



आयकर (अपील) का आयोग, केन्द्रीय कर और उत्सार विभाग
 C.O. THE COMMISSIONER (APPEALS), CENTRAL TAX & EXCISE



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 C.O. THE COMMISSIONER (APPEALS), CENTRAL TAX & EXCISE

फ़ोन नम्बर: 267101

Tel: No. 2671 2672-2673-2674 Email: appeals@ice.gov.in

विषय: श्री. सुभाष

1. **आयकर (अपील) का आयोग, केन्द्रीय कर और उत्सार विभाग**
 2. **आयकर (अपील) का आयोग, केन्द्रीय कर और उत्सार विभाग**
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आयकर (अपील) का आयोग (Appeal No.)

BHT-EXCUS 006-APP-165-10-187-2018-19

आय (Date): 24.07.2018 आय (Date): 26.07.2018

श्री. सुभाष आयोग (अपील) का आयोग, केन्द्रीय कर और उत्सार विभाग
 Shri. Subhash Commission (Appeals) Commissioner (Appeals) Jaipur

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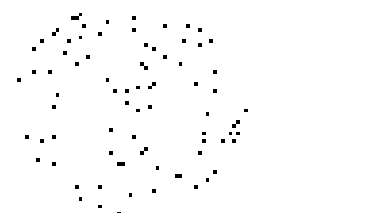
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आय (Date): 24.07.2018 आय (Date): 26.07.2018



ORDER IN APPEAL :

The below mentioned appeals have been filed by the Appellants (hereinafter referred to as "Appellant No.1 to Appellant No.3") as detailed in the Table against Order in Original No. 22/Excise/Demand/2017-18 dated 24.07.2017 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner of Central Excise, Surindranagar, Varanasi (hereinafter referred to as "the lower adjudicating authority") :-

Sl. No.	Appeal No.	Appellant No.	Name of the Appellant
1	12/4473/BVR/2017	Appellant No.1	M/s. Shri Hari Steel Industries, Plot No. 70/71, G.D.C., Varanasi, Uttar Pradesh.
2	12/4477/BVR/2017	Appellant No.2	Shri Mangibhai Jitendraji Dadasaheb, Partner of M/s. Shri Hari Steel Industries, Plot No. 70/71, G.D.C., Varanasi, Uttar Pradesh.
3	12/4804/WV/2017	Appellant No.3	Shri Anandji Pradipji Inani, Sr. Partner, M/s. Inani & Co., 52/1001, Pal, Madhavi Road, Varanasi.

2. The brief facts of the case are that Show Cause Notice dated 14.06.2017 (No. 22/5-E dated 23.07.2017) was issued to the Appellant No.1 to Appellant No.3 for clearance of M.S. Ingots accordingly to various customers alleging as under:

- (a) Appellant No.1 had clandestinely manufactured and cleared their finished excisable goods, namely, CTDMS Round Bars, attracting Central Excise duty of Rs. 44,15,431/- to various customers without issuing the invoices and without payment of Central Excise duty;
- (b) Appellant No.2 Partner of Appellant No.1, sanctioned himself in selling, storing, keeping and removing of the excisable goods which he knew and had reason to believe that the same were liable to confiscation which has made him liable to penalty under Rule 20 of the Central Excise Rules, 2002 (hereinafter referred to as the Rules);
- (c) Appellant No.3, broker concerned himself in selling the excisable goods on commission basis in clandestine manner, which he knew and had reason to believe that the same were liable to confiscation and hence he was liable to penalty under Rule 20 of the Rules.

2.1. The above S.C.N was adjudicated by the lower adjudicating authority vide the impugned order containing demand of Central Excise duty of Rs. 44,15,431/- against Appellant No.1 under section 11A(1)(i) of the Central Excise Act, 1944 (hereinafter referred to as "the Act") along with interest on the continued

devised under 144 of the Act imposed penalty of Rs. 44,13,431/- upon Appellant No. 1 under Section 11 A(1) of the Act and imposed penalty of Rs. 44,13,431/- upon Appellant No. 2 and imposed penalty of Rs. 12,80,000/- upon Appellant No. 2 under Rule 24(3) of the Rules.

