



आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्कः  
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,

द्वितीय तल, जी एम बी भवन / 2<sup>nd</sup> Floor, GST Bhavan

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/368, 369, 428, 430, 446 & 470 /BVR/2017	BHV-EXCUS-000-JC-008- 2017-18	24/05/2017

ख अपील आदेश संख्या (Order-In-Appeal No.):

**BHV-EXCUS-000-APP-189-TO-194-2018-19**

आदेश का दिनांक / Date of Order:	24.07.2018	जारी करने की तारीख / Date of issue:	27.07.2018
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी  
मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Assistant/Joint/Duty/Assistant Commissioner, Central Excise / Service Tax,  
Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellant & Respondent :-

1. Lakshmi steel Rolling Mills Unit-II. Plot No.27(24C), Ship Breaking Yard, Alang,Bhavnagr
2. Shri. Anil D. Jain, Partner M/s Lakshmi Steel Rolling Mills (Unit-II). Plot No. 57(24C), Ship breaking Yard, Alang, Dist: Bhavnagar.
3. Bharat Sheth, Plot No. 619, B-2, Geetha Chowk, Jain Darasar Road, Bhavnagar-364001.
4. Shri. Shrenik Sheth Plot No. 619, B-2, Geetha Chowk, Jain Darasar Road, Bhavnagar-364001.
5. Shri. Jitendra Kumar, Prop. M/s J.K. Jindal & Co., House No. 121, Sec-24D, Mandi Gobindgarh, Dist:- Fatchgarh Sahib, Punjab.
6. Shri. Manmohan Singh, Prop. M/s Iron Traders, Mandi Gobindgarh, Dist: Fatchgarh Sahib, Punjab.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत अपील करने के लिए है।  
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मुल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (शिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए।  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।  
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA 3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।  
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994 and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and shall be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेंगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपील के प्रमाणित प्रतियों के साथ आदेश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub-section (2) and (2A) of the section 86 of the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित हैं, या जुर्माना, जब केवल जुर्माना विवादित हैं, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल हैं  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की ली गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।  
For an appeal to be made before the CBETA, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,  
Under Central Excise and Service Tax, "Duty Demanded" shall include :  
(i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules  
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :  
Revision application to Government of India:  
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामले में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:  
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse  
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिवेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.  
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.  
(iv) सुनिश्चित उत्पाद के उत्पादन के लिए भुगतान के रूप में जो शुल्क जमा की जा सकती है, उपरोक्त एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाचि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.  
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट हैं, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.  
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाना है।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.  
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.  
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.  
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.  
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)

**:: ORDER IN APPEAL ::**

The present six appeals have been filed by the Appellants (*herein after referred to as "Appellant No.1 to Appellant No.6)* as detailed in the Table below against Order-in-Original No. BHV-EXCUS-000-JC-008-2017-18 dated 24.05.2017 (*hereinafter referred to as 'the impugned order'*) passed by Joint Commissioner of Central Excise & Service Tax, Bhavnagar (*hereinafter referred to as 'the lower adjudicating authority'*):-

Sr. No.	Appeal No.	Appellant No.	Details of the Appellant
1	V2/368/BVR/2017	Appellant No. 1	M/s. Lakshmi Steel Rolling Mills (Unit-II), Plot No. 57 (24C), Ship Breaking Yard, Alang, Dist.:Bhavnagar. (Office: 241, Madhav Darshan, Waghawadi Road, Bhavnagar-364002)
2	V2/369/BVR/2017	Appellant No. 2	Shri Anil D. Jain, Partner, M/s. Lakshmi Steel Rolling Mills (Unit-II), Plot No. 57 (24C), Ship Breaking Yard, Alang, Dist.:Bhavnagar.
3	V2/428/BVR/2017	Appellant No. 3	Bharat Sheth, Plot No. 619, B-2, Geetha Chowk, Jain Derasar Road, Bhavnagar-364001
4	V2/430/BVR/2017	Appellant No. 4	Shri Shrenik Sheth, Plot No. 619, B-2, Geetha Chowk, Jain Derasar Road, Bhavnagar-364001
5	V2/470/BVR/2017	Appellant No. 5	Shri Jitendra Kumar, Proprietor M/s. J. K. Jindal & Co., House No. 121, Sector-24D, Mandi Gobindgarh, Distt.: Fatehgarh Sahib, Punjab.
6	V2/446/BVR/2017	Appellant No. 6	Shri Manmohan Singh, Proprietor M/s. Iron Traders, Mandi Gobindgarh, Distt.: Fatehgarh Sahib, Punjab.

2. The brief facts of the case are that officers of the Directorate General of Central Excise Intelligence (*hereinafter referred as 'DGCEI' for brevity*) conducted search operation at the premises of various transporters, few major brokers at Bhavnagar and recovered several incriminating documents. Thereafter, other rounds of search operation were conducted at the premises of various manufacturers and buyers and recovered various incriminating documents indicating clandestine removal of dutiable goods and fraudulently passing of Cenvat credit by issuing invoices to furnace units without physical supply of goods and supply of goods to rolling mill units etc.

2.1 Show Cause Notice No. DGCEI/AZU/12(4)417/2010-11 dated 15.04.2013 was issued proposing demand of recovery of Central Excise duty of Rs.55,40,604/- under proviso to Section 11A(1) of the Central Excise Act,1944 (*hereinafter referred to as "the Act"*) alongwith interest under Section 11AB of the Act and imposition of penalty under Section 11AC of the Act upon Appellant No.1. The Show Cause Notice proposed to impose penalty of Rs. 1,83,244/-

under sub-rule (2) of the Rule 26 of the Central Excise Rules, 2002 (hereinafter referred to as 'the Rules) upon Appellant No.1. It was also proposed to penalties under Rule 26(1) & (2) of the Rules upon Appellant No. 2, 3 & 4. The Show Cause Notice further proposed to impose penalties under Rule 26(1) of the Rules upon Appellant No. 5 & 6. The Show Cause Notice was adjudicated by the lower adjudicating authority vide the impugned order, in which (i) Central Excise duty of Rs. 55,40,604/- was confirmed under Section 11A(1)/(4) of the Act along with interest under Section 11AA of the Act and penalty of Rs. 55,40,604/- was imposed under Section 11AC(1)(a) of the Act and penalty of Rs. 1,83,244/- was imposed under Rule 26(2) of the Rules upon Appellant No. 1, (ii) Penalty of 5,00,000/- under Rule 26(1) of the Rules and penalty of Rs. 3,00,000/- under Rule 26(2) was imposed on Shri Anil D. Jain, Partner of Appellant No. 1, (iii) Penalty of Rs. 3,00,000/- and Rs. 50,000/- under Rule 26(1) & 26(2) of the Rules, respectively, was imposed upon Appellant No. 3, (iv) penalty of Rs. 1,00,000/- and Rs. 25,000/- under Rule 26(1) & 26(2) of the Rules, respectively, was imposed upon Appellant No. 4 (v) penalty each of Rs.50,000/- under Rule 26(2) was imposed upon each of Appellant No. 5 & 6, respectively.

3. Being aggrieved with the impugned order, Appellants No.1 to 6 have preferred the appeals on various grounds as under:

Appellant No. 1 & 2:

(A) The impugned order has been passed on the basis of the assumption presumption ground without any direct corroborative evidences as well as on the basis of third party's evidence; that the impugned order has been passed on the basis of facts narrated in the Show Cause Notice; that various statements recorded by the department are not alone to establish charges unless the same are not corroborated; that until the evidences are not cross-examined, the said documents cannot be considered as relied upon documents to sustain charge; that the documents of third party cannot be the basis of demand as the is based on the diary of third person and transports details which has no direct or indirect connectivity with Appellant No. 1; that statements were literally made to connect in a manner which reflects that transaction has really taken place, whereas, such transaction had not taken place; that they rely upon following judgments:

Mahalaxmi Dying Mill reported as 2016 (343) ELT 453 (Tri.-Ahmd.)

Alliance Alloys Pvt. Ltd reported as 2016 (338) ELT 749 (Tri.-Chennai)

Jindal Drugs Pvt. Ltd. reported as 2016 (340) ELT 67 (P&H)

(B) That in absence of supplying hard copies of relied upon documents, the written submission submitted to Show Cause Notice; that they do not manage the vehicle for transportation of the disputed goods in respect of such entries found from the trip/booking register of various transport company read with GMB's register; that most of the Central Excise invoice got tallied with such particulars recorded in the said trip register etc.; that the disputed 31 entries have been worked out from the trip register/GMB register but these documents had not been supplied along with Show Cause Notice; that the allegation of issuance of phony invoices has not been proved by corroborative evidences pertaining to; that without verifying the production register etc. such charge is not sustainable; that the register maintained by GMB only within the ports limit and every such vehicles are passed through port under special permit; that therefore, the GMB register is not genuine document to sustain illicit removal of excisable goods; that the receipt of commission by transport companies are not the evidence to prove the charge of illicit removals as in the business of transport agency, such transport agency raised the commission as soon as the vehicle booked for a customer; that they rely on judgment in case of Oudh Sugar Mills reported as 1978 (2) ELT J172 (SC) and Gian Mahatani reported as 1999 (110) ELT 400 (SC).

