



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

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan  
रेस कोर्स रिंग रोड / Race Course Ring Road  
राजकोट / Rajkot - 360 001



सत्यमेव जयते

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in

रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20211264SX0000888AFB

क्र	अपील / फाइल नम्बर / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/23//BVR/2021	01/AC/HKM/BVR-2/21-22	13.04.2021
	V2/16/BVR/2021	01/AC/HKM/BVR-2/21-22	13.04.2021
	V2/18/BVR/2021	01/AC/HKM/BVR-2/21-22	13.04.2021

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

### BHV-EXCUS-000-APP-012 To 014-2021

आदेश का दिनांक /

Date of Order:

29.12.2021

जारी करने की तारीख /

Date of issue:

30.12.2021

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

- ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधामा द्वारा उपरलिखित जारी मूल आदेश से सृजित: /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :
- घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

M/s. Ganpatrai Jaigopal, 312, Turning Point, Waghawadi Road 62640, Bhavnagar

M/s. Bharat Seth, Plot No. 619, B-2/Geetha Chowck, Jain Derasar Road, Bhavnagar

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) सामान्य शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलान्य न्यायाधिकरण के प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती 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) बर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलान्य 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 ब्रताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलान्य न्यायाधिकरण (मिस्टेट) 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) अपीलान्य न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 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, ब्याज 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 अपीलान्य न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार 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 अपीलान्य 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 demanded/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) अपीलान्य 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 सकती है 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, ब्याज 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 अपीलान्य न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार 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 अपीलान्य 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 should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs or less, Rs.5000/- 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/-



- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी 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 अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(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.
- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेन्टेट) 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 है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनबेट जमा की ली गई गलत राशि  
(iii) सेनबेट 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 स्वगन अर्थाँ एवं अपील को लागू नहीं होगी। / For an appeal to be filed before the CESTAT, 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 कोपनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, 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 (रिबेट) 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 शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इत अधिनियम एवं इसके विभिन्न प्रावधानों के तहत माल्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायादिधि 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 प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ 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 जाए।  
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 umbers 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 स्वगन 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-1 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 बर्णित 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 three appeals have been filed by the Appellants (*hereinafter referred to as* "Appellant No.1 to Appellant No.3", as detailed in Table below), against Order-in-Original No. 1/AC/HKM/BVR-2/2021-22 dated 13.4.2021 (*hereinafter referred to as* 'impugned order') passed by the Assistant Commissioner, Central GST and Central Excise, Bhavnagar-2 Division (*hereinafter referred to as* 'adjudicating authority') :-

Sl. No.	Appeal No.	Appellants	Name & Address of the Appellant
1.	V2/23/BVR/2021	Appellant No.1	M/s Ganpatrai Jaigopal, 312, Turning Point, Waghavadi Road, Bhavnagar.
2.	V2/16/BVR/2021	Appellant No.2	Shri Vipin Aggarwal Partner of M/s Ganpatrai Jaigopal, 312, Turning Point, Waghavadi Road, Bhavnagar.
3.	V2/18/BVR/2021	Appellant No.3	Shri Bharat M. Sheth, Plot No. 619, B-2, Geetha Chowk, Bhavnagar.

2. The facts of the case, in brief, are that Appellant No. 1 was engaged in breaking of ships imported for breaking purpose at their plot at the Ship Breaking Yard, Sosiya, Alang, District Bhavnagar and was registered with Central Excise Department. Intelligence gathered by the officers of Directorate General of Central Excise Intelligence indicated that most of the Shipbreaking units of Alang/Sosiyo of Bhavnagar District were evading payment of Central Excise duty by resorting to clandestine removal and under valuation of their finished goods viz. MS plates and scrap. On the basis of investigation carried out by the officers of DGCEI, it was alleged that Appellant No. 1 evaded payment of Central Excise duty by resorting to clandestine removal of their finished goods, with active support of Appellant No. 3, broker. The investigation also alleged that Appellant No. 1 also passed fraudulent Cenvat credit without delivery of goods in collusion with Appellant No. 3.

