



आपत्त (अप्रीक) का समर्थन, वास्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क:
O O THE COMMISSIONER IN CHARGE, GST AND CENTRAL TAXES.



ऑफिस नं. 01 एक-डी-ब्लॉक नं. 01 एच. 1, 1551 इन्द्रा,
नवा नोबल टॉन रोड - इन्द्रा (जिला बिकेत), राजकोट

राजकोट (Rajkot) - 360 010

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नविस्सके नाम प. नो. द्वारा :-

Table with 3 columns: No., Name, and Date. Row 1 contains reference number 170211-285-D-287 & 301-BAS/117 and date 17/05/2018.

नवीन आदेश संख्या (New/Appeal/Request) No.:

RAI-EXCUS-000-APP-HSN-TC-062-2018-19

आदेश का दिनांक 17.04.2018 तारीख की दिनांक 01.05.2018
Date of Order Date of Issue

अनुमोदित, राजकोट (अप्रीक) द्वारा पारित।
Passed by Rishi Kumar Bhatnagar, Commissioner (Appeals), Rajkot

1) यह आदेश शुद्ध अंग्रेजी भाषा में है और प्रत्येक स्थानीय अधिकारी को अपनी प्रतिलिपि प्रेषित की जाएगी।
This order is issued in pure English language and shall be communicated to all concerned officers.

2) This order is issued in pure English language and shall be communicated to all concerned officers.

अपीलकर्ता & पति/पत्नी का नाम तथा पता (Name & Address of the Appellant/s & Respondent/s) :-

- List of appellants and respondents including M/s. Topical Chemicals Pvt. Ltd., Smt. Rajjilani K. Agaria, Smt. Vinod Prangilima Patel, Smt. Parulshree A. Hararya, and Smt. Ashokshree B. Chaudhary.

3) This order is issued in pure English language and shall be communicated to all concerned officers.

4) This order is issued in pure English language and shall be communicated to all concerned officers.

Appeal to Customs, Excise & Goods Tax Appellate Tribunal Under Section 35B of CGA - 1944 before Section of Appeal and Revision, Rajkot.

5) This order is issued in pure English language and shall be communicated to all concerned officers.

This order is issued in pure English language and shall be communicated to all concerned officers.

6) This order is issued in pure English language and shall be communicated to all concerned officers.

To be filed before the Bench of Customs, Excise & Goods Tax Appellate Tribunal (CGAT) in 2nd Floor, Central Office Building, Phase II of 1551 Indrawati, New Nobal Toned Road, Rajkot.

7) This order is issued in pure English language and shall be communicated to all concerned officers.

8) The appeal to the Appellate Tribunal shall be filed by depositing the fee of Rs. 500/- for each appeal within 15 days of the date of the order of the Commissioner of Customs, Excise & Goods Tax. The fee shall be deposited by cash or by demand draft drawn on any branch of the State Bank of India or any other bank authorized to receive deposits from the public. The fee shall be deposited at the post office at Rajkot where the Bench of the Tribunal is situated. Application made for grant of stay shall be considered in the order of 20.05.2018.

9) This order is issued in pure English language and shall be communicated to all concerned officers.

10) This order is issued in pure English language and shall be communicated to all concerned officers.

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ORDER IN APPEAL

The appeals (related to above Letter No.) by 5 Appellants (hereinafter referred to as Appellant No. 1 to Appellant No. 5) against Order in Original No. 18000/1417 dated 17.03.2017 (hereinafter referred to as 'the Impugned order') passed by the Deputy Commissioner, Central Excise Division, Morbi (hereinafter referred to as 'the lower adjudicating authority').

Sr. No.	Name of the Appellant	Appeal File No.	Appellant No.
01.	M/s. Tostard Ceramic Private Limited, Survey No.250, Faki, Deda (Rangpur), Pipri Road, Morbi	V2224/RAJ/2017	1
02.	Shri Rajnikant Khotebhai Agale (Feral), Director, M/s. Tostard Ceramic Private Limited, Survey No.250 Faki, Deda (Rangpur), Pipri Road, Morbi	V2224/RAJ/2017	2
03.	Shri Vipul Pratikbhai Patel, Share Holder of M/s. Tostard Ceramic Private Limited, Survey No.250, Faki, Deda (Rangpur), Pipri Road, Morbi	V2225/RAJ/2017	3
04.	Shri Pansambhai Ajmanbhai Dasaiya, Proprietor, M/s. Om Trading, 50 Swagat Chambers, 8 A National Highway Morbi	V2227/RAJ/2017	4
05.	Shri Anandkumar Dadasaheb Chaudharambhai Proprietor, M/s. Kanana Marketing, 115 National Highway, near Umkar Pump, Talpat, Morbi	V2229/RAJ/2017	5