(C) That the Central Excise duty has been quantified on the basis of approximate loading carrying capacity of the so called vehicles by determining the average of 27 and 28 MT per truck but these quantities have ascertained on 100% approximate base and accordingly the alleged removal of the total quantity of 387.100 MT and 655.00 MT automatically proves that the said quantity has been determined automatically; that the transportation of goods are managed either by broker or by the buyers; that the confession statement are not the direct material evidences without corroborative evidences in as much as no statement of concerned driver of the truck had been recorded as well as no such investigation has been carried out at the end of the loader of the vehicle working within the factory premises; that the statements of the concerned person of the transport company have been recorded in stereo type; that without verification of Central Excise record maintained by appellant and without verification of periodical returns filed by appellant, the charge of

clandestine removal is not be prove; that the charges have been framed on the basis of seized private note book, diaries and as stated by the said authorized person, the transaction's responsibility on the broker and therefore, the Appellant had no concern whether the goods had been diverted as the goods were sold at factory gate and they place reliance on judgment reported as 2010 (265) ELT 1021 (Tri.-Ahmd.) and 2000 (121) ELT 46 (Tri.); that they had not contravened any provisions of the Central Excise Rules, 2002 since they had not cleared illicit removal and not cleared the goods clandestinely.

(D) That charge of clandestine removals had been framed on the basis of entries found in the seized private records of third party; that quantity reported to have been cleared clandestinely has not been verified from the angle of Daily Production Register; that the charge of clandestine removal is required to be established by the data of the production and the data of the raw material from which the final products have been manufactured which has not been done by the adjudicating authority; that there are so many labourers are required for manufacturing of the final products as well as more electricity consumption is also required; that these evidences are not placed on record to sustain the charge of clandestine removal of the excisable goods; that no permission to cross examine the witnesses had been granted by the adjudicating authority; that the adjudicating authority failed to establish the genuine differential value as each and every bill is the independent transaction for the purpose of Central Excise law; that the plates of iron and steel produced by the Appellant No. 1 from old and used imported ships are not in the specific measurement and the prices of the said goods are depending upon the quality of the products; that they declared the genuine transaction value in each and every consignment; that the adjudicating authority failed to establish that the Appellant No. 1 received any more sale proceeds than declared in the transactions and no such investigation has been extended to the end of buyers.

(E) That the Show Cause Notice was time barred as they had not suppressed facts and circumstances relating to Central Excise law and the allegations had been framed only on the assumption presumption and third party's evidences; that the evidences relied upon in confirming the charges are not the direct material evidences as the adjudicating authority erred in not granting the permission to cross examine the witnesses; that the allegation of under valuation has been confirmed by not appreciating the submissions made by

them; that the money flow back has not been established by the adjudicating authority; that they are not liable to pay Central Excise duty as well as penalty and interest thereon; that they rely on judgment in case of Chemphar Drugs and Liniments reported as 1989 (40) ELT 276 (S.C.); that the impugned order may be quashed and set aside.

Appellant No. 3 & 4:

(i) The impugned order is based on surmises and conjunctions and upon conjunctures of the adjudicating authority and is against the cannon of natural justice as the defense submissions made by him based on facts and circumstances were not considered. The impugned order is per functionary and therefore, it is required to be quashed and set aside.

(ii) The adjudicating authority did not supply the relied upon documents alongwith the SCN. It was not proper and legal, but supplied some copies of document after request made by him. There were many documents relied upon, which were mainly in the form of recorded statements. For preparing defense reply, each and every document was required to be studied by comparing the contentions contended in the statements of the respective persons namely Manish Patel whose statements had been discussed in the SCN. This important work could not be done from the relied upon documents supplied in CD. Therefore, it is clearly established that the adjudicating authority has grossly violated the principle of natural justice. He relied upon the settled case law of Secure Industries Ltd. [2003 (155) ELT 559 (CESTAT)], wherein it has been laid down that "adjudication order was set aside when copies of documents relied upon were not supplied to assessee, even if he was given opportunity one month prior to hearing to take photo copies. It was held that department was obliged to supply all documents. Otherwise, there is violation of principle of natural justice". In the case of PGO Processor [2000 (122) ELT 26], the Hon'ble Divisional Bench of High Court, Rajasthan has held that "authenticated copies of documents relied upon are required to be supplied. Mere opportunity to inspect the documents and to obtained photo copy thereof is not sufficient". In the present case, the adjudicating authority has failed to supply the complete set of relied upon documents though requested. Therefore, the impugned order is not proper and legal, but deserves to be set aside.

(iii) The duty of excise has been determined on the basis of such entries found

written in the seized diaries by taking into consideration of the trip registers maintained by the Transport Agency as well as such entries of the vehicles found written in gate pass register maintained by GMB; that charges of illicit clearance of goods without payment of Central Excise duty had been framed and confirmed on the basis of the third party's evidences without corroborative evidences.

(iv) The adjudicating authority erred in confirming the duty of Central Excise on the allegation of undervaluation confirmed on the basis of the inquiry conducted by Central Excise department with the various formations; that the Sub Rule (1) of Rule 26 is pertaining to the circumstances under which circumstances such penalty is imposable. In this provisions, it has been specified that when any person is concerned in transportation, concerned in depositing, keeping, concealing, selling or purchasing any excisable goods which he knows or reasons to believe are liable to confiscation under the Act or Rules framed there under. In the present case, no such charge of confiscation had been made in the SCN. Therefore, it is clearly established that the adjudicating authority has wrongly and without authority of law has imposed penalty under Sub Rule (1) of Rule 26 of the CER. In the present case, the adjudicating authority has failed to prove that for which documents, the unit had benefited as well as appellant had received such benefit. Without taking the base of Central Excise Record, maintained by the unit, such penalty is not imposable. In the present case, these aspects are silent. In addition to this, no such findings have been given by the adjudicating authority with regard to how many amount has been received in so called transaction. Therefore, it is clearly established that the adjudicating authority has wrongly and without authority of law has imposed penalty under Sub Rule (1) of Rule 26 of the CER.

(v) The impugned order is not self contained order. In the findings, the adjudicating authority has mainly repeated the facts narrated in the SCN. To sustain such charges of clandestine removals, such Central Excise records would have been verified. In the present case, no such verification has been taken on record. Only on the basis of such statements, such clandestine removal cannot be sustained. Therefore, the impugned order is not correct and true in absence of such verification of the statutory records pertaining to the Act and Rules framed there under. The sales details submitted by the unit, such clandestine removal cannot be sustain on the basis of the above sales particulars without



corroborative evidences with reference to the Central Excise records. Therefore, *mens-rea* is not proved to sustain the charge of clandestine removal. Further, he had acted a limited role to recognize the buyer and seller to each other and fixed the price of the goods on the basis of the market rate prevailing at the material time. He was not used to go the unit to the ship breaking units for managing loading of the dutiable goods, he had not remained present at the time of preparation of Central Excise invoice and at the time of removing of the dutiable goods from the factory premises of the unit. Nowhere in the findings of the impugned order, has it been held that he was present at the time of removal of such dutiable goods clandestinely etc. Further, it was also the fact that the freight charges appears to have been paid by the buyer of the so called goods. Therefore, he was not at all involved in any way as provided under Rule 26 (1) of the CER.

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

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

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

not tenable within the eyes of law.

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

(x) He further submitted that the buyer was always been deploying their man known as Chhatiwala for loading of the required Cenvatable goods to the concerned unit ship breaking units. But, though the Chhatiwala was the key person to state whether the goods under reference had been removed clandestinely, or not, there is no mention in this regard. Therefore, the finding of the adjudicating authority that the dutiable goods had been removed clandestinely is not correct and legal.

(xi) In the SCN, it was also stated that the Angadias have played key role in the issue under reference. However, no SCN had been issued to the Angadias. The Angadias have been found to have been involved in cash transaction as alleged in the SCN. But no any specific evidence has been placed with reference to particular consignment/Central Excise invoice for which the so called transaction had taken place. Therefore no direct specific evidence was there in the SCN. Therefore, the findings given by the adjudicating authority are not correct.

(xii) From the above submissions, and from the facts and circumstances of the case, he has proved that:

(a) He is not liable for a penal action under Rule 26 (1) in as much as no such allegation or charge of confiscation of the so called clandestine removal of the excisable goods had been framed in the SCN. The penal action under the Rule 26 can be imposed only when the so called goods has been charged for confiscation. This legal position has been accepted in the case of M.N. Shah

[2008 (232) ELT 110 (CESTAT)].