2.1 Show Cause Notice No. V.73/3-24/D/Rural/13-14 dated 4.2.2014 was issued to Appellant No. 1 calling them to show cause as to why Central Excise duty amount of Rs. 2,46,215/- should not be demanded and recovered from them under proviso to Section 11A(1) of the Central Excise Act, 1944 (*hereinafter referred to as* "Act") along with interest under Section 11AB of the Act and also proposing imposition of penalty under Section 11AC of the Act read with Rule 25



*du*

of the Central Excise Rules, 2002 (*hereinafter referred to as 'Rules'*). The Show Cause Notice also proposed imposition of penalty upon Appellants No. 2 & 3 under Rule 26(1) and Rule 26(2) of the Rules.

2.2 The above said Show Cause Notice was adjudicated vide Order-in-Original No. 17/AC/Rural/BVR/PS/2014-15 dated 28.2.2015 by the Assistant Commissioner, erstwhile Central Excise, Rural Division, Bhavnagar, who confirmed Central Excise duty amount of Rs. 2,46,215/- under Section 11A(1) along with interest under Section 11AA of the Act and imposed penalty of Rs. 2,46,215/- under Section 11AC of the Act upon Appellant No. 1. He also imposed penalty of Rs. 2,46,215/- each, upon Appellant No. 2 and Appellant No. 3 under Rule 26(1) and Rule 26(2) of the Rules

2.3 Being aggrieved, the Appellants filed appeals before the then Commissioner (Appeals), Central Excise, Rajkot who vide his OIA No. BHV-EXCUS-000-APP-082 TO 084-2015-16 dated 4.2.2016 rejected the appeal of Appellant No.1 but partially allowed the appeals of Appellant No. 2 and Appellant No. 3 by reducing penalty amount to Rs. 65,000/- under Rule 26 of Rules.

2.4 Being aggrieved, the Appellants filed appeals before the Hon'ble CESTAT, Ahmedabad who vide its Order No. A/13877-13931/2017 dated 28.12.2017 remanded the matter to adjudicating authority for *de novo* adjudication with a direction to analyze the evidences in detail and record findings.

2.5 In *de novo* adjudication, the adjudicating authority vide the impugned order confirmed Central Excise duty of Rs. 2,46,215/- under Section 11A(1) along with interest under Section 11AA of the Act and imposed penalty of Rs. 2,46,215/- under Section 11AC of the Act upon Appellant No. 1. He also imposed penalty of Rs. 65,000/- each, upon Appellant No. 2 and Appellant No. 3 under Rule 26(1) and Rule 26(2) of the Rules.

3. Being aggrieved, Appellants No. 1 to 3 have preferred appeals on various grounds, *inter alia*, as below:-

Appellant No. 1 & 2:-

(i) The case was booked against them on the basis of investigation carried out against Shri Bharat Sheth, Bhavnagar. Whatever the grounds relied upon by the Department cannot be termed as independent and corroborative evidences to sustain the charge of clandestine removal of goods against them.

(ii) The impugned order passed by the Adjudicating Authority is nothing



*Handwritten signature*

but repetition of the findings given by the adjudicating authority at the time of deciding the previous OIO. The impugned order has been passed only on the basis of the assumption presumption without corroborative evidences regarding the clearances of excisable goods manufactured by them clandestinely on the ground that the various submission/statement given by Shri B. M. Sheth, broker, had not been corroborated with the Central Excise Record statutory maintained by them. Therefore, the impugned order is liable to be set aside.