2. The brief facts of the case are that Show Cause Notice F.No.V 980A7-11/MORBI/WADC/SK5/4-7016-16 dated 26.3.2016 (hereinafter referred to as 'SCN') was issued to Appellant No. 1 to Appellant No. 5, alleging as under -

- (a) Appellant No.1 clandestinely manufactured and cleared their finished excisable goods, namely, Ceramic Wall Tiles and Hightone Tiles (hereinafter referred to as 'the said goods') involving Central Excise duty of Rs. 48,82,904/- to various customers including Appellant No. 4 and Appellant No. 5 on the strength of a special pass and without issuing central excise invoices and without payment of Central Excise duty and interest, duty of Rs. 48,82,904/- is payable by Appellant No. 1 along with interest and penalty equal to duty is leviable on them under Section 15AC of the Act read with Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as 'the Rules');
- (b) Appellant No. 2 (Director of Appellant No. 1) and Appellant No. 3 (Share holder of Appellant No. 1) had conspired, the manufacture, selling, storing, and removing of the said excisable finished goods, which they knew and has reasons to believe that the said goods were liable to

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confiscation and hence, it made them liable to penalty under Rule 25 of the Rules.

(g) Appellant No. 4 and Appellant No. 5 had concerned themselves in purchasing of the excisable finished goods from Appellant No. 1 without certain excise invoice and without payment of Central Excise duty, which they knew and had means to believe that the same were liable to confiscation and hence, it made them liable to penalty under Rule 26 of the Rules.

The above SCM was adjudicated by the lower adjudicating authority vide the impugned order confirming demand of Central Excise duty of Rs. 48,32,934/- on appellant No.1 under Section 11A(4) of the Central Excise Act, 1944 (hereinafter referred to as the Act) and imposing Rs 10,00,000/- deposit by them during litigation towards confirmed demand, ordered to pay interest on confirmed demand for 115A of the Act and imposed penalty of Rs. 48,32,934/- upon Appellant No.1 for Section 11A(4) of the Act read with Rule 25 of the Rules with option to pay fixed penalty @ 25% of duty confirmed and also imposed penalty on Appellant No.2 to Appellant No. 5 under Rule 26 of the Rules.

Being aggrieved with the impugned order Appellant No. 1 preferred present writ petition to the following grounds -

The lower adjudicating authority was erred in failing to take into consideration various of the appellant were giving findings at Para 5 of the impugned order that it settled legal position that a serious charge of clandestine manufacture and that kind of excisable goods cannot be considered only on the basis of statements of actors or employees associated with a manufacturer as held by Hon'ble CESTAT Mumbai in the case of Arya Fibres Pvt. Ltd. (reported as 2014 (31) ELT 529 (Tribunal) and as held by Hon'ble CESTAT, Chennai in the case of Poshak Corporation and as 2012 (143) ELT 181 (Tribunal, Chennai).

The statements were not recorded in free and fair manner and also that the statements contained only half-truth; whereas true and full facts were not taken on record though the persons concerned desired to clarify serious facts and also the need of business. The request for cross examination of the witnesses was really necessary to test the veracity, authenticity and reliability of such statements which was not done by the lower adjudicating authority. In view of decision in the case of Arya Fibres Pvt. Ltd. supra and other relevant case laws, the appellant submitted that the impugned order passed without allowing opportunity of cross examination of persons whose statements are relied upon is void because such an order is in gross violation of the

principles of natural justice.

