



::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 / 2nd 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-20220364SX000000D812

क्र	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIONo.	दिनांक/ Date
	V2/79/RAJ/2021	10 to 16/DC/KG/2020-21	24-02-2021
	V2/80/RAJ/2021	10 to 16/DC/KG/2020-21	24-02-2021
	V2/81/RAJ/2021	10 to 16/DC/KG/2020-21	24-02-2021
	V2/82/RAJ/2021	10 to 16/DC/KG/2020-21	24-02-2021
	V2/83/RAJ/2021	10 to 16/DC/KG/2020-21	24-02-2021
	V2/84/RAJ/2021	10 to 16/DC/KG/2020-21	24-02-2021
	V2/93/RAJ/2021	10 to 16/DC/KG/2020-21	24-02-2021

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

RAJ-EXCUS-000-APP-108 TO 114-2021-22

आदेश का दिनांक /
Date of Order: **28.02.2022** जारी करने की तारीख /
Date of issue: **04.03.2022**

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 / गांधीधाम। 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 Simond Fibertech Limited, Plot no. 2643/44, Kranti gate, Main Road no.13 GIDC, metoda Distt:
Rajkot Gujarat-360021.**

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 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) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद 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 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण
(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd 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) नियमवाली, 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, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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
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 अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के
साथ 500/- रुपये 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 नियमवाली, 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, रुपये 5
लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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
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 अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 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/-.



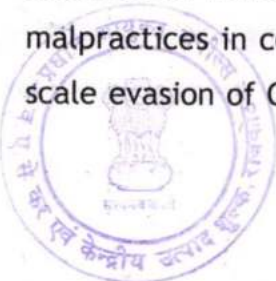
- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ 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 निदेश 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.
- (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 जर्माना विवादित है, या जर्माना, जब केवल जर्माना विवादित है, 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 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 स्थगन अर्जी एवं अपील को लागू नहीं होगा।
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 को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामला में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक 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 (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 क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य 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 समायाविधि 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 उत्पाद 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 प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साध्य 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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding 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-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट 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 बर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और 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 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

:: ORDER-IN-APPEAL ::

The below mentioned appeals have been filed by the Appellants (*hereinafter referred to as 'Appellant No.1 to Appellant No.7'*, as detailed in Table below) against Order-in-Original No. 10 to 16/DC/KG/2020-21 dated 24.02.2021 (*hereinafter referred to as 'impugned order'*) passed by the Deputy Commissioner, Central GST Division-II, Rajkot (*hereinafter referred to as 'adjudicating authority'*):-

Sl. No.	Appeal No.	Appellants	Name & Address of the Appellant
1.	V2/79/RAJ/2021	Appellant No.1	M/s Simond Fibertech Limited, Plot No. 2643/44, Kranti Gate, Main Road No. 13, Lodhika Industrial Estate, GIDC, Metoda, Rajkot-360021
2.	V2/80/RAJ/2021	Appellant No.2	Shri Chhaganbhai M Patel, Managing Director of M/s Simond Fibertech Limited, Rajkot-360021.
3.	V2/81/RAJ/2021	Appellant No.3	Shri Hemant S Bhut, Director of M/s Simond Fibertech Limited, Rajkot-360021.
4.	V2/82/RAJ/2021	Appellant No.4	Shri Vinodbhai T Ramani, Director of M/s Simond Fibertech Limited, Rajkot-360021.
5.	V2/83/RAJ/2021	Appellant No.5	Shri Kantilal C Chovatia, Director of M/s Simond Fibertech Limited, Rajkot-360021.
6.	V2/84/RAJ/2021	Appellant No.6	Shri Anand C Patel, Director of M/s Simond Fibertech Limited, Rajkot-360021.
7.	V2/93/RAJ/2021	Appellant No.7	Shri Daulatrai B Pipalia Director of M/s Simond Fibertech Limited, Rajkot-360021.

2. The facts of the case, in brief, are that Appellant No. 1 was engaged in manufacture of Ceramic Fibers & other Ceramic Products falling under Chapter Sub Heading Nos. 69039030 and 69039090 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AAJCS0476NXM002. Intelligence gathered by the Directorate General of Central Excise Intelligence, Zonal Unit, Ahmedabad indicated that various Tile manufacturers of Morbi were indulging in malpractices in connivance with Shroffs / Brokers and thereby engaged in large scale evasion of Central Excise duty. Simultaneous searches were carried out on



22.12.2015 at the premises of Shroffs in Rajkot and Morbi and various incriminating documents were seized. On scrutiny of said documents and Statements tendered by the said Shroffs, it was revealed that huge amounts of cash were deposited from all over India into bank accounts managed by said Shroffs and such cash amounts were passed on to Tile Manufacturers through Brokers/Middlemen/Cash Handlers. Subsequently, simultaneous searches were carried out on 23.12.2015 and 31.12.2015 at the premises of Brokers/Middlemen/Cash Handlers engaged by the Tile manufacturers and certain incriminating documents were seized.

