paid (in order of section 35) of Section 35, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are indistinct, or penalty, where such penalty is indistinct, in pursuance of a decision or an order passed by a higher authority. Since lower authority than the Commissioner of Central Excise (iii) and "The warrants shall not sustain any appeal not made within the prescribed period of time of filing appeal. However, appeal cannot be heard, he, surrendered unless the pre-deposit is made. Thus, in order to pay the pre-deposit amount, appellant has not made the pre-deposit. Hence, Circular No. 96/05/2014-CX dated 15/09/2014 states that if there is non-payment, appeal is liable for rejection. Hence, it can be argued that rejection of appeal is not automatic. Further, CBEC Circular No. 150/05/2014-CX dated 11/10/2014 states that "section 35B required to produce a deposit of percentage at the time of filing of appeal. If such pre-deposit is not made, after receiving above specified circulars, the appeal may be numbered and filed on Friday before the Court provided by the Service Member, for appellate jurisdiction. If not, the appellant is not to accept appeal, if it is not accompanied by proof of payment of tax duty. Further, the amount will be liable for non-payment of tax. Thus, appellant can request hearing by the bench before it assess any issue and if it assess the issue, but the appeal was filed on 10/06/2017 and the pre-deposit is made after the day i.e. on 12/12/2017 and before passing of this order. The appeal memo the appellants had stated that they had received the impugned order on 22/07/2017. Considering this date into account the appellant's deposit is made after 180 days after filing of appeal or say after completion of period of 90 days (60 days as required by sec 35B) days from the date of issue of order. In view of such orders of duty prescribed under Section 35B of the Central Excise Act, 1944. Therefore, I find that the condition of pre-deposit was fulfilled by the appellant before filing the appeal of order. Therefore, I find that the delay in filing of appeal by the appellants is liable for condone and accordingly I proceed to decide the appeal on merits.

13.1. I consider the merits of the appeal. Mr. Dharam Vaidhartha Sheth had stated that his role was limited as middleman and not concerned in goods and therefore penalty should not be levied upon him. It was stated, I find that the liability of Sri Dharam Vaidhartha Sheth was the key person who arranged for procuring goods from the appellants without cover or invoice and supplied the same without invoice. In fact his account recorded all these transactions in his diary which also contained the details of the payments received and made to respective parties. It was also stated that he arranged to supply goods to appellants without supply of goods and also arranged to supply the goods to some other party without any invoice for facilitating smooth flow of business. Certain details entered in diary of Mr. Dharam Vaidhartha Sheth by Sri Vaidhartha Sheth's accountants were compared with the sales bill of respective date

breaking cases, it was found that in order to remove any breaking units did not use of any invoices for the goods removed clandestinely. Further, the appellant had received the cash amount from selling milk against excise duty receipts of stamp by him and her director of Gough angdia. The M/s. units discussed were elaborated in the COO and the place he cannot plead that his role was limited. In fact, in the case, he was active in the whole episode of clandestine removal of goods as well as facilitating the duties available of Central Excise. The Central Excise duties under Rule 20(1) and 20(2) of the Central Excise Rules, 2002 are correctly imposed on him and there is no manner of evasion of the removal of duty liability.

15. The appellant's activities impinged upon Sri Vinod Ambichhalal Patel and Sri Kishore Ambichhalal Patel, brokers, they have made deal with the broker of milk with the goods in the manner prescribed under Rule 26 of the Central Excise Rules, 2002 and transfer of the duty liability to the appellant and that the duties maintained system in coded language and since details of bill and bill of lading can't be supplied to M/s. Govil Traders, Bharrnagar. It was found that the transactions related to M/s. Govil Traders were done in a very un-soft and soft maintained by the appellant and that the same, they provided sensitive copies like the documents were imaginary or they were keeping accountability. They never decided or co-operated in the investigation. However, due to a series of acts of the investigation agency, the evidence was revealed and the whole character of clandestine removal was revealed. The decoded data maintained by the appellant as well as the documents were kept in the appellant's custody and the appellant's ship heading, etc. This information was maintained by the appellant, Patel brothers. On confronting the data, they tried to impress upon the investigative officers that they have no any involvement with the appellant. Sri Vinod Ambichhalal Patel stated that he was not at all connected with the activities of M/s. Shree Krishna Enterprises. Sri Kishore Ambichhalal Patel, who handling was lots of registered cases and it was advised to him to get all the documents and goods of the appellant M/s., which is the duty demand of Rs. 31,33,71, was raised on the basis of entries mentioned in the bills marked as M/s. A/8 and A/10 seized from the appellant. The appellant's very much have so under Rule 9 of the Central Excise Rules, 2002. The relevant records showed that only one bill heading as Shree Krishna Enterprises and there is no need to link these with the same.