(ii) The burden to prove an excessive removal of excisable goods resulting in evasion of duty is on the Revenue. By virtue of several judgments and decisions, it is clear that the department must adduce evidence regarding procurement of raw materials, actual production of goods in the factory, removal of goods by adjoining agencies or vehicle agencies involved in delivering goods to customers, at least a few of the customers to whom excisable removal goods is delivered and also payments that a manufacturer is expected to receive from the customer for selling and delivering any goods. It is settled legal position that on the basis of documents like challans, books or papers containing some entries and details, the Revenue cannot make out a case for clandestine manufacture and illegal removal of goods. Except six, no other buyers are also contacted and it is not established through the evidence the statements of such buyers that Ceramic Vitrified Tiles were actually sold and delivered to them. There is no evidence of purchase value of such cash sales having been actually received. There is no evidence about cash payments received by them for purchasing and procuring required raw materials for manufacturing Ceramic Vitrified Tiles. The Revenue is also required to establish consumption tax for manufacturing of Ceramic Vitrified Tiles are alleged to have been received by them from the buyers. The appellant relies on following decisions:-

- Vishwa Traders Pvt. Ltd. – 2012 (279) ELT 362 (Tri. Apprd.)
- Saakree Alloys Pvt. Ltd. – 2014 (336) ELT 655 (Guj); maintained in 2015 (219) ELT 317 (300)
- Flevel International – 2013 (252) ELT 413 (Del.)
- Surya Alloy Industries Ltd – 2014 (305) ELT 340 (C.A.)
- Chemica Stone Pvt. Ltd – 2005 (151) ELT 859
- K. Rajgopal – 2007 (142) ELT 123
- Anbika Chemicals – 2002 (148) ELT 101
- Suresh Kanaka Srigars Ltd. – 2007 (217) ELT 535
- Sangamitra Cotton Mills (P) Ltd – 2004 (153) ELT 472 (1)

(v) The deposit of Rs. 10,00,000 during the course of investigation were made only as a law abiding assessee to show our bonafide and may not be considered as an intention of accepting these facilities. The appellant relied decision of Honble Orissa High Court in the case of Park International Limited reported as 2001 (124) ELT 329 and decision of Honble CESTAT in case of Sanku Chemical Industries reported as 1965 (72) ELT 410.

(vi) There is no cogent and reliable evidence in support of the charges leveled in impugned order and the same, no penalty would be justified on the basis of charges so

relied merely on assumptions and presumptions. Penalty is quasi-criminal in nature and therefore cannot be imposed on mere assumptions and presumptions or hearsay evidence. Appellant had not acted dishonestly or unconscionably and therefore, not even a fine penalty would be justified. Hence, their Order (appellant No. 3) is appellant relied on decision of Hon'ble Supreme Court in the case of Hindustan Steel Limited reported as 1971 (2) HLR 1118 (SC).

1. In the instant case, there is no short levy or short payment or non-payment of any central Excise duty. Therefore, provision to charge interest under Section 110A of the IT is not maintainable.

2. Appellant No. 2 and Appellant No. 3 filed appeals on almost same grounds as pleaded by Appellant No. 1 and as mentioned from (i) to (vi) above.

3. Appellant No. 4 and Appellant No. 5 preferred appeals, inter alia, on the grounds that they have not made any payment to Appellant No. 1 in cash for any purchase of any quantities without central excise invoices from them and therefore, the whole sale for mensura penalty on them under Rule 95 of the Rules is illegal and unauthorized. The case of the Revenue is neither substantiated nor proved by any reliable evidence. It is not even alleged in the impugned order II that they had any reason to believe or any knowledge that any goods were liable to confiscation and yet they have had as concerned in dealing with such goods. The appellants rely upon decision of Hon'ble CEGAT in the case of Standard Panel reported as 1981 (81) HLR 5.

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Personal Hearing in the matter was attended to by Sri. Chetan Dhanirava, C.A., behalf of all appellants, who reiterated the grounds of appeals and also submitted their submissions on behalf of Appellant No. 1 during personal hearing. It says II that violations of clandestine clearances are based on unreliable details/documents without corroborative evidences; that Annexure D prepared on the basis of so called dispatch list is not reliable at all as in this, names of customers to whom goods sold are not mentioned because these are not sold at all; that Annexure G prepared on the basis of the register is not a reliable document at all as in many cases II is showing negative, among thereby that legal and correct document i.e. Daily Stock Account is showing no clearances (than saying negative) that all negative columns go in favour of appellant, but impugned order are SOI ignored these vital facts, not even Annexure E being excess dispatch/ clandestine clearances all no name of customers? How can we sale without details of buyers? that no case-examination of buyers and purchases have been allowed in the impugned order; that impugned order has been passed without any legal and valid evidences; that such orders need to be set aside and ought to be allowed by relying on the following observations:-