2.1 Investigation carried out by the officers of DGCEI revealed that the Shroffs opened bank accounts in the names of their firms and passed on the bank account details to the Tile manufacturers through their Brokers/Middlemen. The Tile manufacturers further passed on the bank account details to their customers/ buyers with instructions to deposit the cash in respect of the goods sold to them without bills into these accounts. After depositing the cash, the customers used to inform the Tile manufacturers, who in turn would inform the Brokers or directly to the Shroffs. Details of such cash deposit along with the copies of pay-in-slips were communicated to the manufacturers by the Customers. The Shroffs on confirming the receipt of the cash in their bank accounts, passed on the cash to the Brokers after deducting their commission from it. The Brokers further handed over the cash to the Tile manufacturers after deducting their commission. This way the sale proceeds of an illicit transaction was routed from buyers of goods to Tile manufacturers through Shroffs and Brokers.

2.2 During scrutiny of documents seized from the office premises of M/s K.N. Brothers, Rajkot, Shroff and Shri Thakarshi Premji Kasundra, Broker, it was revealed that the said Shroff had received total amount of Rs. 73,23,930/- in their bank accounts during the period from 5.1.2015 to 6.7.2015, which were passed on to Appellant No. 1 in cash through Shri Thakarshi Premji Kasundra, Broker. The said amount was alleged to be sale proceeds of goods removed clandestinely by Appellant No. 1.

3. Show Cause Notice No. DGGI/AZU/Group-C/Simond/36-116/2019-20 dated 23.10.2019 was issued to Appellant No. 1 calling them to show cause as to why Central Excise duty amounting to Rs.9,14,689/- should not be demanded and recovered from them under proviso to Section 11A(4) of the erstwhile Central Excise Act,1944 (*hereinafter referred to as "Act"*) along with interest under Section 11AA of the Act and also proposing imposition of penalty under Section

11AC of the Act and fine in lieu of confiscation under Section 34 of the Act. The Show Cause Notice also proposed imposition of penalty upon Appellant No. 2 to Appellant No. 7 under Rule 26(1) of the Central Excise Rules, 2002 (*hereinafter referred to as "Rules"*).

3.1 The above said Show Cause Notice was adjudicated vide the impugned order wherein the demand of Central Excise duty amounting to Rs. 9,14,689/- was confirmed under Section 11A(4) along with interest under Section 11AA of the Act. The impugned order imposed penalty of Rs. 9,14,689/- under Section 11AC of the Act upon Appellant No. 1 with option of reduced penalty as envisaged under provisions of Section 11AC of the Act. The impugned order also imposed penalty of Rs. 1,00,000/- each upon Appellant No. 2 to Appellant No. 7 under Rule 26(1) of the Rules.

4. Being aggrieved with the impugned order, Appellants No.1 to 7 have preferred appeals on various grounds, *inter alia*, as below :-

Appellant No. 1:-

- (i) That the Adjudicating authority has erred in confirming the demand of Rs. 9,14,689/- on the ground as mentioned in the order and also ignoring the facts and circumstances of the case. The denial of cross examination of the witnesses as per the settled law is breach of natural justice and hence the order under consideration is not liable to be sustained.
- (ii) That the Adjudicating authority has erred in confirming the demand on the basis of the documentary evidences impounded from third party and ignoring the fact that the investigating authority had not found any discrepancies from the documents submitted by the applicant. In any case it is well settled law that no proceedings can be confirmed on the basis of the documents impounded from third party.
- (iii) That the Adjudicating authority has erred in confirming the demand without allowing us cross examination of the witnesses. In absence of the cross examination the statement of third party cannot be relied upon by the department and hence the show cause notice confirmed is not proper and justified and was liable to be set aside.
- (iv) That the Adjudicating authority has erred in confirming the demand ignoring the settled law that the allegation of clandestine removal cannot be sustained unless the criteria laid down by the Honorable Appellate authority are satisfied. The adjudicating authority has



ignored the principal of law and hence the order under consideration is liable to be set aside.