3. Being aggrieved with the impugned orders, Appellant No. 1 & Appellant No. 2 have preferred present appeals inter alia on the following grounds :-

Appellant No. 1 :-

(i) The impugned order has been passed on the basis of the third party evidence only and therefore not sustainable in law;

(ii) The lower adjudicating authority has erred in confirming demand without allowing cross-examination of the witness inasmuch as the statements are based upon the documents recovered from the premises of the third party;

(iii) The lower adjudicating authority has erred in confirming demand without appreciating the fact that broker firm Appellant No. 1 had confirmed the clandestine removal of excisable goods on the basis of documents recovered from his premises; that offence of the partner has not been considered;

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(iv) The lower adjudicating authority has erred in confirming demand for the financial year 2013-14 on the ground that the Appellant is not eligible for exemption under Notification No. 54/2002-CE dated 21-11-2002 and therefore, the demand for the financial year 2013-14 is liable to be set aside;

(v) The lower adjudicating authority has erred in granting recovery of interest and imposing penalty of Rs. 11,10,131/- on the grounds mentioned above;

Appellant No. 2 :-

Appellant No. 2 contended that the lower adjudicating authority has erred in imposing penalty of Rs. 44,13,431/- on him on the grounds as mentioned in respect of Appellant No. 1; that the Department has not produced any positive evidence to prove that Appellant No. 2 had actively involved himself in so called clandestine removal of the excisable goods and therefore, penalty imposed is against law; that Hon'ble Gujarat High Court in the case of *Beharwal Kumar* reported as 2001(260) ELT51(Guj) held that no penalty is imposable on the partner if the firm is penalised.

For Appellant

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Appellant No. 3:

(1) Appellant No. 3 stated that the impugned order is non-speaking and non-reasoned inasmuch as the lower adjudicating authority has not dealt with the issues made before in his written submissions and judgments referred by him were completely ignored; that the impugned order is issued in violation of principles of natural justice as case laws referred to have not been discussed by the lower adjudicating authority; that Appellant No. 3 is not liable to penalty under Rule 26 of the Rules as he was broker only and had not dealt with the goods and imposition of penalty under Rule 26(1) of the Rules does not arise inasmuch as he being a broker was approached by the purchaser of 24.5 Bars; that as being broker had introduced and got finalized the order and it cannot be said that he being a broker had played any role which would render him liable to confiscation under Rule 25(1) of the Rules in order to attract penal provisions of Rule 26(1) of the Rules; that he has not conspired or colluded with the selling mill to facilitate evasion of excise duty by them and he never asked the selling mill to remove the goods clandestinely.

(2) That he had only brokered the sale of the goods and had nothing to do with the sale of the excisable goods illicitly; that he had only introduced the purchaser to the seller i.e. selling mill, represented by Shri Hiteshwar; that he was just a link between buyer and seller of his goods; that he was not required to get registered with the Central Excise authorities and he was not versed with rules or regulations; that even if it is admitted that he had indulged in clandestine removal of goods and whatever written documents and details of such illicit transactions, then also one has to have the evidence from sellers regarding such sale, the report of such goods; that this case is not covered under sub-rule (1) of Rule 26 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 prime condition that either he acquired possession of any excisable goods with the knowledge or belief that the goods are liable to confiscation under the Act or Rules or has been in any way concerned in manufacturing, removing, depositing, keeping, concealing, selling or purchasing or has in any other manner dealt with any excisable goods with such knowledge or belief; that Appellant No. 3 had never transacted that counted cash with any re-rolling mill; that no evidence has been adduced during the investigation to prove that the excisable goods alleged cleared by Appellant No. 3 were received by the purchaser without proper documents; that no investigation has been extended to purchaser's end; that they relied upon the decision of the Hon'ble

65134) In the case of Chandan Tahare (as reported as 2011 (273) ELT 67 (T)) to emphasize their contention that charges of clandestine removal are quasi criminal and requires production of positive and tangible evidences to be proved beyond reasonable doubt.