(b) Without having direct material evidences, the adjudicating authority has wrongly and without authority of law has imposed penalty and in as much as there was no charge of confiscation, there was no any material evidences that he was concerned in transpiration of goods illicitly, he had not abated any documents of the unit. The department has failed to prove that he was aware of clandestine manufacture and removal.

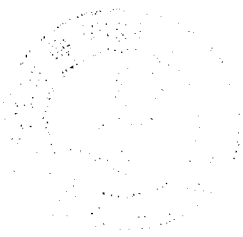
(c) The so called clandestine removal of the dutiable goods has not been proved on basis of the material evidences. For each consignment as mentioned in the SCN, it is required to be independently proved. But in the present case, the same has been concluded in general. This is not correct.

(d) The so called cash transaction had not been proved with each and every consignment as mentioned in the SCN.

(xiii) No such evidence has been produced regarding seizure of incriminating documents from the factory premises of the unit to prove the so called charge of clandestine removal reported to have been made by the unit. Therefore, it is clearly established that the subject case had been made out on the assumption presumption ground only. He had not defended the case vehemently as contended in the impugned order. The findings of the impugned order appear to have been made without any corroborative evidence with reference to each and every so called consignments cleared clandestinely by the unit. Since, the case against the unit appears not to have been proved with material evidence, the Co-Noticee i.e. the appellant was also not liable for penal action as penalized vide the impugned order.

(xiv) The adjudicating authority has failed to consider the various case laws as relied upon by him and mentioned in the above mentioned written submission. Again, he is relying upon the said case laws which are reproduced here under as the same are squarely applicable in the present case:-

- a) Mukund Limited - 2007 (218) ELT 120
- b) Indo Green Textile - 2007 (212) ELT 343
- c) Vishal Shal - 2007 (210) ELT 135
- d) S.R. Jhunjhunwala - 1999 (114) ELT 890



- e) S.L. Kirloskar -1993 (68) ELT 533 (Bom HC), 1997(94) ELT A 248(SC).
- f) Gujrat Borosil - 2007 (217) ELT 367 (CESTAT)
- g) Amrit Foods Co. Ltd. - 2003 (153) ELT190 (Tri. Del.)
- h) Om Aluminium Pvt. Ltd. - 2014 (311) ELT 354 (Tri. Ahd)
- i) Order No. A/11033-11034/2015 dated 17.07.2015 CESTAT Ahmedabad
- j) Order-In-Original No. SIL-EXCUS-000-COM-099-16-17 dated 28.03.2017 passed by the Commissioner, Central Excise, Silvassa.

(xv) Appellant No. 3 filed application for condonation of delay stating that he was required to pay pre deposit of Rs. 26,250/- before filing an appeal as his financial position was very weak and therefore, he could not make the mandatory pre-deposit within time limit of 60 days; that the grounds of late filing were beyond his control and he requested to condone the delay of 24 days as per proviso of Section 35(1) of Act.

(xvi) Appellant No. 4 filed application for condonation of delay stating that he was required to pay pre deposit of Rs. 9,375/- before filing an appeal as his financial position was very weak and therefore, he could not make the mandatory pre-deposit within time limit of 60 days; that the grounds of late filing were beyond his control and he requested to condone the delay of 24 days as per proviso of Section 35(1) of Act.

Appellant No. 5 & 6:

(i) The impugned order has been passed in a mechanical way without considering written submissions, without supplying relied upon documents even without supplying the copy of statement; that the facts and circumstances narrated in the Show Cause Notice and the impugned order were not matching; that no any detail of 31 cases cleared clandestinely has been mentioned in the impugned order; that no Annexure-TR-3 to Show Cause Notice was supplied to them; that they were registered with Central Excise Range, Mandi Gobindgarh, Division- Mandi Gobindgarh under Central Excise, Chandigarh-I Commissionerate. Central Excise Bhavnagar has no territorial jurisdiction to adjudicate this impugned order; that the impugned order is liable to be quashed on this ground alone as held in judgment in the case of I.T.I. Equatorial Satcom Ltd. reported as 2001 (136) ELT 156 (Tri. - Chennai), Coimbatore Aero Based Controls Sys (P) Ltd. reported as 2000 (116) ELT 193 (Tribunal); that whole of the investigation

was fake, vitiated and shady; that the Appellants in their statement agreed that he had purchased the scrap cleared by Appellant No. 1 but the value and duty involved in this transaction are not known to the investigation officers so not mentioned in the Show Cause Notice thus this allegation is not correct; that the Show Cause Notice has been issued in casual manner and in the statement it has been alleged that the Appellant No. 5 had received 8 trucks and Show Cause Notice has been issued for 6 trucks.

(iii) It has been alleged that appellants were agreed in the statements that said purchases were made without cover of invoices and that payment of the clandestine removal was made by cheques and after receipt of cheque amount by ship breaker, appellants had received cash through angadia for such illicit transaction from the broker/ship breaker jointly. The facts stated in the statements cannot be believed as no person after 4/5 years can record statement and can identify the truck number, name of seller, name of broker, weight, exact date of purchase, name of transporter without verifying the record. Thus, all the facts narrated in the statements are categorically denied to have been accepted and agreed by the appellants and it cannot be believed that a person can get such statement recorded without record.

(iv) The appellants had in sworn affidavit cleared the position about the compelling circumstances to which the statements were got signed without being allowed to read. All the facts and circumstances narrated in the statements are not matching with the factual position.

(v) There is no single document supplied to the appellants including statement/record of broker, statement/record of manufacturer/ship breaker, statement/record of transporter, statement/record of Marine Board showing that the disputed goods were received by the appellant without cover of invoices except of getting statements signed in hurry which had been retracted by the appellants as has been got signed fraudulently/illegally and in unfair manner.

(vi) The scanned copy of record of the transporter has been incorporated in SCN do not contain the particulars of the goods in dispute to have been received by the appellant. The department failed to supply evidence available with them from the record of Maritime Board. It has been mentioned in SCN that some record of Maritime Board is not available, entries of truck having registration of

Bhavnagar District are not made as entry permit is issued on monthly basis. The appellant failed to understand the investigation at the end of Maritime Board as no any documents, entry has been supplied to the appellant showing alleged clandestine purchase. Without any evidence on record, statements got signed that the appellants purchased scrap illicitly without payment of Central Excise duty and against such purchases paid payments in cheque and against payment of cheques the appellants received back the cash from broker/ship breakers through angadia from broker and ship breaker jointly. The statements without any such evidences got signed through pressure tactics in the same manner and same style by copying and pasting the para verbatim which shows that whole of the investigation is fake and malicious and cannot be relied upon.

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

(viii) Onus to prove allegation lies on department and the department cannot shift the same to appellants without discharging its onus as held in following cases: -

- Rama News & Papers Ltd. - 2008 (221) ELT A079
- Chandan Tobacco Co. - 2014 (311) ELT 593 (Tri. - Ahmd.)
- Srivastva International Ltd. - 2014 (310) ELT 607 (Tri. - Del.)

(ix) It is well settled law that statement of co-appellant without any corroborative evidence cannot be made the sole basis for imposing penalty on other co-appellants as held in the case of Vikram Singh Dahia reported as 2008 (223) ELT 619.

(x) Some transporters who have agreed in the statements to have supplied the trucks for clandestine removal of goods and some brokers who have agreed in the statements to have supplied trucks for clandestine removal of goods. But the SCNs were not issued to such transporters and brokers, therefore imposition of penalty under Rule 26 of the Rules is not sustainable. No investigation has been done at the premises of the appellants. The Hon'ble High Court of Gujarat in the case of Motabhai Iron and Steel Industries reported as 2015 (316) ELT 374

(Guj.) has quashed the demand and penalty based only on the statement of transporters/third party and the premises of the assessee was not visited by the investigating agency.

(xi) Appellants had requested for cross examination of Director of Appellant No. 1 (Appellant No. 2), Broker Shri Kittu Bhatia, Transporter M/s. Vardhman Transport and concerned officers of DGCEI, Ahmedabad.

(xii) The penalty under Rule 26 of the Rules is imposable where there is confiscation of goods as held in the case of Shyam Traders reported as 2012 (278) ELT 468 (Tri. - Del.).

(xiii) The only evidence available with the department relied upon in the impugned order is the statements of the appellant. The appellant placed important facts which prove that pre-printed statements were got signed without showing its contents to the appellants. The lower adjudicating authority has not discussed the submission on these important facts and passed the impugned order by ignoring the same; that such lengthy statements of six persons cannot be recorded within hour as proved from the affidavit duly sworn in by all the deponents; that the statements saved in the computer and records of date and time of creation of file, date and time of saving the file would have proved that the files in the computer were created and saved within minutes only by changing the name of the persons making the statement even without change of para number and other facts. When under RTI Act this information was requested to supply, the Public Information of the Office of DGCEI informed that information/files are not available meaning thereby that the files are deleted to wash out the important fact. The appellants had filed written complaint to Revenue Secretary to make enquiry of this incident.