- (v) The adjudicating authority has erred in confirming the demand on the basis of presumption and assumptions in as much as the investigating authority has not found any incriminating documents from the possession or has not recorded any statement confirming the allegation contained in the SCN and hence the order under consideration is bad in law and is liable to be set aside.
- (vi) The adjudicating authority has also erred in imposing the penalty of Rs. 9,14,689/- on the ground as mentioned in the order and also on the ground mentioned here in above. The ground raised for setting aside the demand may be treated as part of the ground for setting aside the penalty.
- (vii) That the Adjudicating authority has also erred in the confirming interest on the ground as mentioned in the order and also on the ground mentioned here in above. The ground raised for setting aside the demand may be treated as part of the ground for setting aside the interest.

Appellants No. 2 to 7:-

- (i) That the adjudicating authority has erred in imposing penalty of Rs. 1,00,000/- under the provisions of Rule 26 of Central Excise Rules on the grounds mentioned in the order.
- (ii) That the adjudicating authority has erred in imposing penalty without considering our request for cross examination of the witness and without considering the fact that the department has not produced any evidence to prove that the applicant has dealt with the goods in the manner as required under the provision of Rule 26 of Central Excise Rules.
- (iii) That the adjudicating authority has erred in imposing penalty ignoring the fact that without quantification of duty demand evaded in terms of the provisions of Rule 26 of Central Excise Rules no penalty can be imposed and therefore the penalty imposed is illegal and irregular and hence the amount of penalty imposed is liable to be set aside.

4. Personal Hearing in the matter was scheduled on 01.12.2021 in virtual mode through video conferencing. Shri Paresh Sheth, Advocate appeared on behalf of Appellants No. 1 to 7. He reiterated the submissions made in appeal memorandum in respect of all the appeals. He relied upon case laws submitted as compilation dated 29.11.2021 as well as case law of Canon India Ltd - 2021

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(376) ELT 3 (SC).

5. I have carefully gone through the facts of the case, the impugned order, the appeal memoranda and written as well as oral submissions made by the Appellants. 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 7 is correct, legal and proper or not.

6. On perusal of records, I find that an offence case was booked by the officers of Directorate General of Central Excise Intelligence, Ahmedabad against Appellant No. 1 for clandestine removal of goods. Simultaneous searches carried out at the premises of Shroff / Brokers / Middlemen situated in Rajkot and Morbi resulted in recovery of various incriminating documents indicating huge amount of cash transactions. On the basis of investigation carried out by the DGCEI, it was alleged that various manufacturers of Morbi were indulged in malpractices in connivance with Shroffs / Brokers and thereby engaged in large scale evasion of Central Excise duty. During investigation, it was revealed by the investigating officers that the Tile manufacturers sold goods without payment of duty and collected sale proceeds from their buyers in cash through said Shroff/Brokers/ middlemen. As per the *modus operandi* unearthed by the DGCEI, the Tile manufacturers passed on the bank account details of the Shroffs to their buyers with instructions to deposit the cash in respect of the goods sold to them without bills into these accounts. After depositing the cash, the buyers used to inform the Tile manufacturers, who in turn would inform the Brokers or directly to the Shroffs. Details of such cash deposit along with the copies of pay-in-slips were communicated to the Tile manufacturers by the Customers. The Shroffs on confirming the receipt of the cash in their bank accounts, passed on the cash to the Brokers after deducting their commission from it. The Brokers further handed over the cash to the Tile manufacturers after deducting their commission. This way the sale proceeds was allegedly routed through Shroffs/Brokers/middlemen.

7. I find from the case records that the DGCEI had covered 4 Shroffs and 4 brokers/middlemen during investigation, which revealed that 186 manufacturers were routing sale proceeds of illicit transactions from the said Shroffs/Brokers/Middlemen. I find that the DGCEI has, *inter alia*, relied upon evidences collected from the premises of Shri K.N. Brothers, Rajkot and M/s Maruti Enterprise, Rajkot, both Shroffs, and Shri Thakarshi Premji Kasundra, Morbi, Broker, to allege clandestine removal of goods by the Appellants herein. It is settled position of law that in the case involving clandestine removal of goods, initial burden of proof is on the Department to prove the charges. Hence,



it would be pertinent to examine the said evidences gathered by the DGCEI and relied upon by the adjudicating authority in the impugned order to confirm the demand of Central Excise duty.

7.1. I find that during search carried out at the office premises of M/s K.N. Brothers, Rajkot, Shroff, on 22.12.2015, certain private records were seized. The said private records contained bank statements of various bank accounts operated by M/s K.N. Brothers, sample of which is reproduced in the Show Cause Notice. I find that the said bank statements contained details like particulars, deposit amount, initiating branch code etc. Further, it was mentioned in handwritten form the name of city from where the amount was deposited and code name of concerned middlemen/Broker to whom they had handed over the said cash amount.