iii) The allegation of aiding and abetting Appellant No. 1 is not correct, inasmuch as there is nothing alleged regarding interaction, place and communication of Appellant No. 3 with Appellant No. 1, that at the time removal of goods, Appellant No. 3 had no knowledge that the Hiding Miscellaneous No. 1 was involving in clandestine clearances of the excisable goods; that requiring possession of such type goods with knowledge of label that the goods are liable to confiscation under Central Excise Act or Rules is not a requirement that penalty can be imposed only in the case of sufficient evidences; that there is no evidence on record to say that Appellant No. 3 had in any way, conspired or colluded with Appellant No. 1 and therefore, imposition of penalty under Rule 26 of the Rules is not proper and legal; that they rely upon the cases of *M/s. Goyal Dye & Mill Co.* reported as 2002 (146) ELT 161 (T); *A. G. Kulkarni* reported as 2001 (142) ELT 174 (S) & *M/s. J. M. J.* and *Ram Nath Singh* reported as 2002 (151) ELT 451 (T) & *Dell* to contend that the ingredients contained in Rule 26 of the Rules for imposition of penalty are not satisfied in this case.

(Signature)

6. Personal Hearing in the matter on behalf of Appellant No. 1 and Appellant No. 2 was attended to by Shri Pankaj Shrivastava, Advocate, who reiterated the grounds of appeals and submitted that bills had been cancelled at broker's premises; that Show Cause Notice relied upon broker's diary, which is a third party document and hence, can't be relied upon as held by Hon'ble CESTAT as confirmed by the Hon'ble High Court; that statement given by Partner had been retracted before statutory authorities and sent to the investigators during investigation, but submitted to the adjudicating authority during adjudication as reply to Show Cause Notice; that request for cross examination was not accepted, also request to supply documents was not allowed; that in absence of following principles of natural justice the case needs to be remanded back to the lower adjudicating authority.

7. Personal Hearing in respect of Appellant No. 3 was attended to by Shri Pradyumn Madhukar, Chartered Accountant who reiterated the grounds of appeals and made written submissions to emphasize that he had only arranged meeting between sellers and buyers and what they said was not in control of Appellant No. 3; that he did not encourage date evasion.

4.1.1 In the Written Submissions Appellant No. 2 contended that: The P&G number numberer not dealt with the alleged goods; that Appellant No. 1 had just acted as middle man between buyer and seller and thus brokered the sale; that removal of goods involved physical movement involving vehicles and other entities which said case was investigated; that Appellant No. 1 was not acquired possession of the disputed goods; that case laws and judgments issued by the lower adjudicating authority be and not applicable to their case; that he is not involved in any way which would make him liable to penalty under Rule 25(1) of the Rules.

4.2 Results personal hearing notices sent to the Commissioner, no reply / response received and also no one appeared for personal hearing and hence I would proceed to decide the appeals.

Findings:-

5. I have carefully gone through the facts of the case, the incriminated order and written as well as oral submissions made by the appellants.

5.1 Appellant No. 2 filed appeal beyond period of 30 days but within further period of 30 days and stated that consulting chartered accountant at the material time was busy with other legal matters which had arisen on account of centralization of liquidation/currency rates, etc. Since appeal has been filed within permissible limit of further 30 days prescribed under the Act, I condone the delay of 27 days in filing appeal.

6. The issues to be decided in these appeals are whether in facts and circumstances of the case:-

- (i) confirmation of demand of Central Excise duty of Rs. 44,14,512/- under Section 11A of the Act along with interest under Section 114A of the Act against Appellant No. 1 is correct or not;
- (ii) Inclusion of penalty equal to duty under section 114C(i) of the Act on Appellant No. 1 is correct or not;
- (iii) Whether penalty imposed on Appellant No. 2 and Appellant No. 3 under Rule 25 of the Rules is correct or not.