(iii) The Adjudicating Authority failed to corroborate each and every consignment appearing in diary of Shri Bharat Sheth by disclosing the concerned central excise invoices under which the excisable goods had been dealt with illegally as discussed in the impugned order. Therefore, the impugned order is not proper, correct and legal but liable to be quashed and set aside and relied upon following case laws:

- (a) Shree Industries Ltd. - 2010 (261) ELT 803 (Tri-Ahmd)
- (b) K. Rajagopal - 2002 (142) ELT 128 (Tri. Chennai)
- (c) Varun Dyes & Chemicals Pvt. Ltd. - 2007 (218) ELT 420 (Tri. Ahmd.)
- (d) D.P. Industries - 2007 (218) ELT 242 (Tri Del.)
- (e) Pole Star Industries Ltd -2007 (216) ELT 257 (Tri-Ahmd)

Appellant No. 3:-

(i) The impugned order has erred in imposing penalty upon him under Rule 26 of the Rules.

(ii) The adjudicating authority failed to take note that his role was limited to recognize buyer and seller to each other and fix price of the goods on the basis of market rate. For this work, he had maintained such diary only for the purpose of knowing the facts and knowing how many parties had dealt with such manner. That he had not involved in clandestine removal of goods under reference. Only say and submission of third party evidence are not to be termed as corroborative evidences so far as the imposition of penalty under Rule 26 of the Rules. Thus, it is clear that the Appellant is not liable for penalty under Rule 26 of the Rules.

4. Personal Hearing in the matter was scheduled in virtual mode through video conference on 22.10.2021, 15.11.2021 and 1.12.2021. Appellant Nos. 1 and No. 2 vide their letters dated 30.11.2021 waived the opportunity of Personal Hearing and requested to decide the appeals on the basis of grounds raised in appeal memorandum. No consent for attending virtual hearing was received from Appellant No. 3 nor was any request for adjournment received. I,



therefore, proceed to decide all the three appeals on merits on the basis of grounds raised in appeal memoranda.

5. I have carefully gone through the facts of the case, the impugned order, and grounds raised in appeal memoranda. The issue to be decided is whether the impugned order, in the facts of this case, confirming demand on Appellant No. 1 and imposing penalty on Appellants No. 1 to 3 is correct, legal and proper or not.

6. I find that the impugned order was passed in pursuance of the remand direction of the Hon'ble CESTAT, Ahmedabad vide Order No. A/13877-13931/2017 dated 28.12.2017. It is, therefore, pertinent to examine relevant portion of the said Order, which is reproduced as under:

“6. Heard both sides and perused the record. On going through the impugned orders of the authorities below, I find that even though various case laws on the subject have been referred to, however, detailed analysis of the facts and evidences which were collected during investigation in the form of statements/documents, particularly, the statements of the Director and the Accountant of the Appellant broker, Shri Bharat Sheth have been not analysed and findings were not recorded on the evidentiary value of these statements vis-a-vis the documents. In the absence of the detailed analysis of the evidences, it is difficult to ascertain the facts alleged in the show cause notice. In these circumstances, both sides fairly submit that it is prudent to remand the matters to the adjudicating authority, to analyse the evidences in detail and record findings on the said evidences relied upon in raising the demands and proposing penalties against the respective Appellants. All issues are kept open. The Appellants are at liberty to submit evidences in support of their defence. Needless to mention that a reasonable opportunity of hearing be given to all the Appellants. The Appeals are allowed by way of remand to the adjudicating authority.”

7. It is pertinent to examine the findings recorded by the adjudicating authority in the impugned order to ascertain whether directions of the Hon'ble Tribunal are followed or not. I reproduce relevant portion of the impugned order as under:

“1.17.1 As per the directives of the CESTAT's order dated 28.12.2017, the said issue was scrutinized closely with reference to the provisions of law:

A thorough check of the seized diary marked as A/13 to the panchnama dated 30.3.2010 was carried out to ascertain as to whether the removal of excisable goods were through clandestine manner. The diary contained the transaction carried out by Noticee No. 3 in respect of supply of ship breaking scrap to various units for the period from 1.1.2009 and 31.12.2009. When the