7.2. I have gone through the Statement of Shri Lalit Ashumal Gangwani, Owner of M/s K.N. Brothers, Rajkot recorded on 23.12.2015 under Section 14 of the Act. In the said statement, Shri Lalit Ashumal Gangwani, *inter alia*, deposed that,

“Q.5 Please give details about your work in M/s Ambaji Enterprise, Rajkot and M/s K.N. Brothers, Rajkot.

A.5. We have opened the above mentioned 9 bank accounts and give the details of these accounts to the Middlemen located in Morbi. These middle men are working on behalf of Tile Manufacturers located in Morbi. These Middlemen then gives our Bank details to the Tiles Manufacturers of Morbi who in turn further passes these details to their Tiles dealers located all over India. The Tiles dealers then deposit cash in these accounts as per the instruction of the ceramic Tiles Manufacturers who in turn inform the Middlemen. The Middlemen then inform us about the cash deposited and the name of the city from where the amount has been deposited. We check all our bank accounts through online banking system on the computer installed in our office and take out the printout of the cash amount deposited during the entire day in all the accounts and mark the details on the printouts. On the same day, latest by 15:30 hours, we do RTGS to either M/s Siddhanath Agency and or to M/s Radheyshyam Enterprises in Sakar Complex, Soni Bazar, Rajkot. In lieu of the RTGS, M/s Siddhanath Agency and or to M/s Radheyshyam Agency gives the cash amount. The said cash is then distributed to concern Middlemen.

Q.6: Please give details of persons who had deposited the amount in your firms.

A.6. We are not aware of any persons who had deposited the cash amount in our bank accounts, the ceramic Tile Manufacturers direct the said parties to deposit the amount in cash in these accounts. As already stated above, we had given our bank accounts details to the middle man who had inturn given these numbers to the Tile Manufacturers.”

7.3 I have gone through the Statement of Shri Nitinbhai Arjanbhai Chikani, actual owner of M/s. Maruti Enterprise, Rajkot recorded on 24.12.2015 under Section 14 of the Act. In the said statement, Shri Nitinbhai Arjanbhai Chikani, *inter alia*, deposed that,

“Q.5 Please give the details about your work in M/s Maruti Enterprise, Plot no. 33, Udaynagar street-1, Mavdi main Road, Rajkot, M/s India Enterprise, Plot No. 33, Udaynagar street-1, Mavdi main road, Rajkot and M/s PC Enterprise, Office No. 110, Haridarshan Arcade, 150 Ft. Ring Road, Rajkot.

A.5 Though, I am not the owner of the above mentioned firms but I looked after all the work of M/s Maruti Enterprises (now closed), M/s India enterprise and M/s PC enterprise with the help of staff. Basically, our work is to receive the cash amount in our 9 bank accounts of the aforesaid firms.

These Bank accounts were opened during the period from March 2015 to June 2015. All the bank accounts of M/s Maruti Enterprise were closed on December 2015 except one account of Bank of India.

We have opened the above mentioned 9 bank accounts and gave the details of these accounts to the middleman located in Morbi. The middleman are working on behalf of tile manufacturers located in Morbi. These middleman then gives our bank details to the tiles manufacturer of Morbi who in turn further passes these details to their tiles dealers located all over India.

The tile dealers then deposits cash in these accounts as per the instructions of the ceramic tile manufacturers who in turn inform the middleman. The middle man then inform us about the cash deposited and the name of the city from where the amount has been deposited. We check all our bank accounts through ‘online banking’ systems on the computer installed in our office and take out the printout of the cash amount deposited during the entire day in all the accounts and mark the details on the printouts. On the same day latest by 15:30 hrs, we do RTGS to M/s Siddhanth Agency in lieu of the RTGS, M/s Siddhanath Agency gives the cash amount. The said cash is then distributed to concern middleman.

Q.6 Please give the details of persons who had deposited the amount in your firms namely M/s Maruti Enterprise, M/s India Enterprise and M/s PC Enterprise ?

A.6 We are not aware of any persons who had deposited the cash amount in our bank accounts. The ceramic tile manufacturers direct the said parties to deposit the amount in cash in these accounts. As already stated above, we had given our bank account details to the middle man who had in turn given these numbers to the tile manufacturers.”