6.1 I find that the officers of Central Excise Bhavnagar conducted coordinated search operations at various places including at the premises of

Appellant No. 1 and manufacturing and other like files, notebooks, files, loose papers etc. were recovered. The statements of Appellant No. 2 (partner of Appellant No. 1) and Appellant No. 3 (SI of Hamirpur Mandal, Jammu) were recorded by confronting them with recovered and seized records and the copies recorded in the newspapers/resumes under Feroziana proceedings, which revealed clandestine manufacture and clandestine clearances of M. S. Kando 121 Bars to buyers against cash transactions without CE invoices and without payment of CE duty as seen from Para 13 to 21.C and Para 38 of the impugned order. At Para 39 and 40 of the impugned order, Appellant No. 2 in detail manner explained the cases used and the transactions recorded in the said private notebooks etc.

7. In the grounds of appeal, it is stated that the lower adjudicating authority while passing the impugned order has ignored the submissions made by them, whereas I find that the adjudicating authority has mentioned the defence submissions in detail in the impugned order, and has distinctly mentioned his findings. Thus, this argument put forth by the appellants is devoid of merits.

7.1 I find that demand of Rs. 46,11,117/- has been calculated as per Annexure - 3 of the Show Cause Notice and before recording statement of Appellant No. 2 all documentary evidences recovered from the premises of Appellant No. 1 were placed before him and shown to him. Appellant No. 2 (Partner of Appellant No. 1) in his statement dated 20.03.2013 recorded under Section 17 of the Act had gone through Batchwise drawn at the end of said premises and the statements tendered (transporters, broker, etc. Appellant No. 2) was also given full opportunity to peruse corroborating documents, statements and duty calculation worksheet before going to the court. The trial was conducted in the open. He was shown duty calculation Annexure B prepared on the basis of investigation showing transactions carried out through Appellant Nos. 3, broker of Appellant No.1. I find that the documentary evidences and statements of the broker, transporters 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 satisfactory records/transactions of Appellant No.1 which proves authenticity of transactions and details contained in the invoices/ bills/ bills of lading, etc. and in view of these facts and findings of Appellant No. 1.

(c) Para No. 26.1 and 26.2 : Appellant No. 2 and Appellant No. 3, broker of the Appellant No. 1 accepting clandestine removal by Appellant No. 1 :

26.2 I find that the said witness should also determine the fact whether the said witness No. 1 were clandestinely clearing taxiable goods without cover of any form of basic invoice and without payment of the duty levied thereon. To ascertain the case and for further investigation, the statement of the Magistrate Municipal of District, Poonch of the witness No. 1 (Witness No. 3) was recorded on 28.03.2013. I find from sales report forwarded by the witness No. 1 for the goods mentioned in most of the entries of the said invoice and the goods have been removed without payment of duty and without issue of invoice.

26.2 I find Magistrate Municipal, District, in his statement dated 28.03.2013 deposed that he had and the witness should determine the witness M. Jagan. I find that the investigation of 26.03.2013 showed in the light of the statement of said witness M. Jagan that he confessed that the entries of the Appellant No. 1 in respect of which no invoice or sales bill has been issued, the said sales entries, the goods mentioned in the said entries have been removed by them without payment of duty and without issuance of Central Excise Invoice. He has also expressed that they have to be held responsible for the goods which have been removed without issuance of invoice and without payment of duty, in case.

[Emphasis supplied]

(d) Para No. 27 and 27.1 of the impugned order :- Computation of duty calculation sheet and its acceptance :-

27. I find that the duty calculation has been done under Annexure B for the clandestine removal made by the witness No. 1 on the basis of documents No. 12 & 13 of the Annexure to the Petition dated 22.09.2012 by the office create. The witness No. 2 under his statement dated 04.10.15 has mentioned that all the entries of Annexure A after removing the entries in respect of which sales bills had been issued by the witness No. 1 are related to clandestine removal of goods from the factory premises of the witness No. 1. Annexure B has been prepared in which the entries are crossed by the exemption limit of Rs. 1.50 crore during the month of July, 2012 into after that they should have to discharge their duty liability. Accordingly, the details of short paid duty payable for the I.T. 27 & 3 has been mentioned in Annexure B. Accordingly, the witness No. 1 has availed 100% exemption benefit during the I.T. 27 & 3.