Subscribed by:

- Ouda Sugar Mills Ltd. - 1979 (2) ELT (J 72) (SC)
- Lure Chloro Alkali Ltd. - 2010 (233) E.T. 68 (In. Del.)
- Shree Nathra Ispat Ltd. - 2012 (343) ELT 311 (In. Del.)
- Gupta Synthetics Ltd. - 2014 (312) ELT 225 (Tr. Ahmed.)
- Kabha Steels Ltd. - 2013 (344) E.T. 60 (In. Chand.)
- Continental Cement Company - 2014 (303) E.T. 41 (All.)
- Rajputana Steel Casting Plant - 2014 (343) E.T. 43 (In. Ahmed.)

FINDINGS:

6. I have carefully gone through the facts of the case, the impugned order, the appeal memoranda and written arguments submitted made during the personal hearing. The issue to be decided is whether the impugned order in the facts of this case, confirming demand of Appellant No. 1 is on any interest and passing priority of Appellant No. 2 to Appellant No. 1 is correct or not.

7. Appellant No. 1 contended that the clearance manufacture and final removal of excisable goods cannot be considered only on the basis of statements of directors or employees associated with a manufacturer. I find that Preventive Officers of the department had searched the factory premises of Appellant No. 1 on 05.12.2012 during which are produced incriminating documents containing computerized order of daily-wise ledgers, Notebooks containing details of actual production details and cutting record prepared on the basis of production written in such note books and print out of dispatch slips were recovered indicating that clearances of ceramic wall tiles are unorganized like F.1044. On verification of stock of finished goods lying in the factory premises, shortage of 1295 Boxes of Ceramic Wall Tiles were also found. Statement of General Supervisor of Appellant No. 1 recorded on 05.10.2012 wherein he deposed that he had maintained daily-wise ledger in respect of finished goods sold with and without invoice copies; that in the details of the ledger wherein invoice number was mentioned, were their with invoice sales and wherein without invoice number that without invoice sales during the period from 01.02.2012 to 26.09.2012, that they received payment towards sales without correct invoice through angadiya or in cash but they were maintaining sales production in RG-1 register correspond to actual production, that as per instructions of Shri Rajendra (Appellant No. 2) and Shri Venkatar (Appellant No. 3) they used to adjust figures in RG-1 register and not show actual production of 800 to 1000 boxes on daily basis in RG-1 register compared to cutting record; that they had arranged arrangement report of earlier period after adjusting with RG-1 register. Statement of cutting supervisor was recorded on 05.12.2012 wherein he deposed that they were sorting the manufactured wall tiles single day and then prepared cutting report; that he had gone through ledgers notebooks and stated that

ing report were prepared on the basis of production recorded in note books. Deposition of Appellant No. 3 was also recorded on 04.10.2012 wherein he stated that they were purchasing boxes without invoices for booking of wall tiles to be sold without central excise invoices; that seized van drive recovered from the drawer of his office drawer contained details of all types of transactions of Appellant No. 1 and accepted the same was maintained by him and his brother Rajnithal (Appellant No. 2); that he knew the details of dispatch wherein invoice number and tax amount were not mentioned re arrangements of wall tiles without invoices that production recorded in vaning report is actual production of ceramic wall tiles; that they were adjusting production details in the register and were selling unaccounted production of tiles without central excise invoices and without payment of Central Excise duty. The statements of General Manager, Billing supervisor and Shariel owner of Appellant No. 1 (Appellant No. 2) as deposed by Shri Rajnithal Agola, Director (Appellant No. 3) whose statement was recorded on 05.10.2012 wherein he categorically admitted and confessed the positions made by these persons and he stated the same were true and correct and affirmed the said depositions made by all these persons, that since inception of the factory in January 2011 they had sold their wall tiles with and without central excise invoices; that buyers to whom these goods were cleared without central excise invoices made their own arrangements for transportation of goods and Appellant No. 1 received payment through angadiya or in cash; that they have not accounted for receipt cash amount; that shortage of 1200 boxes of wall tiles was due to sale of goods without central excise invoices. That they were taking 50% of production compared to their production capacity. The printouts containing details relating to clearance of goods without central excise invoices stored in Ceramic account in seized pen drives have been taken out under regular Hanchama dated 14.01.2013 in presence of Appellant No. 2, who under his statement dated 17.01.2013 stated that the printouts taken from seized pen drive contained details of their transactions with and without central excise invoices sales of ceramic wall tiles from January 2011 to September 2012. The seized pen drive was sent to Forensic Science Laboratory, Chandernagore for retrieval of data which was thereafter dated 14.10.2013 submitted rearward data in excel format and current printouts of clearance of ceramic wall tiles for the period from February, 11 to October 2012 (upto 04.10.2012) by way of under invoicing/under grading of goods. The Statement of Appellant No. 2 was also recorded on 20.12.2013 wherein he stated that receipts of sales and documents/printouts submitted by FSL related sales or clearance of wall tiles with and without central excise invoices and through under invoicing/under grading from February, 2011 to October 2012 (upto 30.2012) and that they had cleared ceramic wall tiles having MRP of Rs. 130/- per sq. ft. in their without central excise invoice clearance as retrieved by FSL. Appellant No. 2 in their statements dated 05.04.2013 and dated 10.04.2013, admitted that they