(xiv) Six persons visited DGCEI office on same day to record the statements. It has been got recorded from one of the persons Shri R.G. Gupta that he had got the material clandestinely while his firm R.G. Gupta had duly received material with invoices as mentioned in Para 13 of Affidavit.

(xv) In one of the firm M/s. R.G. Gupta & Co. the proprietor of firm at the relevant time was expired and at the time of recording statement on 26.08.2012 his son/legal heir was the sole proprietor. It has been got signed from the legal heir that he knows everything, truck number, name of broker, name of transporter, etc. and he had got the material clandestinely. This itself prove



that the whole of the investigation is fake, vitiated and shady. Another important fact was mentioned at Sr. No. 12 of the Affidavit that Mamta Steel Corporation had got 26.315 MT material vide Invoice No. Ex 112 dated 27.08.2009 loaded from Plot No. 109 of Rishi Ship Breakers, Sosiya, Alang on 27.08.2012 in Truck No. RJ21GA1975 through Transporter New Jai Shanker Transporter Co. and the partner of the firm Lalit Prashad alleged to have given the statement that the same Truck No. RJ21GA1975 was loaded from Plot No. 9 on the same date 27.08.2009 through same transport company without issue of invoice.

4. Personal Hearing in the matter was attended by Shri N. K. Maru, consultant on behalf of Appellant No.1 & 2 who reiterated grounds of appeals and submitted written submission to say that he does not want to add any other submission then written submission and grounds of appeals for both said appellant.

4.1 In written submission, Appellant No. 1 & 2 stated that nowhere any of the concerned persons of the truck owners, angadias, brokers viz. Shri Vinod Patel, Shri Kishor Patel, Shri Bharat Sheth etc. have stated that such illicit activities as alleged in the Show Cause Notice have been carried out by them under knowledge; that it is not on specific record that the owner of such truck had been used for removing of the excisable goods without payment of duty from the factory premise of the Appellant; that the impugned order has been passed only on the basis of the assumption presumption grounds and only on the say and submission made by the third parties'; that it has been alleged that they had removed the excisable goods without payment of duty but nowhere the names of the so called customers have been taken on record; that it has been alleged that appellants had received cash from the so called buyers through brokers, but the names of customers had not been disclosed from whom the so called cash had been received; that allegation of removal of goods without payment of duty is not at all sustainable; that appellant No. 2 in his statement has stated that the transportation was managed by the brokers/buyers and the Appellants had not received any cash either from S/Shri Vinod Patel or Kishor Patel or from Bharat Sheth; that the impugned order has been passed only on third parties' evidences without corroborative the tangible evidences directly pertaining to the Central Excise records of Appellant No. 1; that they sold out the excisable goods at the price prevailing at the material time and was ex-factory price and thus they had



not attempted to suppress the transaction value of the goods sold without under cov of valid Central Excise invoices; that the price were the genuine transaction value as provided under Section 4 of the Act.

4.1.1 That private diaries/not books seized from the above mentioned brokers were nothing but only relating to their business and carried out on commission; that the firm named M/s. Krishna Enterprise is registered dealer owned by Shri Kishor Pate, brother of Shri Vinod Patel but no such records pertaining to the said registered dealer have been taken on record to prove such charges as charged in the Show Cause Notice in as much as the department had concluded that both the above brothers are involved in the so called illicit activities; that Shri Vinod Patel in his statement dated 03.01.2011 has stated that he had given such cash amount to 'some ship breakers' but specific name of ship breaker has not been disclosed during the investigation with regard to clandestine removal made by ship breaking unit through broker; that he also stated that the entries made in his seized books were in relation to 'making out survey of the availability of the various scraps from various ship breaking unit'; that the Show Cause Notice is time barred; that the charge of clandestine removal has been framed on the basis of such private records has been seized from the residential premises of Shri Bharat Sheth under Panchnama dated 30.03.2010, whereas the Show Cause Notice was issued only on 15.04.2013/19.04.2013 though the department was well in knowledge that ship breaking units/brokers were involved in evasion of Central Excise duty from the date of 30.03.2010; that the Show Cause Notice was required to be issued on or after one year from the date of discloser of the facts.

4.1.2 That the adjudicating authority has wrongly and without any authority of law has confirmed the differential duty as determined by the department under the guise of under valuation without considering the invoices for arriving the differential duty; that ship breaking units of Alang are used to remove their dutiable goods at ex-factory gate by issuing invoices considering the price of the goods prevailing at the time of removal from the factory gate; that such price is depending upon the quality of the excisable goods generated by breaking up old and used imported ships of various types and nature resulting into different quality of the iron & steel products; that the method adopted by the department to demand the differential Central Excise duty under the guise of under valuation is not correct; that they rely on the judgment in case of Om Aluminium

Pvt. Ltd. reported as 2014 (311) ELT 354 (Tri. Ahmd.), CESTAT, Ahmedabad Order No. A/11033-11034/2015 dated 17.07.2015 in case of M/s. Bajrang Castings Pvt. Ltd., Pushpam Pharmaceuticals Co. reported as 1995 Supp 3 SCC 462 = 78 ELT 401 SC, Sarabhai M. Chemicals - Cenvat Credit Rules, 2004 AIR 2005 SC 1126=179 ELT 3 (SC 3 Member Bench), Modipon Fibre Co. reported in 2007 (218) ELT 8 (SC), S. Kumar Ltd. reported as 2007 (211) ELT 124 (CESTAT).

4.2 Appellant No. 3 & 4 vide their letter dated 18.06.2018 has submitted that they has elaborated their submissions in grounds of appeals and established that they had not played any role in the so called clandestine removal of the excisable goods cleared, if any, by the Appellant No. 1; that they do not wish to be heard in person and prayed to set aside the impugned order.

4.3 Personal hearing for Appellant No. 5 & 6 was attended by Shri Rakesh K. Shahi, Advocate who reiterated the grounds of appeals and submitted that copies of RUDs were not been supplied; cross-examination of the persons who made statements not allowed by the adjudicating authority violating Para 14.9 of CBEC Circular dated 10.03.2017; that he denied to have received goods without Central Excise invoices and the disputed goods were received through valid invoices ad mentioned in detail as per Para 5 of additional evidence produced today also at Para 2.5 (Page 36) of the impugned order but not properly discussed at para 3.4.3 (Page 41) of the impugned order; that no Bank & cheque details were given investigation as to who and how given and no Angadiya's details found as to who paid in cash; that appeals may be remanded/allowed.

#### Findings:

5. I have carefully gone through the facts of the case, the impugned order and written as well as oral submissions made by the Appellants. The issue to be decided in the present appeals is whether the impugned order, in the facts of this case, confirming demand and imposing penalty on Appellant No. 1 to Appellant No. 5 is correct or otherwise.

5.1 I find that Appellants No. 3 & 4 filed appeals beyond period of 60 days but within further period of further 30 days stating that they were required to pay pre deposit of Rs. 26,250/- and Rs. 9,375/- respectively before filing appeals, however, since their financial position was very weak, they could not make the mandatory pre-deposit within time limit of 60 days; that the grounds of late

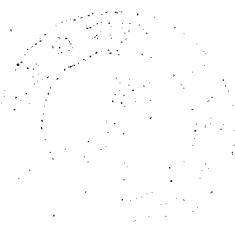
filing were beyond their control and they requested to condone the delay of 24 days as per proviso of Section 35(1) of Act. I condone delay in filing these appeals and proceed to decide the appeals on merits.

5.2 Appeal of Appellant No. 6 received in this office beyond period of 60 days but without application for condonation of delay. On being pointed out by the Department, he replied the appeal was sent by Blue Dart Courier 6 days before the due date; that the said courier reached Rajkot office of the courier company on 01.09.2017; that there were holidays on 02.09.2017 and 03.09.2017; that the courier employee visited CGST Appeals, Rajkot on 04.09.2017, 05.09.2017 and 06.09.2017 but could not deliver the documents and the documents could be delivered by courier on 07.09.2017. On verification, I find that the Appeal of Appellant No. 6 is dated 28.08.2017 and was sent through courier well within 60 days of the receipt of the impugned order. Hence, I am inclined to decide this appeal also on merits.

6. I find that the officers of DGCEI, Ahmedabad conducted coordinated searches at the places of brokers and transporters, from where various incriminating documents like diaries, files, loose papers, computer, pen drive, etc. and lorry receipts, booking / trip registers etc, were recovered.