16. The facts of the case of the case are distinguishable from the previous similar cases by the appellant in as much as the elements comprising facts, analysis, search and cash management system, etc. was corroborated by the statements, of Sri Manoj Kumar, a companion of Shri. Dinesh Manikrishi Shinde, statements of Manoj Kumar, angdia and records obtained from the units activities, which are all have been retrieved. The version presented in this case has already mentioned, Manoj, Vinod and Manoj all of the activities in character made by M/s. Govil Traders, Bharrnagar. Moreover they also managed and handled the cash amounts for the sale of the excise duty and diversion of excisable goods, this is a vital role in evasion of Central Excise duty. Instead of finding the following as follows below, for impugned case.

(a) The statements of the appellant, if not proved, 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. (i) Narain D. K. Prasad [1997] 231 FTR 373 (SC); (ii) Rajesh Kumar Das [2016] 429 ITR 521 HC (B);

(b) The admission or statement or confession is a substantial piece of evidence which can be used against the maker of the same. Commissioner of Central Excise

Mumbai V. M. A. & Anr. (1993) 2003 (3) 115 (Til. M. Mumbai) (ii) M/s. Divine Solutions Vs. Commissioner of Central Excise, Coimbatore (2006) 280 (30) ELT (Til. Chennai) (iii) M/s. Karm King Works Vs. Commissioner of Central Excise, Dehra [2004] 158 (11) 173 (Til. Dehra)]


(2) Even if the statement is accepted, considering the other facts of the case and corroborated with other evidences, the same can be held to be untrue and no person involved can be held liable for the same. CCE, Mumbai Vs. M/s. Karmat Foods India Pvt. Ltd [2011-UOL-76-30-CX]


(3) Fraud is a well known thing every citizen get. Fraud and Justice never dwell together. Fraud is a conduct either by terms or words and also includes a person's representation. Fraud is not limited to legal or principles and any fraud mixed with fraud cannot be perpetrated or saved by the application of any equitable doctrine including estoppel. M. C. (2) Vs. Andhra Pradesh (Judicial) (2011) 2012 (3) 115 (SC) (4) (ii) R. S. Chandra Singh Vs. Savitri Devi and Ors. (2001) 131 (50) 115

(4) If it is also a legal position that even the case of the entire removal of taxable goods in the manner it has been executed in the current case is established, it is not necessary to prove the same with the provisions of the provision (i) M/s. Sanyal & Co. Vs. E. C. Commissioner (1985) 131 ELT 163 (SC), and (ii) Shri. Gurnam Mal Vs. State of Andhra Pradesh (1985) 131 ELT 156 (SC)

(5) In view of the above, I uphold the order passed by the adjudicating authority and the same is hereby confirmed.

(6) The appeal is hereby dismissed with costs as above. The appeal stands disposed of in above manner.


Commissioner
Appeals


Gopi Nath
Commissioner (Appeals) & A. C. Officer

Case No. 730/2020/29268/2019

Date: 10/07/2019

By K. S. Jyoti, Joint A. C. Officer

(i) M/s. Sanyal & Co., Plot No. 51, Ship Breaking Yard, Alwar, Dist. Bikaner-334 001 AND Co. No. 2282-A-1, V. Jyoti, Full Time Officer, Dist. Bikaner-334 001.

(ii) Shri. Gurnam Mal, Full Time Officer, Plot No. 612, Geytha Chowk, Jain Derasa, Gandhinagar, Bikaner-334 001.

(iii) Shri. Kishore Kumar, Full Time Officer, Proprietor of M/s. Sanyal & Co., Plot No. 51, Ship Breaking Yard, Alwar, Dist. Bikaner-334 001 AND Co. No. 2282-A-1, V. Jyoti, Full Time Officer, Dist. Bikaner-334 001.

(iv) Shri. Jyoti Kumar, Full Time Officer, Plot No. 29, Bikaner, Dist. Bikaner, Full Time Officer, Bikaner-334 001 AND Plot No. 102, Bikaner Nagar, Dist. Bikaner, Full Time Officer, Bikaner-334 001.



Copy forwarded to:-

- (1) The Chief Commission, CCST & Central Excise, Ahmedabad Zone.
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 - (3) The Additional District Officer, DC CEI, Ahmedabad.
 - (4) The Deputy / Assistant Commissioner (RR&D), CCST & Central Excise, HQ, Bhavnagar.
 - (5) The Deputy / Assistant Commissioner (Revenue), CCST & Central Excise, HQ, Bhavnagar.
 - (6) The Superintendent, RR&D, CCST & Excise, Rural Division, Bhavnagar.
 - (7) The Superintendent, CCST & Central Excise, Range-_____ Rural Division, Bhavnagar.
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