27.1 The duty exemption limit for the I.T. 2012-13 was Rs. 100 crore in Annexure B has exceeded the limit of Rs. 400 crore and hence, the witness No. 1 was not lawfully avail benefit of 100% exemption in the year 2012-13. But as per the Central Excise returns, No. 66 B filed by the witness No. 1 for the goods from 1.7.2012 to 31.3.2013, they have availed the benefit of 100% exemption No. 66/2008 CE issued on 27.12.12. The witness No. 1 has started to use their duty liability from December, 2012 (as shown in 27.3), in view of the above, the witness No. 1 is liable to pay the duty liability from the first statement in the I.T. 2012-13. Accordingly, the short duty not paid duty liability for the I. T. 2012-13 is also indicated in Annexure B.

[Emphasis supplied]

(e) Para No. 38 of the impugned order :- Repeated offences committed by the Appellant No. 1 and Appellant No. 2 :-

38. I further mention that in case, the witness No. 1 has involved in clandestine removal of 2000000 kgs. of steel bars during the period July, 2010 to December,

2019 and had evaded Central Excise duty to the tune of Rs. 47,45,500/- and Shri/Smt. Manoj Kumar Gupta, an un-charged person (dated 26.02.2019), also admitted to having concealed excisable goods without payment of central excise duty and without taking licences, in this way, it can be ascertained that the incident of Appellant No. 1 is a repeated offence. Therefore, the Hon'ble member of Law Commission, Delhi vide Order No. 06/2014-14 p.3/147 dated 28.11.2014 has upheld the validity of mandatory payment of satisfaction of Central Excise for all the excises in terms of the provisions of Rule 12(7) of Central Excise Rules, 2002 and Rule 12(4d) of Central Excise Rules, 2004.

Emphasis supplied

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

2.4 I further find that these are substantial evidences duly corroborated which have not been retracted at any stage and therefore, as per the settled legal position authority of the same cannot be undermined by their arguments only. Also, the fact that authority of records seized from the premises of Appellant No. 1 and broker have been duly corroborated and correlated and filled with records seized from Appellant No. 1 before constituting Central Excise duty liable to be paid by Appellant No. 1, Appellant No. 2 in his statement dated 26.02.2019, as referred to at Para 26.1 and 26.2 of the impugned order has also been executed Annexures containing duty calculations. While carrying out duty calculation, many entries found to be violating with the statutory records of Appellant No. 1 and such entries were excluded from the said.

2.5 Appellants No. 1 has argued that demand of duty cannot be confirmed on the basis of entries and records recovered from the third party like broker, Sanjivendra H. Bajani (Appellant No. 3) and Henry, demand made on the basis of third party documents is not sustainable. In this regard, I find that the entries maintained by the broker recorded item, as well as bill of lading transactions of Appellant No. 1. I also find that many transactions recorded in private records tallied with invoices were actually issued by Appellant No. 1. Thus, truthfulness of diaries/notebooks and other private records recovered from the broker during search is clearly established, also, because broker and Appellant No. 2 have admitted to have dealt with the goods belonging to Appellant No. 1 without

Central Excise invoices and also sold such goods without the invoices. I also find that demand has been computed on the basis of duty computation Annexure is prepared on the basis of invoice records recovered from the broker and Appellant No. 1. I also find that all links involved in the case, i.e. broker, transmitters, Appellant No. 1, Appellant No. 2, etc. have corroborative statements gathered during searches and therefore, demand cannot be said to be based upon third party evidence only. The case in fact, is not based only on third party documents but duly corroborated by host of other evidences also. I find 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 cannot be called third party evidence. All corroborative and supporting evidences against Appellant No. 1, brokers, antecedents of Appellant No. 1 and Appellant No. 2 are not without blemish, inasmuch as at Para 35 of the impugned order it has been found by the lower adjudicating authority, "In furtherance that in fact, the Notice No. 1 was involved in clandestine removal of 1500.016 Mts of Steel Bars during the period July 2008 to December, 2009 and has evaded Central Excise duty to the tune of Rs. 42,41,119/-". Shri Magphane (Sarghat) Daxiga in his statement dated 24/03/2017, also admitted to issuing parallel Invoice and to have removed excisable goods without payment of Central Excise duty and without issuing invoices. In this way, it can be ascertained that the Notice No. 1 is a repeated offender....."