6.1 The appellants have submitted that copy of relied upon documents were not provided to them. I find that the appellants had also made such contention before the lower adjudicating authority, who vide Para No. 3.1.2 of the impugned order held as under: -

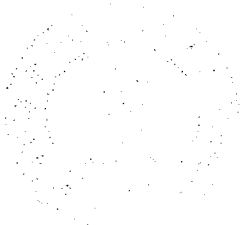
*"All the relied upon document were provided to the Noticee in soft copy through a compact disc. Considering the fact that the documents have been provided in the form of a CD, one can read the same in a computer and get the hard copies printed. The reluctance to print the desired information from the CD by such a established business group is nothing but an attempt to hamper the adjudication process in the guise of natural justice. I, therefore, find that to provide RELIED UPON DOCUMENTS in soft copy is sufficient compliance and I hereby rely on the decision of Hon'ble High Court of Judicature at Allahabad in case of Commissioner of Central Excise, Merrut-I Vs. Parmarth Iron Pvt. Ltd. [2010 (11) LCX 0021] [Para 18]."*



6.2 I find that Para 22 of SCN dated 15.04.2013 states that the documents relied upon are listed in Annexure-R to the Show Cause Notice and copies thereof wherever not supplied earlier are enclosed or would be made available for inspection on demand. Therefore, contentions of the appellants to have not received copies of RUDs do not hold field.

6.3 It has also been submitted that the adjudicating authority while passing the impugned order has completely ignored the submissions made by them. However, I find that the adjudicating authority has stated detailed defense submissions of the appellants at various sub-para(s) of the impugned order and also narrated his own findings evaluating the evidences available.

6.4 It is on record that DGCEI established authenticity of records seized from Appellant No. 3 and duly corroborated the same with records seized from other premises. Para 10.6 of the Show Cause Notice has illustrated the example. It is mentioned that based on the investigation of records seized from Appellant No. 3, Appellant No. 1 had supplied plates including clandestine supply to M/s. Patel Steel Industries & Re-Rolling Mills, Mehsana. The search at M/s. Patel Steel Industries on 30.09.2011 also led to recovery of various incriminating documents and based on such documents follow up searches were carried out on 27.01.2012 at the premises of buyers including M/s. JDK Decorative Sales, Vadodara. The scrutiny of records seized i.e. note book bearing no. 01 to the Panchnama dated 27.01.2012 recovered from M/s. JDK revealed that they made cash payment to Appellant No. 3 on behalf of M/s. Patel Steel Industries through Angadia, which corroborated the details mentioned in the seized records of Appellant No. 3. During the course of investigation, M/s. Patel Steel Industries revealed that they had procured plates from different ship breaking units clandestinely without invoices through Appellant No. 3 and manufactured finished goods out of such illicitly procured plates and cleared the same to buyers clandestinely. The Note Book bearing No. 1 of the Panchnama dated 27.01.2012 recovered from M/s. JDK contained the details of receipt of finished goods clandestinely totally valued at Rs. 1,04,36,004/- from M/s. Patel Steel Industries and details regarding payment of huge cash amount, on behalf of M/s. Patel Steel Industries. Further, the details mentioned in said note book, M/s. JDK has made cash payment of Rs. 1,04,36,00/- to the different persons on behalf of M/s. Patel Steel Industries through various angadias. The clinching, irrefutable and concrete evidences gathered by DGCEI proved that M/s. Patel Steel Industries used to receive plates



from different ship breaking units through Appellant No. 3 and other brokers of Bhavnagar clandestinely without issuance of Central Excise invoices. M/s. Patel Steel Industries manufactured finished goods from illicit receipt of plates and cleared the same clandestinely to their buyers on cash basis and cash received from the buyers were transferred to respective ship breaking units through Appellant No. 3. In this case, the cash amount was directly transferred by M/s. JDK, Vadodara to Appellant No. 3 on behalf of M/s. Patel Steel Industries. Thus, this is corroboration of documents seized by DGCEI.

6.4.1 It is also on record that DGCEI established authenticity of records seized from Appellant No. 3 and duly corroborated the same with records seized from other premises. Para 10.2.1 of the Show Cause Notice has illustrated the example by pasting scan image of page no. 169 of the seized diary marked as "A/13" for dated 17.02.2009 mentioning that based on the investigation of records seized from Appellant No. 3. There are total 10 entries recorded on the said page. The top left side is the continued part of the transaction made by Appellant No. 3 & 4 on 17.02.2009. In first column, 2<sup>nd</sup> entry "24C" denotes plot number of Appellant No. 1 (Unit-II). In second column, "5-10" has been recorded which denotes size of iron plates/scrap. In third column, "17800" has been mentioned which denotes Rs. 17,800/- rate per metric ton of the plates at which rate respective recipient unit is required to make payment to ship breaker, and below it, "18300" has been mentioned which denotes Rs. 18,300/-, the broker has to receive amount of Rs. 18,300/- per metric ton. In the next column, "R (Krush)" denotes R means M/s. Ragatia Steel Rolling Mills, Sihor and (Krush) means M/s. Krushna Steel Industries, Bhavnagar. In this context, M/s. Ragatia Steel Rolling Mills has received goods while M/s. Krushna Steel Industries, Bhavnagar received invoice only.

6.4.2 It is further on record that DGCEI established the authenticity of records seized from Appellant No. 3 and duly corroborated the same with records seized from other premises. Para 10.2.9.6 of the Show Cause Notice has illustrated the example by pasting scan image of page no. 75 of the seized diary marked as "A/13" for dated 22.08.2009 mentioning that based on the investigation of records seized from Appellant No. 3. Appellant No. 1 had cleared 11.330 MT of plates of Zie ½" @ Rs. 18,000/- per MT to Shri Ajay Patel Broker on 22.08.2009 through Appellant No. 4 and the payment in respect of said transaction was to be made on the spot by recipient trader. As per scan copy of page No. 75 of the

seized diary marked as A/13, Appellant No. 3 and 4 had received total amount of Rs. 15,34,500/- in cash from various parties on 22.08.2009 and Appellant No. 3 & 4 had given total amount of Rs. 15,36,510/- in cash to the various parties on 22.08.2009 including Appellant No. 1.

6.5 I find that before recording the statement of Appellant No.2, (Partner of Appellant No.1), all evidences in form of documents recovered from the premises of Appellant No.1, 3, & 4 and transporters during investigation, were placed before him; that he had seen Panchnamas drawn at the premises of Appellants No.1, 3, & 4 and at the premises of various transporters and the statements given by Appellant No.3 and Shri Manish Patel, Accountant of Appellant No.3, Appellant No. 4 and various transporters and angadias; that he had been given full opportunity to peruse the same before giving testimony about the truthfulness and correctness thereof. It is seen from the statements of Shri Manish Patel, Accountant of Appellant No. 3 that the documents were in the form of diaries maintained by him for and on behalf of Appellant No.3. Thus, Appellant No.2 was given sufficient opportunity to examine documentary evidences duly corroborated by oral evidences collected from Appellant No.3 and his accountant as well as Appellant No. 4, transporters and angadias. He was also shown annexure prepared on the basis of investigation conducted in respect of records seized from Appellant No.1, 3 & 4 and transporters showing the details of the transactions carried out through Appellant No.3 & 4 by Appellant No.1. I find that from the documentary evidences viz. seized diary of Appellant No. 3 & 4 and statements of the anagadias and transporters, it is proved that Appellant No.1 had removed the goods with the help of Appellant No.2, 3 & 4 clandestinely as well as fraudulently passed on Cenvat credit by issuing Central Excise invoices without actual supply of excisable goods. These transactions also tallied with the records of Appellant No.3 & 4 which are corroborated with the record of invoices issued by Appellant No. 1, Angadias and transporters also, who have also admitted transfer of cash amount as well as excisable goods. These are substantial evidences, in the form of documentary and oral evidences, on record resumed from the firm and persons indulged in transaction with Appellant No.1. I find that the investigation has corroborated various evidences and established evasion of Central Excise duty and fraudulent passing of Cenvat Credit by Appellant No.1. Therefore, it is proved beyond doubt that Appellant No.1 had evaded duty of Central Excise of Rs.55,40,604/- as detailed in relevant Annexure (s) of the Show Cause Notice and had fraudulently passed on Cenvat Credit of Rs.

1,83,244/- as worked out in Annexures to SCN. The records also show that Appellant No.3 and his accountant, Appellant No. 4 whose statements were perused by Appellant No.2 before giving his own statements, never filed any retraction at any point of time. Therefore, all these evidences substantiate the charges against the appellants and are valid, admissible and legal evidences in the eyes of law.