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purchases Ceramic Wall Tiles from Appellant No. 1 without central excise invoices and without payment of Central Excise duty. Based upon documentary evidences so received, the department has prepared various Annexures - a) Annexure-A containing details of clearance of ceramic wall tiles without invoices from 06.02.2011 to 24.10.2012; Annexure-B containing details of ceramic wall tiles cleared through under invoice/under grading resulted into short payment of central excise duty from 21.03.2012 to 04.10.2012; Annexure-C showing clearance of ceramic wall tiles cleared without invoice from 11.06.2011 to 31.11.2011; Annexure-D showing excess quantity of ceramic wall tiles than quantity mentioned in respective central excise invoices from 28.02.2011 to 25.09.2012; Annexure-E showing clearance of JG sized tiles without central excise invoices and without payment of central excise duty from 03.04.2012 to 24.10.2012 and Annexure-F showing differential grade-wise quantity of ceramic wall tiles increased in billing report as compared to HGT declared under payment of central excise duty and accordingly computed central excise duty of Rs. 48,82,904/- as summarised in Annexure-I to SON.

7.1 I find that incriminating documents recovered from the offices of Appellant No. 1 are duly corroborated with the statements of Appellant No. 2 who is Director of Appellant No.1 (Shareholder of Appellant No. 1 (Appellant No. 3); and statements of officers. There are substantial materials in the form of documentary and oral evidences on record and cannot be ignored. I find that the investigation has concentrated various activities of evasion of Central Excise duty by Appellant No. 1. In view of it established that Appellant No. 1 have evaded Central Excise duty amounting to Rs. 48,82,904/- as detailed in Annexure-I of the SON. The records clearly show that none of the appellants has ever filed any objection at any point of time. Therefore, all these evidences substantiate the charges against the appellants and are valid admissions and legal evidences in the eyes of law also.

7.2. Appellant No. 1 has contended that the statements were not recorded in free and fair manner and the request for cross examination of the witness was really necessary to test the veracity, authenticity and reliability of such statements which was denied by the lower adjudicating authority. I find that Appellant No. 1 has made their argument at this stage without any tangible evidence in this regard. I find that Appellant No. 1 has not made any attempt to comment upon copying month spreads to record actual production in stock register instead of Daily Stock Account and clearance of finished goods without preparation of Central Excise invoices, without entering the details of removal in their Daily Stock Account without payment of Central Excise duty and clearance of finished goods through under invoice/under grading, the details thereof have been kept in pen drive. There are other evidences available in the case which indicates malafide use of different software to maintain records of actual transactions.

transferring payment details, productions and generation of dispatch slips with intent to evade payment of Central Excise duty. I find that records pertaining to production of finished excisable goods maintained in sorting register, details of warehouse clearance, finished excisable goods and details of payments mentioned in serialive data, are corroborated to establish clandestine manufacture of finished products and evasion of duty. I also find that none of the appellants has stated that their respective statements have been recorded under duress or coercion or under threat and therefore admissions made by these persons considered to be voluntary. The confessional statements along with corroborative facts available in the case are credible, voluntary & hence admissible as has been held in *M/s. Sural Hegg, Varanasi Vs CCE, New Delhi* reported as 2004 (167) ELT 135 (Tri. Del.) as under:

"It is well settled that admission made by the maker can be accepted as a substantial piece of evidence under the law. He cannot be taken on, compelled to deny record and deny that his admission was not voluntary, unless he is able to establish that the admission was extracted from him under coercion, duress, threat etc. This being the position in law, in my view, the admission made by Shri Ravindra Saini, the proprietor of the Appellant's firm which he never retracted by alleging to have been taken out from him, by beating, coercion, provided substantial piece of evidence for proving the allegations against him as contained in the SCM. He even deposited the duty amount without any protest. Therefore, the non-preparation of the Panchnama and giving of the independent answers under these circumstances, can get no bearing on the merit of the case."

(Emphasis supplied)

I find that the lower adjudicating authority while denying opportunity to cross-examine the witnesses has relied upon various case laws as is seen from Para 6.3 to 6.7 of its impugned order. I find that Appellant No. 2 (Director of Appellant No. 1) has never challenged Panchnama proceedings and recovery of disputed slips relating removal of finished goods for which no corresponding control documents were prepared, that he never retracted his statements, which admitted clandestine clearance of finished goods and his buyers have also not retracted their records relating clandestine clearance of finished goods manufactured by Appellant No. 1. Hence, this is a case of clandestine removal of finished goods, fully supported by facts of law and documentary evidence. Hence, I am of the considered view that definitive value of the depositions made by Appellant No. 2 and Appellant No. 5 and it hinges on their respective statements cannot be free due to denial of cross-examination.

(Signature)

1. I find that no statement has been retracted by any person and facts recorded in Panchnama and contents of seized items are accepted by Appellant No. 2 also in his findings. It is not a case that any one statement has been retracted and relied upon series of statements of Appellant No. 2 vs Appellant No. 5 establishing clandestine manufacture of final products by Appellant No. 1. In the circumstances, I am of the

considered view that the statements relied upon in this case recorded at Jille and the are not recorded under duress or threat but is now being alleged by Appellant No. 1 only to get rid of doubts of law and to avoid fastening of duty liability and consequences thereof. The facts of the statements have been independently corroborated by the facts and contents of Panchnama dated 25.10.2012 recorded at the time of search, and Panchnama dated 17.01.2013 recorded at the time of obtaining and cuts from sales pendrive.

7.4 Appellant No. 1 has contended that no evidences regarding procurement of raw materials, actual production of goods in the factory, removal of goods by producing evidence of various transporters involved in receiving goods to customers and also payments that a manufacturer is expected to receive from the customers for selling and dispatching goods have been adduced by the department. It is contended by Appellant No. 1 that the contention of Appellant No. 1 is not sustainable as the investigator has recovered voluminous dispatch slips from the factory premises of Appellant No. 1 during the search, which proves clandestine clearance of excisable finished goods backed by the admissions made by the Director of Appellant No. 2 who was looking after the activities relating to manufacture and clearance of the finished goods. Hence, it is the department has discharged its burden successfully by adducing clinching evidences in this case. Hence, it is in the considered view that there is existence of irregularities consisting manipulation and deception on the part of Appellant No. 1. It is settled legal position that in cases of clandestine removal, the department is not required to prove every well mathematical precision as has been held by the Hon'ble Apex Court in the well known cases of *Ashtel Textiles (India) Pvt. Ltd.* reported as 2000 (235) H.T. 537 (SC) and *Shri. Gumar Mal* reported as 1982 (13) E.L.T. 1546 (S.C.).

7.4.1 Hon'ble CIB AT in the case of *M/s. N. R. Sangee F. Ltd.* reported as 2011(328)H.T. 463 (Tri-De) has held that when preponderance of probability was against the Appellant, abating or no statements recorded from buyers, no excess electricity consumption found, no raw material purchase found, manufactured and no input-output ratio prescribed by law is of no use. The relevant portion of the decision is reproduced below:

"10.2 The statements recorded from shift supervisors being self-speaking cannot be treated reliable because they were the persons within whose knowledge goods were manufactured and cleared. This evidence was believable, cogent and reliable for the reason that they truthfully described methodology of production"