7.6 Further, Appellant No. 2 (Partner of Appellant No. 1) was in his statement dated 26.03.2014 recorded during investigation, on being confronted with vital documentary and oral evidences along with duty calculation Annexure, admitted that they carried excisable goods without payment of duty and no CE Invoices raised for such transactions. This statement dated 26.03.2014 of Appellant No. 2 has really not been recorded and also not examined in time during investigation, as found by the lower adjudicating authority at Para 26 (f) of the impugned order, hence, the statement have sufficient evidentiary value, which cannot be belied only by arguments or balanced stand and vague affidavit. I find that the statement was recorded on 26.03.2014, Appellant No. 2 authorized attorney to sign the said statement on 22.07.2014 and submitted the said affidavit during the course of persons hearing, on 06.03.2017. I also find that the Appellant No. 2 had specifically sought for cross-examination of various persons without stating purpose and intent for cross-examination and therefore, it has no legal significance as held by the lower adjudicating authority at Para 26(f) of the impugned order as under:-

7.8 It is settled law that in cases of clandestine removal, the Dept. does not need to prove the case with mathematical precision, and it is well established supported by judgments of the Hon'ble Supreme Court in the cases of *Shri Ganai Lal* (reported as 1983 (13) F.T.R. 111 (SC) & *Kallu, Tera, et al* (1984) 1 Cr. 110, reported as 2003 (73) ELT 587 (SC).

7.8.1 The statements, if not retracted, are legal and valid evidences in the eyes of law and have to be considered as corroborative evidences, at least in the cases of (i) *Narinder Singh Sawani* (1975 (53) ELT 258 (SC); (ii) *Rakesh Kumar Garg* (2016 (30)) ELT 321 (H. Delh)). I find that Statements of Father / authorized persons of assessee admitting clearance of goods without payment of Customs duty and without issuing invoices were inculcatory and specific and have not been retracted and therefore, are admissible as held in the case of *H. Tech Abrasives Ltd.* reported as 2017 (346) ELT 606 (Trib. Delh.)

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 inculcatory and is specific. The Director clearly admitted that the documents/private records recovered by the officers contained details of movement of raw materials as well as movement 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 crossed by the Director issued by the assessee on which duty is not paid. The Director has clearly admitted the truth of the facts as well as clandestine clearance of goods against the entries in the private records which are not covered by the invoices. Such statements admittedly in evidence as has been held in the App. Court in the case of *Sydeex & Co* reported as 2011 (318) ELT 1000. The activities of clandestine nature is required to be proved on sufficient positive evidence. However, the facts presented in each individual case are required to be considered and examined independently. The demand in this case has been made on the confessional statement of the Director, which is not supported by the mentioned entries in the private records. There is no admission that the statement has been taken under duress. The assessee also has not argued to have acted for expediency during the process of adjudication.

15. In view of the foregoing, I find that the Revenue's demand has been made in taking the view that there is an enough evidence of clandestine removal of goods. Even though the statement of Mr. Sangee (employee), who is said to be the author of the private records recovered has not been recorded, it stands admitted by Mr. Tejinder, Director about the truth of the contents of the private records. Consequently, I find no reason to exclude this piece of evidence.

16. The evidence of clandestine clearance has been created on record only as a result of investigation undertaken by the department. The evidence collected by the department on the various statements and would have gone unrecorded had the investigation been thorough. Therefore, this is a clear case of suppression of facts from the department and certainly the amended penalty of 100% is applicable in this case and hence the demand cannot be held to be time barred.