6.6 The investigation has also established the authenticity of records seized from various transporters and Appellant No. 3 to 4 and duly corroborated the same with records seized from other premises. Regarding demand of duty based on booking register of the transporters, it has been contended by the appellant that department has not adduced evidence with regard to quantity of goods and buyer of the goods. They have also raised question regarding authenticity of the register maintained by GMB at the gate of ship breaking yard. In this regard, I find that out of total entries found in the booking register of the transporter, except for 31 entries, Appellant No. 1 had issued invoices. Thus, authenticity of the booking register is beyond doubt. During investigation, statement of Partner of Appellant No. 1 (Appellant No. 2) were recorded in which he failed to produce copy of central excise invoices in respect of details of clearance mentioned therein and admitted to have cleared goods without issue of invoices. Regarding register maintained by the GMB at the gate of ship braking yard, I find that such register provides corroborative evidence to establish that the truck number mentioned in the booking register of the transporter actually entered the premises of ship breaking yard on the given date and time. Though it has been contended by the appellant that the truck might have gone to some other plot for loading, they have not challenged the fact that only after finalization of deal, the trucks are engaged, in order to save money pertaining to cancellation of booking of truck. Therefore, there is no doubt that both the registers, viz. booking register of the transporter as well as register maintained by GMB are authentic. Regarding buyer of such goods, it is seen that the booking register does not show name of the buyer. It shows only destination for which truck was hired. It is settled law that in cases of clandestine removal, department is not required to prove the case with mathematical precision as held by the Apex Court in the case of D. Bhoormull - 1983 (13) ELT 1546 (SC.), wherein it was held that -

*31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered to use the words of Lord Mansfield in Blatch v. Archar (1774) 1 Cowp. 63 at p. 65 "According to the Proof which It was in the power of one side to prove and in the power of the other to have contradicted". Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden ".*

6.7 I find that the department has adduced enough evidences to establish that Appellant No. 1 was engaged in clandestine removal of the goods and therefore, the case laws cited by them are of no help to them, as facts of the present case clearly show evidences that Appellant No. 1 was engaged in evasion of duty by way of clandestine removal of the excisable goods.

7. Regarding demand of duty on the basis of diaries recovered from brokers Shri Bharat Manharbhai Sheth, Shri Shrenik Bharatbhai Sheth, it has been contended by the appellant that the demand made on the basis of third party documents is not sustainable, I find that in the diaries maintained by the brokers, licit as well as illicit transactions of the appellant are recorded. It is found that in case of many such transactions, invoices have been issued by the appellant. Thus, the authenticity of the diaries and other records recovered from the brokers is established. Further, the brokers have admitted to have received the goods from appellant without invoices and sold the same without invoices. They have also admitted that in many cases, in order to pass on Cenvat credit fraudulently, they had supplied invoice to one party and the goods of that invoice to another party. Thus, the case is based not only on third party documents but duly corroborated by other evidences. The Partner of the appellant (Appellant No. 2) has not furnished any satisfactory explanation in respect of details available in the seized diaries showing premises of the appellant from where goods loaded and could not produce corresponding central excise invoices in this regard. The statements have never been retracted by Appellant No. 2 and hence, have evidentiary value. The combined effect of all such evidences reflects that the evasion has taken place and Appellant No. 1 to Appellant No. 6 have indulged themselves in such duty evasion. Hence, in this case third party evidences backed by confessional statements of brokers are admissible. The contention made by Shri Manish Patel, were confirmed by Shri Bharat Manharbhai Sheth and they never retracted their statements. It is on



record that all transactions were recorded in ciphered and coded manner, and the case was made out after deciphering and decoding the same. The transactions recorded in diaries and storage devices seized from Shri Bharat Manharbhai Sheth and Shri Shrenik Bharatbhai Sheth were further corroborated with relevant records. These are vital and crucial evidences as per the Indian Evidence Act, 1872 and are sufficient to prove the case against Appellant No. 1 to Appellant No. 6.

7.1 Regarding allegation of undervaluation, it has been contended that the rates quoted by M/s. Major and Minor as well as other agencies/persons are not actual rates prevailing during that period. I find that ship breakers and brokers subscribed to publications issued by various research agencies in order to ascertain prevailing market prices so as to enable them to transact the goods. Inquiry conducted by DGCEI with various marketing research agencies revealed that day to day price of 12mm size of plate is almost equivalent to average price of all size of rolling plate within the range of 8 mm to 25 mm. I also find that statements of various angadia were recorded, wherein it clearly transpired that the transactions in unaccounted cash over and above the invoice value took place. Thus, department has proved receipt of money over and above invoice value. The price adopted by DGCEI is relied upon by most of the ship breaking yards of Alang and the goods emerging out of breaking up of ship are sold at about the same price. I find that in order to be just and fair, the investigation has also allowed variation upto 2% in the price published by M/s. Major and Minor. I find that it is not a case where flow back of money or receipt of consideration over and above invoice value is not established, however, in a case where assessee/appellant has indulged in clandestine clearances as well as undervaluation of the goods produced by them, no one can establish one-to-one correlation of goods sold and payments received in cash or through angadia. In my view, it is sufficiently proved from the entries in the dairies recovered from brokers that cash transactions took place between various rolling mills/furnace units and Appellant No. 1 through brokers (Appellant No. 3 to 4). Therefore, I find that the rejection of transaction value and replacement of the same by the price prevailing is correct in view of Valuation Rules as well as Section 4 of the Central Excise Act, 1944.

7.2 In view of above, I find that Appellant No. 1 has evaded payment of Central Excise duty by way of clandestine removal of goods as well as by

undervaluation of the goods and had fraudulently passed on Cenvat Credit by issuing Central Excise invoices without actual supply of the excisable goods hence, I hold that the order of adjudicating authority is correct, legal and proper.

7.3 I also find that Appellant No.1 intentionally adopted unlawful means to evade payment of excise duty. Therefore, I hold that the removal of excisable goods in this case was of clandestine nature, illicit removal with intent to evade payment of excise duty and is liable to pay Central Excise duty of Rs.55,40,604/- under Section 11A(4) of the Act. I hold that the confirmed dues are required to be paid along with Interest at applicable rate under the provisions of erstwhile Section 11AA of the Act and Appellant No.1 is liable for penalty equal to the duty under rule 25 of the Rules read with Section 11AC of the Act.

8. Appellant No. 2 has contended that the lower adjudicating authority failed to establish as to how has he abated the so-called evasion of Central Excise duty and thus, wrongly imposed penalty on him under Rule 26(1) & 26(2) of the Rules. I find that the facts of this case have revealed that he was the key person of Appellant No. 1 and was directly involved in clandestine removal of goods as well as fraudulent supply of cenvatable invoices without physical delivery of goods by Appellant No. 1 and in undervaluation of the excisable goods manufactured and cleared by Appellant No. 1. He was looking after day-to-day functions of Appellant No. 1 and had concerned himself in all matters related to the excisable goods, including manufacture, storage, removal, transportation, selling etc. of such goods and hence, was knowing or had reason to believe that these goods were liable to confiscation under the Central Excise Act, 1944 and Rules made thereunder. I, therefore, find that imposition of penalty of Rs. 49,00,804/- and penalty of Rs. 1,66,068/- upon Appellant No. 2 under Rule 26(1) & 26(2) of the Rules is correct, proper and justified.

8.1 Shri Bharat M. Sheth (Appellant No. 3) & Shri Shrenik B. Sheth (Appellant No. 4), have contended that their role was limited as middleman and they were was not concerned with the goods and therefore, penalty is not imposable upon them. In this regard, I find that as admitted by Shri Manish Patel, he was the key person who arranged for procuring goods from Appellant No. 1 without cover of Central Excise invoices and got them supplied without cover of invoice. Appellant No. 3 & 4 and Accountant (under their instructions) recorded all these

transactions in their diary, which contained details of cash payments received and made to respective parties. They were the person who supplied Bills to some other units for facilitating availment of fraudulent Cenvat credit and supplied the goods to some other units without any Central Excise invoices and their role is very elaborately discussed in the Show Cause Notice and the impugned order and therefore, they cannot now plead that their role was limited. In fact, I find that their role was crucial in the whole episode of clandestine removal of goods as well as facilitating fraudulent availment of credit. Therefore, I find that penalty of Rs. 3,00,000/- and Rs. 1,00,000/-, respectively, imposed on Appellant No. 3 & 4 under Rule 26(1) of Central Excise Rules, 2002 and penalty of Rs. 50,000/- and Rs. 25,000/-, respectively, imposed on Appellant No. 3 & 4 under Rule 26(2) of the Central Excise Rules, 2002 are correctly imposed and there is no need to interfere with the order of adjudicating authority.

8.2 I find that the facts of the case are distinguishable from the judgments relied upon by these two appellants inasmuch as the documents resumed, analysis thereof and data storage devices have been corroborated by the statements of Appellant No. 2, 3, 4 and Shri Manish Patel, Accountant of Appellant No. 3, statements of Appellant No. 3 & 4, statements of transporters, angadia and records obtained from GMB authorities and the statements have never been retracted. The persons involved in this case have closely monitored, arranged and managed all affairs of clandestine clearances made by Appellant No. 1. I find the following case laws relevant for this present case.