"10.5 Added to the above, the director admitted clandestine removal of the goods not subjected to Excise duties. This resulted in loss of revenue. He admitted, admission to pass receipts of the goods without commencing any business implication of the entries in general ledger and costs recovered from possession of Appellant during search. Hence abating of the Appellant's liability, failure to sustain when own facts of the Appellant came to

room. Chandeshwar's account was not within the knowledge of the staff supervisors mentioned. Various manufacturers and suppliers against whom officers' previous convictions are on record and established unaccounted goods cleared without payment of duty. This clear & cogent evidence of Kalesh Agarwal brought the Appellant's company to the front of disputation. All of them established unaccountable and of evasion. Shri Agarwal by his evidence attached to the verdict pleaded to the effect of complete clearance through their established.

10.4. Transparency of accounts was against the Appellant. Filing of no objects of records from books, registers, receipts, electricity consumption found no real objects purchased from manufacturer and no appropriate bills prescribed by law & of no real bills. Records contained no proof bringing out the evasion in the short case, bills submitted. But, the Appellant miserably failed to discharge its burden of proof. It failed to bring clear facts.

10.5 It is not only one evidence but multiple proved evidence demonstrated obvious 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.

(Synthesis required)

The Appellant has contended that Annexure B to SCM is based on difference of one figure derived from selling register with Daily Stock Account whereas some files of production as per selling register are lesser than that of recorded in DSA on particular dates. It has gone through Annexure B to SCM and find that there are some cases where production recorded in DSA is higher than those recorded in selling register for particular types of Ceramic Wall Tiles. However, I find that the department calculated cesses of Central Excise duty by giving effect to such quantity of goods which are lesser recorded in Selling Register in comparison to Daily Stock Account and the demand only for those quantities of goods which were manufactured by Appellant. I find less recorded in Daily Stock Account. I further find that Appellant No. 2 & sister of Appellant No. 1 has under his statement recorded on 25.11.2012 admitted less production was entered in Daily Stock Account on account of under-reporting of output in Daily Stock Account and also accepted that they had sold these goods without preparing central Excise returns and without payment of Central Excise duty. In view of above, I do not find any merit in the plea of the Appellant that relying on selling register is not correct.

(Handwritten signature)

I find that the Appellant raised an objection of Harbinger CHELAI Ahmedabad in case of M/s. Anva Tibex Pvt. Ltd reported as 2014 (3) 11 EIT 525 & mislabeled such as the Harbinger Tribunal was doing with the different set of facts as revealed up in the said case. The facts before the Harbinger CHELAI were that cross-examination was denied in the case even when the Appellant was challenging the evidence maintained by employees of other party and the statements of their names did not admit the correctness of the documents whereas, the case on hand a different set of facts where cross-examination of the persons whose statements

have been relied upon as requested for by Appellant No. 1 has been done by the lower adjudicating authority on the basis of recovery of nominating documents indicating clandestine production and clearances thereof and on the basis of confessional statements of Appellant No. 2 and Appellant No. 3 (promoter and shareholder of Appellant No. 1) and buyers of the said goods i.e. Appellant No. 4 & 5. None of these appellants or persons whose statements were relied upon have been released and therefore, the confession made or statements can be considered as valid source of evidence as set settled legal position. Hence, the decision relied upon by the Appellant is not applicable in the present case.

2.6. In view of above factual and legal position, and that continuation of demand of Central Excise duty under the impugned order is correct, legal and proper and therefore, I uphold the impugned order for demand of duty.

It is a natural consequence that the continued demand is required to be paid along with interest at applicable rate as per Section 100A of the Act. It is found that Appellant No. 1 has a possession of manufecture of finished goods and clearances thereof on the strength of dispatch slips without making corresponding entry in case books and without payment of Central Excise duty and without accounting for the manufacture and search finished goods in their records. Thus, Appellant No. 1 has suppressed the facts with intent to evade payment of Central Excise duty, which clearly attract provisions of Section 114C of the Act read with Rule 26 of the Rules. Hence, fine the Appellant No. 1 is liable to penalty equal to duty so evaded, under Rule 26 of the Rules read with Section 114C of the Act, as has been held in the impugned order and hence, no need to interfere with the order in respect of penalty on Appellant No. 1.