*[Handwritten signature]*

details mentioned in the dairy marked as A/13 was compared with the sales data of respective ship breaking units, it was observed that in certain transactions, different ship breaking units did not issue any sales invoice and as such they have cleared scrap clandestinely to the various rolling mills through Bharat Sheth. In some cases they had raised invoices without supply of goods mentioned therein to the various induction furnace units/traders and the goods corresponding to the said quantity were cleared clandestinely to the rolling mill units. Shri Bharat Sheth received cash amount from such rolling mill units against clandestine receipt of scrap by them either directly or through various angadias which were ultimately handed over to the respective ship breaking units either directly or through Angadias. Sometimes amounts were also given to the induction furnace units/ traders against the cheque given for full invoice value. The said activities were authenticated by the statements recorded and the documents seized during the investigation of the DGCEI. Also at the material time of seizure of incriminating documents they could not produce any evidence in support to prove that excise duty was paid on the impugned goods removed and thereby violated the various provisions of the Central Excise Rules, 2002.

It is an undisputed and proven facts that the adjudicating authority has categorically mentioned the defence submissions and have discussed the same and then have offered the findings. Thus, the arguments put forth by the Noticee that the adjudicating authority has ignored the submissions made is far from truth and is devoid of merits.

1.17.2 I find that all the records/documents received from the premises of Noticee No. 3 were placed before the Noticee No. 1 & 2 during the investigation. Also the panchnama dated 30.3.2010 drawn at the premises of the Noticee No. 3 and the statement recorded by Noticee No. 3 and Shri Manish Patel, Accountant of the Noticee No. 3 were shown to Noticee No. 1. The Noticee had been given full opportunity to peruse the same before giving the testimony of the truth and correctness thereof. They were asked to examine various documentary evidences duly corroborated by the oral evidences collected from Noticee No. 3. and his staff. Also I find that while recording the statement of Noticee No. 2 he was shown the panchnama and statement given by Noticee No. 3, Accountant of Noticee No. 3, Angadias etc also. Also the Annexures prepared on the basis of the investigation conducted in respect of records seized from the Noticee No. 3 showing the details of the transactions carried out through the Noticee No. 3 for appellant No. 1. I find that from the documentary evidences viz. seized diary of the Noticee No. 3 and the statement recorded of the angadias, it is proved that the Noticee No. 1 had removed the goods through the Noticee No. 3 under proper invoices and in certain transactions the goods were cleared to units other than whom invoices was raised. These transactions had tallied with records of the Noticee No. 3 which is corroborated with the records of Angadias also, who have admitted regarding transfer of the cash amounts. I find that these are sufficient substantial evidence in the form of documentary and oral evidences on records resumed from the firm and persons indulged in the transactions with the Noticee No 1. I find that the department has not left any brick unturned to prove that the Noticee No. 1 had clearly evaded duty of Central Excise amounting to Rs 2,46,215/- as detailed in relevant Annexures of the Show Cause Notice. I find that the Noticee No. 2 have never filed any retraction at any point of time before giving his statement and thereby confirming the correctness of the statements/records of Noticee No. 3 and his accountant. Therefore, I hold that all the evidences on record are valid, admissible and legal evidence in eyes of law.

1.17.3 I find that all the above facts bring the matter at the conclusion that the removable of excisable goods were of clandestine nature, mis-declaration and diversion of goods, which has resulted in loss of Government Revenue. Therefore, I hold that the removal of excisable goods in this case was of clandestine nature, mis-declaration and diversion of goods and illicit removal with pure intention to evade payment of excise duty. In view of above, I hold that Noticee No. 1 is liable



*de*

to pay Central Excise duty amounting to Rs 2,46,215/- under the provision of erstwhile sub-section(1) of Section 11A of the Act. It is a natural consequence that the confirmed dues are required to be paid along with interest as applicable rate under the provisions of erstwhile Section 11AB of the Act. I find that by acting in this manner the Noticee No. 1 is liable to penalty equal to duty under Rule 25 of the CER read with Section 11AC of the Act.”