(a) The statements of the accused, if not retracted, the same is legal and valid in the eyes of law. And the same can be considered as corroborative evidence and no further evidence is required. The above has been held in the cases of (i) Naresh J. Sukhawani [1996 (83) ELT 258 (SC)] (ii) Rakesh Kumar Garg [2016 (331) ELT 321 HC-Delhi]

(b) That the admission or confession is a substantial piece of evidence, which can be used against the maker of it as has been held in the cases of (i) Alex Industries [2008 (230) 073 ELT (Tn. Mumbai)] (ii) M/s. Divine Solutions [2006 (206) ELT (Tri. Chennai)] (iii) M/s. Karori Engg. Works [2004 (168) ELT 373 (Tri. Delhi)]

(c) Statement of director and authorized persons of assessee admitting clearance of goods without payment of Central Excise duty and without issuing

Central Excise invoices inculpatory and specific and never retracted later on is admissible as admissible as held in the case of Hi Tech Abrasives Ltd. reported as 2017 (346) 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 inculpatory 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 clandestine 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 averment 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 (Appeals) 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 Tekriwal, Director about the truth of the contents of the private notebooks. Consequently, I find no reason to disallow 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 unearthed 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 invocable in this case and hence the demand cannot be held to be time-barred."*

(d) The penalty on director of company is imposable, when he was directly involved in the evasion of Central Excise duty has been held in the case of P.S. Singhvi reported as [2011 (271) ELT 16 (Guj)]

(e) It is settled legal position that once a case of clandestine removal of excisable goods is established as has been done in the instant current case, it is not necessary to prove the same with mathematical precision as held by the Hon'ble Supreme Court in the cases of (i) Shah Guman Mal reported as [1983 (13) ELT 1546 (SC)] and (ii) Aafloat Textiles (India) Pvt. Ltd. reported as 2009 (235) ELT 587 (SC).

8.3 I also rely on the decision in the case of Haryana Steel & Alloys Ltd. reported as 2017 (355) ELT 451 (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 disclosed by GM of the factory tally with invoices/gate passed is trustworthy; that statement of employee containing detailed knowledge to be considered as reliable. I also rely on the decision in the case of Ramchandra Rexins Pvt. Ltd. reported as 2014 (302) ELT A61 (S.C.) wherein similar view has been adopted by the Hon'ble Apex Court.

8.4 I am of the considered view that admitted facts need not be proved as has been held by CESTAT in the cases of Alex Industries reported as 2008 (230) ELT 0073 (Tri-Mumbai), M/s. Divine Solutions reported as 2006 (206) E.L.T. 1005 (Tri. (Chennai) that Confessional statements would hold the field and there is no need to search for evidence. Hon'ble CESTAT in the case of M/s. Karori Engg. Works reported as 2004 (166) E.L.T. 373 (Tri. Del.) has also held that Admission/Confession is a substantial piece of evidence, which can be used against the maker. Therefore, Appellant's reliance on various case laws relating to corroborative evidences and establishing clandestine removal cannot be made applicable in light of the positive evidences available in the case as discussed in the findings of the impugned order.

8.5 Hon'ble CESTAT in the case of M/s. N R Sponge P Ltd reported as 2015 (328) ELT 453 (Tri-Del) has held that when preponderance of probability was against the Appellant, pleading of no statements recorded from buyers, no excess electricity consumption found, no raw material purchase found unaccounted and no input-output ratio prescribed by law is of no use. The relevant portion of the decision is reproduced below:-

"10.1 Recovery of the loose sheets and pencil written ledger from the premises of the Appellant in the course of search proved the entries therein as representative of the clandestinely removed goods which were well within the knowledge of the Appellant. Active involvement of Appellant in that regard came to record since those materials were in the custody of the Appellant. It is common sense that the materials having utility to the possessor thereof are only possessed by him. He proves ownership thereof and is answerable to the contents therein. Entries on such incriminating materials demonstrated clandestine clearance of 562.130 MT of Sponge Iron and 887.560 MT of such goods respectively well explained by Appellant. That also proved clandestine removal of 81.010 MT of Dolochar by the Appellant. Such removals were further proved from the records seized from the transporters M/s. Purwanchal Road Carriers and M/s. Giriraj Roadlines. The materials recovered from transporters brought out the evidence of clandestine removal of 69.180 MT of Sponge Iron and 55.855 MT of such goods respectively. Those clearances were not substantiated by Excise invoices. When certain entries in the pencil handwritten ledger matched with the Central Excise invoices and other entries did not match, the unmatched entries, became testimony of clandestine removals not supported by invoices. Accordingly, such clearances became subject-matter of allegation in respect of removal of 887.560 MT of Sponge Iron without payment of Excise duty. Similarly, the loose sheets when evaluated, that proved removal of excisable goods without payment of duty to the extent of aforesaid quantity of goods.

10.2 The statement recorded from shift supervisors being self-speaking cannot be brushed aside because they were the persons within whose knowledge goods were manufactured and cleared. Their evidence was believable, cogent and credible for the reason that they vividly described methodology of production.

10.3 Added to the above, the director admitted clandestine removal of the goods not supported by Excise invoices. That resulted in loss of revenue. He therefore, admitted to make payment of the duty evaded without controverting the Revenue implication of the entries in pencil handwritten ledger and chits recovered from possession of Appellant during search. Entire pleading of the Appellant therefore, failed to sustain when mala fide of the Appellant came to record. Clandestine removal was well within the knowledge of the shift supervisors, accountant, Director, transporters and commission agent. Each other's evidence corroborated all of them and established unaccounted goods cleared without payment of duty. The most lively evidence of Kailash Agarwal brought the Appellant-company to the root of allegation. All of them established inextricable link of evasion. Shri Agarwal by his evidence attached all the persons involved in the chain of clandestine clearance without their detachment.

10.4 Preponderance of probability was against the Appellant. Pleading of no statement recorded from buyer, no excess electricity consumption found, no raw material purchase found unaccounted and no input-output ratio prescribed by law is of no use to it. Revenue discharged its onus of proof bringing out the allegation in the show cause notice succinctly. But, the Appellant miserably failed to discharge its burden of proof. It did not come out with clean hands.

10.5 It is not only one evidence, but multiple echoed evidence demonstrated oblique motive of the Appellant and proved its mala fide. Therefore, Appellant fails on all counts. Revenue's investigating was successful and its suffering was established.

(Emphasis supplied)

8.6 I further find that the Hon'ble CESTAT in the case of M/s. Praveen Kumar & Co reported as 2015(328) ELT 220 (Tri-Del) has held as under:-

*"23. Voluntary confessional statement which is retracted after two years without any basis, has no legs to stand. No new facts have come on record to justify retraction short levy was paid consequent upon confession not once but twice. Further confessional statement rendered by Shri Praveen Kumar was also satisfied by Shri Rajender Kumar authorised signatory. Contentions that resumed records were only referring to pouches and lime tubes and not to filled pouches of tobacco is clearly afterthought as pointing out to the fact that seized record are having reference to the pouches, etc. has no force as those facts were on record and were not challenged and actually admitted. Also duties on evaded tobacco were paid in two instalment (2nd instalment being after a gap of four months). Once evasion is accepted and documents are confronted manifesting fraudulent intentions to defraud, there is no force in learned Member (Judicial)'s contention that there were no investigations relating to procurement of raw materials and manufacture of huge quantity of final goods and transportation of goods. I feel once an evasion is clearly admitted and these activities are undertaken in the darkness of night, no evader shall leave proof of these activities. Once fraudulent intent to evade is manifested and later confessed, proving such evasion by other activities which are not recorded, will be giving a bonus to the evader. As per Supreme Court's judgment in D. Bhormull - 1983 (13) E.L.T. 1546 (S.C.) case, Department is not required to prove its case with mathematical precision, but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of facts in the issue."*

8.7 I find that no statements have been retracted by any person and facts recorded in Panchnamas and contents of seized items have been accepted by Appellant No. 1, 2, 3, 4 in their statements. It is not a case that a single statement has been recorded and relied upon but various statements of Appellant No. 2, 3 & 4 establishing clandestine removal of final products by Appellant No. 1. In the circumstances, I am of the considered view that the statements recorded at different time and of different persons are not recorded under duress or threat. Facts of the statements have been independently corroborated by the facts and contents of Panchnamas recorded at the time of search. Therefore, I am of the well-considered view that denial of cross examination by adjudicating authority does not violate principles of natural justice in the given facts of this case. My views are supported by the Hon'ble Bombay High Court's judgment in the case of M/s. Sharad Ramdas Sangle reported as 2017 (347) ELT 413 (Bom) wherein it has been held that where directors have themselves admitted the guilt and statements have not been retracted, there is no question of cross examination and denial of same does not give rise to any substantial question of law. Relevant portion of the judgment is reproduced below: -

"3. The Tribunal recorded following reason: -

*"5.1 As regards the denial of cross-examination of Shri Thorve and Shri Ashok Kumar Yadav and whether the said denial has caused any*