It is to record that Appellant No. 2 was the Director of Appellant No. 1 and had knowingly indulged himself in suppressing the production details in their production register and was actively involved in clearances of the finished goods without preparation of central excise invoices and without payment of Central Excise duty and under invoicing/under weighing of their finished goods and hence, directly concerned with removing and selling of such finished goods and therefore, penalty under Rule 26 of the Central Excise Rules, 2002 is required to be imposed on him and I uphold the penalty of Rs. 4,00,000/- imposed upon him. Appellant No. 3 was shareholder of Appellant No. 1 and has knowingly indulged himself in purchasing of packing materials used for clandestine clearance of finished goods and maintained records of clearance of finished goods without getting correct evidence in pan drive connection from his office computer and thereby he abetted Appellant No. 1 in evasion of central excise duty and hence penalty imposed upon him under Rule 26 of the Rules is justified and I uphold the penalty of Rs. 5,00,000/- imposed upon him.

Appellant No. 4 and Appellant No. 5 have contended that the imposition of duty under Rule 25 of the Rules is not correct but there is no evidence that they had any reason to believe or had any knowledge that the goods were liable to confiscation duty as they were held concerned in dealing with such goods. And that Rule 26 of the rules prescribes that "Any person who acquires possession of or is in any way concerned in transacting, removing, concealing, keeping, storing, selling or releasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees, whichever is greater." It is seen that penalty under this rule is payable as soon as excisable goods in respect of which offence is committed, and the person who has dealt in excisable goods, knew that the same were liable to confiscation. The lower judicial authority has imposed penalty of Rs. 2,00,000/- each upon Appellant No. 4 & Appellant No. 5, which is reasonable considering Central Excise duty involved in the releases made by them and hence, appeal filed by them need to be rejected.

In view of above discussion and the facts of the case, the appeals and cross appeals filed by all Appellants

are hereby dismissed. The order of the Assessing Officer is hereby confirmed.

1. The appeals filed by the Appellants stand disposed of in above terms.




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RPAD

M/s. Toppan Ceramic Private Limited, Survey No.240 Paki, Bela (Rangpur), Pipli Road, Mumbai	श्री. टॉपान सेरामिक प्राइवेट लिमिटेड, सर्वेय नं. 240 पैकी, बेला (रंगपुर), पिपली रोड, मुंबई
Shri Rajnikant Khodabhai Agents (Pvt.) Ltd., Director, M/s. Toppan Ceramic Private Limited, Survey No.255 Paki, Bela (Rangpur), Pipli Road, Mumbai	श्री. रजनीकान्त खोदाबाई एजेंट्स प्राइवेट लिमिटेड, डायरेक्टर, म.स. टॉपान सेरामिक प्राइवेट लिमिटेड, सर्वेय नं. 255 पैकी, बेला (रंगपुर), पिपली रोड, मुंबई
Shri Vipul Pranjithai Patel, Share Holder of M/s. Toppan Ceramic Private Limited Survey No.251 Paki, Bela (Rangpur), Pipli Road Mumbai	श्री. विपुल प्रजिथीपटेल, शेअर होल्डर, म.स. टॉपान सेरामिक प्राइवेट लिमिटेड, सर्वेय नं. 251 पैकी, बेला (रंगपुर), पिपली रोड, मुंबई
Shri. Pankajbhai Ajitrambhai Bara ya,	श्री. पंकरभोई अजितरामभोई बरया,

	Proprietor M/s. Oni Trading, 30 Sagar Chambers, B & National Highway, Marol	प्रोप्राइटर, श्री. अमरेंद्र सिंह, ए. ए. सगर चैम्बर्स, B-अ नेशनल हाईवे, मारोली
5	Smt. Anshulal Davel, Dasi Charanbhar Proprietor, M/s. Parana Marketing, B-A National Highway, Near Central Pump, Malpur, Marol	श्री. अशोक नारई व श्री. अनाई नांदेकर, प्रोप्राइटर, म्. पारना मार्केटिंग, B-अ नेशनल हाईवे, अमरावती, मखलोफ, मारोली

Copy for information and necessary action to:

- 1: The Chief Commissioner, GST & Central Excise Ahmedabad Zone Ahmedabad
- In his kind information.
- 2: The Commissioner, GST & Central Excise Rajkot Commissionerate, Rajkot
- 3: The Deputy Commissioner, GST & Central Excise Dargol, Malpur.

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