8. I find that the Hon'ble Tribunal had remanded the matter to the adjudicating authority for analyzing documentary evidences collected during investigation with Statements of the Director and the Accountant of Appellant No. 3. When the findings recorded by the adjudicating authority reproduced *supra* is examined in light of the directions of the Hon'ble Tribunal, I find that the adjudicating authority has failed to follow the directions of the Hon'ble Tribunal inasmuch as the findings recorded by the adjudicating authority is general in nature discussing about evidences involving all Shipbreaking units. Even where findings is recorded about Appellant No. 1, the adjudicating authority has failed to discuss specific evidences available in said Diaries and depositions made by Accountant of Appellant No. 3 in his Statements, while alleging clandestine removal of goods by Appellant No. 1.

8.1 As per facts emerging from the records, I find that Appellant No. 3 acted as broker between Shipbreaking units of Alang / Sosiya and various Re-rolling mills. During search carried out at the office premises of Appellant No. 3, various incriminating documents / Diaries were seized, which contained details of alleged illicit as well as licit sale transactions by Shipbreaking units to Re-rolling mills. The said documents / Diaries contained cash collected by Appellant No. 3 from the said Re-rolling mills and paid to the said Shipbreaking units. The said documents / Diaries also contained details of invoices issued by Shipbreaking units to Induction Furnace units without supply of goods. I further find that details in the said Diaries were written in 'short name' or 'codes' by Accountant of Appellant No. 3, which was decoded/deciphered by him in his Statements recorded during the course of investigation and confirmed by Appellant No. 3 in his Statements. In *de novo* proceedings, the adjudicating authority was required to analyse evidences available in said Diaries in respect of Appellant No. 1 and corroborate the same with depositions made in the Statements by Appellant No. 3, accountant of Appellant No. 3 as well as Appellant No. 1 and then come to any conclusion, as directed by the Hon'ble Tribunal, which is not done.

9. In view of above discussion, I hold that the impugned order is not sustainable. I, therefore, remand the matter to the adjudicating authority for *de novo* proceedings with a direction to thoroughly analyse evidential value of seized documents vis-à-vis Statements recorded during investigation and pass a





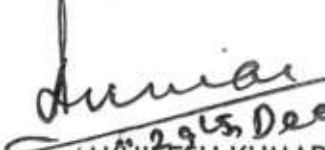
reasoned order, as directed by the Hon'ble Tribunal in Order dated 28.12.2017 *supra*. Needless to mention that principles of natural justice be adhered to.

10. In view of above, I set aside the impugned order and dispose the appeals of Appellants No. 1 to 3 by way of remand.

10.1 अपीलकर्ताओ द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

10.1 The appeals filed by the Appellants are disposed off as above.

सत्यापित,  
  
 विपिन शाह  
 अधीक्षक (अपील)

  
 29.12.2021  
 (AKHILESH KUMAR)  
 Commissioner (Appeals)

By R.P.A.D.

To, 1. M/s Ganpatrai Jaigopal, 312, Turning Point, Waghavadi Road, Bhavnagar.	सेवा में, मेसर्स गणपतराय जयगोपाल, 312, टर्निंग पॉइंट, वाघवाड़ी रोड, भावनगर।
2. Shri Vipin Aggarwal Partner of M/s Ganpatrai Jaigopal, 312, Turning Point, Waghavadi Road, Bhavnagar.	श्री विपिन अग्रवाल, भागीदार, मेसर्स गणपतराय जयगोपाल, 312, टर्निंग पॉइंट, वाघवाड़ी रोड, भावनगर।
3. Shri Bharat M. Sheth, Plot No. 619, B-2, Geetha Chowk, Bhavnagar.	श्री भरत एम. सेठ, प्लॉट नंबर 619, बी-2, गीता चौक, भावनगर।

प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-2 मंडल, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।