(Forwards on file)

7.9 I rely on the order in the case of *M/s. Haryana Siro. & Adopt. Ltd.* reported as 2007 (334) H.T. 40 (Tri. Delhi) which held that notebooks (diaries) seized from the possession of appellant's employee at the time of search showing entries not accounted as well as unaccounted gases which have been explained in detail and discussed by GO of the factory tally with the original gas-passes is trustworthy, that statement of employee turning into several pages and containing detailed knowledge to be considered reliable. I also rely on the order in the case of *Kamchandra Bhandar Pvt. Ltd.* reported as 2004 (302) E.O. 461 (S.C.) wherein similar view has been taken by the Hon'ble Apex 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 *Alex Industries* reported as 2000 (230) E.L.T.0073 (Tri-Mumbai) and *Divler Salutaris* reported as 2006 (266) E.L.T. 900 (Tri-Mumbai). While GO is in the case of *Karori Engg. Works* reported as 2007 (166) E.L.T. 372 (Tri. Delhi) has also held that Admission/Confession is a substantial piece of evidence, which can be used against the maker. Therefore, the Appellant's reliance on various case laws are not applicable in light of the positive evidence available in this case as discussed above and in the impugned order. While GO in the case of *P.R. Spange & Ltd* reported as 2005 (223) E.L.T.451 (Tri-Delhi) has also held that when preponderance of probability was against the Appellant, pleading of no statements recorded from buyers, no excess electricity consumption (10-15% on raw material purchase found unaccounted as no input at that rate prescribed by law is allowed).

7.11 In view of above, I find that the contention raised by the appellants are of no help to them and the Department has adduced sufficient oral and documentary corroborative evidences to demonstrate that the Appellants were engaged in clandestine removal of the goods. I, therefore, find that the confirmation of demand of Central Excise duty of Rs. 4,13,491/- 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 114A of the Act. I, therefore, uphold the impugned order relating interest.

8. I find that this is a case of clandestine clearance of the goods without Central Excise Invoice and without payment of CE duty and hence, the impugned order has correctly imposed penalty equal to duty i.e. Rs. 4,13,491/- on

Appellant No. 1 (under Section 110(1)) of the Act with option to pay the tax penalty @ 25% of duty confirmed as per provisions of Section 110(1) of the Act and as per judgement passed by Justice Guzman (J-1) in the case of Rajasthan Spinning and Weaving Mills (merged) vs 2009 (259) E.L.T. 3 (303) and CPEO Circulars No. 80913/2009-CX., dated 15/09/2009 and No. 88809/2009-CX., dated 21/09/2009.

3.1 Appellant No. 2 (Partner of Appellant No. 1) has contended that the learned adjudicating authority has failed to establish as to how he has abetted the evasion or evasion of Central Excise duty and thus penalty on him has been wrongly imposed under sub-rule (1) of the Rules. I find that the facts of this case very clearly establish that he was the key person 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. It is also not the composition of penalty upon him as partner under Rule 26(1) of the Rules in addition to imposition of penalty on his partnership firm is correct, legal and proper. Simultaneous imposition of penalty upon partnership firm and partner is not appropriate in light of the judgment of Hon'ble Bombay High Court in the case of Amrakhani Machine Works (merged) vs 2015(335)ELT225(Guj.). However, penalty equal to duty imposed on him also, even when penalty equal to duty on partnership firm has been imposed, is very harsh. I, therefore, reduce penalty on Appellant No. 2 to Rs. 10 lakhs to meet the interest of justice.

(Signature)

3.2 Insofar as penalty under Rule 26(1) of the Rules on Appellant No. 3 is concerned, he contended that his role was limited as Jit's person and he was not concerned with the goods and the firm, so it is not possible upon him to find that he was the key person in evasion of CE duty by Appellant No. 1 and 2. It is such as goods were transported without entry or CE invoices and without payment of CE duty. Incriminating documents establishing clandestine clearances of the goods were found from the premises of Appellant No. 3 during search proceedings on 12/09/2019. The details of clandestine transactions were recorded in his diary/notebooks and these entries and details of the goods, truck nos., cash payments, etc. and his role has been elaborately discussed in the impugned order. A full inquiry has originated based on the documents recovered from his premises and the other, as stated. It is pleads that his role