*prejudice to the Appellants, it is seen from the records that the entries made in the private records were corroborated by Shri Ramdas Shivram Sangle, Director of the Appellant firm and Shri Sharad Ramdas Sangle, Proprietor of M/s. Ambica Scrap Merchant through whom the clandestinely removed goods, were sold wherein they had admitted that the entries recorded are true and correct and pertain to the unaccounted production, purchase of raw materials without accounting and sale of the finished goods in cash without payment of duty. Further from the records it is seen that about sixteen buyers [referred to in para 11.13 of the impugned order], who purchased the finished goods from the Appellants without payment of duty have also confirmed that they had received these goods without the cover of proper excise documentation and without payment of duty. Similarly, two scraps suppliers, Mr. Yunus Ahmed Shaikh and Mr. Shaikh Mushtaq Gulab have also admitted that they have supplied the MS scrap which is the raw materials for the manufacture of these goods without the cover of documents and they have received consideration for sale of such scrap in cash. Considering these evidences available in record, we hold that the denial of cross-examination of the authors of the private records has not caused any prejudice to the Appellants. In fact none of the statements recorded have been retracted or disputed. In such a scenario, when the fact is not disputed, cross-examination of the party is not necessary. The Hon'ble Apex Court in the case of Kanungo Company - 1983 (13) E.L.T. 1486 (S.C.) and the Hon'ble High Court of Andhra Pradesh in the case of Shalini Steels Pvt. Ltd. [supra] have held that there is no absolute right for cross examination and : if sufficient corroborative evidences exist, cross-examination of the deponent of the statement is not necessary. In view of the above we hold that the denial of cross-examination of Shri Thorve and Shri Ashok Kumar Yadav who maintained the private records has not caused any prejudice to the Appellants."*

*From the above conclusions, we are also of the view that this was not a case which required cross-examination. The Directors themselves admitted the guilt. So, almost all allegations stood proved. As said above, the statements recorded were not retracted or disputed. Learned counsel for the Appellants reiterated that he can succeed in showing that these appeals should be admitted for deciding following question, which according to him, is substantial question of law:-*

*"Whether denial of cross-examination of witnesses caused any prejudice to the Appellant?"*

*We are not inclined to accept this submission at all. In these appeals, there was no question of cross-examination, and therefore, denial of the same would not give rise to any substantial question of law. We perused the judgment of the Tribunal and find the same is quite pertinent. It is not necessary to interfere in it."*

9. I find that Appellant No. 5 & Appellant No. 6 have been alleged to have purchased goods clandestinely cleared by Appellant No. 1 without payment of Central Excise duty and without issuance of central excise invoices. The lower adjudicating authority has imposed penalty upon them under Rule 26(1) of the Rules as he found that these appellants were concerned in purchase of clandestinely cleared goods. Appellant No. 5 to 6 have contended that they cannot be penalized on the basis of third party evidences; that no investigation has been carried out at their premises; I find that the disputed clearances have



been alleged to be of the years 2008-09 and 2009-10 and the statements of these appellants were recorded on 16.08.2012. The appellants filed appeals by mentioning that the investigation agency has not incorporated statements of some of the persons whose statements were recorded during the course of investigation; that many persons whose statements were recorded, were not made noticee in the Show Cause Notice; that they have not purchased any goods clandestinely but with invoice and payments were made through cheque only. In the statement dated 16.08.2012, the Appellant No. 4 had categorically accepted that his firm purchased goods from Appellant No. 1 through Shri Vinod Bhandari, broker and brokers generally arrange for transportation of the goods. Appellant No. 4 while answering question No. 11, accepted that his firm has received scrap without cover of Central Excise invoices and without payment of Central Excise duty. He also deposed that his firm in fact paid payment in cheque so as to camouflage the triangular transactions involving brokers, ship breakers and his firm, however, after receipt of cheque amount by concerned broker/ship breakers, his firm would receive cash taxation portion through angadia for such illicit transactions from brokers and ship breakers jointly and for such transactions, they don't keep any record.

9.2 In the statement dated 16.08.2012, the Appellant No. 6 had categorically accepted that his firm purchased goods from Appellant No. 1 through Shri Kittu Bhatia, broker and brokers generally arrange for transportation of the goods. Appellant No. 6 while answering question No. 11, accepted that his firm has received scrap without cover of Central Excise invoices and without payment of Central Excise duty. He also deposed that his firm in fact paid payment in cheque so as to camouflage the triangular transactions involving brokers, ship breakers and his firm, however, after receipt of cheque amount by concerned broker/ship breakers, his firm would receive cash taxation portion through angadia for such illicit transactions from brokers and ship breakers jointly and for such transactions, they don't keep any record.

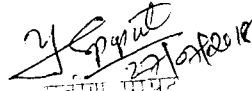
10. In the statement dated 16.08.2012, Appellant No. 5 had categorically accepted that his firm purchased goods from Appellant No. 1 through Shri Kittu Bhatia, broker and brokers generally arrange for transportation of the goods. Appellant No. 5 while answering question No. 11, accepted that his firm has received scrap without cover of Central Excise invoices and without payment of Central Excise duty. He also deposed that his firm in fact paid payment in

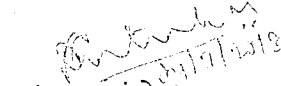
cheque so as to camouflage the triangular transactions involving brokers, ship breakers and his firm, however, after receipt of cheque amount by concerned broker/ship breakers, his firm would receive cash taxation portion through angadia for such illicit transactions from brokers and ship breakers jointly and for such transactions, they don't keep any record. Therefore, there are sufficient evidences to hold that Appellant No. 5 & Appellant No. 6 had abated clandestine clearance of the goods and/or they were concerned in purchase of clandestinely cleared goods by Appellant No. 1. Hence, I find that this is a fit case to impose penalty upon Appellant No. 5 & Appellant No. 6 and therefore, I uphold penalty imposed under Rule 26 of the Rules on Appellant No. 5 & 6.

11. In view of above, I uphold the impugned order and reject appeals filed by Appellant No. 1 to Appellant No. 6.

१२. अपीलकर्ताओं द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

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

सत्यापित.  
  
 प्रवीण कापटे  
 वकील (अपील्स)

  
 (कुमार संतोष)  
 आयुक्त (अपील्स)

By RPAD  
 To

1.	M/s. Lakshmi Steel Rolling Mills (Unit-II), Plot No. 57 (24C), Ship Breaking Yard, Alang, Dist.: Bhavnagar. (Office: 241, Madhav Darshan, Waghawadi Road, Bhavnagar- 364002)	मेसर्स लक्ष्मी स्टील रोलिंग मिल्स (यूनिट-II), प्लॉट संख्या ५७ (२४C), अलंग शिप ब्रेकिंग यार्ड, भावनगर. (ऑफिस: २४१, माधव दर्शन, वाघावाडी रोड, भावनगर-३६४००२.)
2.	Shri Anil D. Jain, Partner, M/s. Lakshmi Steel Rolling Mills (Unit-II), Plot No. 57 (24C), Ship Breaking Yard, Alang, Dist.:Bhavnagar.	श्री अनिल डी. जैन, भागीदार, मेसर्स लक्ष्मी स्टील रोलिंग मिल्स (यूनिट-II), प्लॉट संख्या ५७ (२४C), अलंग शिप ब्रेकिंग यार्ड, भावनगर. (ऑफिस: २४१, माधव दर्शन, वाघावाडी रोड, भावनगर-३६४००२.)
3	Bharat Sheth, Plot No. 619, B-2, Geetha Chowk, Jain Derasar Road, Bhavnagar-364001	श्री भरत शेट, ब्रोकर, प्लॉट संख्या ६१९, बी-२, गीता चौक, जैन देरासर रोड, भावनगर - ३६४००१.
4	Shri Shrenik Sheth, Plot No. 619, B-2, Geetha Chowk, Jain Derasar Road, Bhavnagar-364001	श्री श्रेणिक शेट, ब्रोकर, प्लॉट संख्या ६१९, बी-२, गीता चौक, जैन देरासर रोड, भावनगर - ३६४००१.
5	Shri Jitendra Kumar, Proprietor M/s. J. K. Jindal & Co., House No. 121, Sector-24D, Mandi Gobindgarh, Distt.: Fatehgarh Sahib, Punjab.	श्री जितेंद्र कुमार, मालिक: मेसर्स, जे. के. जिंदाल & कु., मकान संख्या १२१, सेक्टर २४-डी, मंडी गोबिंदगढ़, जिल्ला: फतेहगढ़ साहिब, पंजाब.
6	Shri Manmohan Singh, Proprietor M/s. Iron Traders, Mandi Gobindgarh, Distt.: Fatehgarh Sahib, Punjab.	श्री मनमोहन सिंह, मालिक: मेसर्स आइरन ट्रेडर्स, मंडी गोबिंदगढ़, जिल्ला: फतेहगढ़ साहिब, पंजाब.

Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar.
- 3) The Additional Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar
- 4) The Assistant Commissioner, GST & Central Excise Division-II, Bhavnagar.
- 5) The Superintendent, GST & Central Excise, Range: Alang, Bhavnagar.
- ✓ 6) Guard File.
- 7) F.No. V2/369/BVR/2017
- 8) F.No. V2/428/BVR/2017
- 9) F.No.V2/430/BVR/2017
- 10) F.No.V2/446/BVR/2017
- 11) F.No. V2/470/BVR/2017.