7.4 I find that search was carried out at the office premises of Shri Thakarshi



Premji Kasundra, Morbi, a broker/middlemen on 23.12.2015 and certain private records were seized. As reproduced in the Show Cause Notice, the said private records contained details like name of bank, cash amount, place from where the amount was deposited in bank, name of the person / authorized representative who collected the cash from him, date on which cash was handed over and name of the beneficiary of Tiles manufacturer of Morbi.

7.5 I have gone through the Statements of Shri Thakarshi Premji Kasundra, Morbi, recorded on 24.12.2015 and 28.12.2015 under Section 14 of the Act. In the said statements, Shri Thakarshi Premji Kasundra, *inter alia*, deposed that,

Statement dated 24.12.2015:

“Q.1: Please explain the business activities of M/s. Gayatri Enterprise, Morbi.

A.1: M/s. Gayatri Enterprise, Morbi is running business as a broker since November, 2011. I am handling all the day to day work of the firm including Accounts. My firm is working as a middleman between Shroffs and my clients, who are Ceramic Tile manufacturers/Traders. In this regard, my said clients approach me and inform that their certain amount of money has been deposited by their customers in the accounts of my Shroffs. Accordingly, I approach concerned Shroff to deliver the cash amount to me for subsequent distribution to my clients. For this work, I generally charge Commission @ 0.05% of the amount, so distributed to the concerned Manufacturers/ Traders. I further explain in detail that my Shroffs have given me a bank account number and the said number was given by me to my clients. Accordingly, dealers/buyers of the tile manufacturers (who are my clients) deposit the cash amount in the said account of the Shroffs as per the instructions of the Ceramic Tile manufacturers. My clients then inform me about the cash deposited and the name of the city from where the amount has been deposited. And once the said amount is deposited in the account of my Shroffs, my work is to receive the cash from the Shroffs and deliver the same to my clients. I further state that generally Shri Nitinbhai A. Chikhani of M/s. Maruti Enterprise & M/s. India Enterprise, Rajkot, used to deliver the cash to me. My Shroffs are M/s. Maruti Enterprise and M/s. India Enterprise, Rajkot, which is operated by Shri Nitin A. Chikhani & M/s. Ambaji Enterprises and M/s K.N. Brothers, both situated at Rajkot, which is operated by Shri Lalitbhai Gangwani.

... ..

Q.3: Please produce all documents/files/diaries/registers, pertaining to aforesaid business activity of your firm namely M/s. Gayatri Enterprise, Morbi for the period from inception of the firm to till date.

A.3: I produce herewith one “Office time” make Notebook containing pages from 1 to 160. The said notebook contains the details of cash amount received from the Shroffs for distribution of the same to my clients Le. Ceramic Tile manufacturers/Traders, for the period from 24.11.2015 to 21.12.2015. I further explain the details shown at Entry No. 1 at the left side of Page No.1 of the said Notebook as under:

2758040 shiv 23-11 TPK

The first column “2758040” represents the amount received from Shn Nitin Chikani of M/s. India Enterprise, Rajkot (shiv). The second column “shiv”

represents the code name given to Shri Nitin Chikani. The third column "23-11" represents the date of transaction. The fourth column "TPK" represents the short abbreviation of my name.

In view of the above, I state that on 23.11.2015, I have received Rs.27,58,040/- from my shroff namely Shri Nitin Chikani.

In the same manner, the other entries have been made during the course of regular business in this notebook.

Statement dated 28.12.2015:

Q.4. Please state who has made the entries in these 28 records consisting of Diaries and why these entries have been made?

A.4. I have personally made the entries in all these 28 diaries. On some pages, the writing may be different. Those entries have been made by my son whenever I am out of station or in the office. These entries pertain to the cash received from the various Shroff and cash paid to the Ceramic Tile manufacturers.

Q.5. Two types of records are maintained by you. One in the Writing pads and other is in Pocket small diaries. Please explain what they contain?

A.5. I am first explaining the details mentioned in the Writing pads. The Writing pads contain the details received from the Ceramic Tile manufacturers. The manufacturers or his representative calls me in the morning or noon and inform the amount of cash deposited from a particular city or sometimes the amount to be deposited in cash on that day from a particular city. The amount is then entered on the respective pages in 'thousands' i.e. '000' are to be added. If the amount is in thousand and hundreds then it is differentiated with /. For example Rs. 8800/- is written as 8/8 and in that case '00' are to be added. Then the name of the city is mentioned from where the amount is to be received. Lastly the name of the account is mentioned in code word i.e. the name of the Bank and or details of the account holder or his firm's name. After that will call the respective Shroff and inform him the account name and the name of city from where the amount is to be received and when he confirms the receipt, we put a code mark viz 'Star', 'Triangle' and 'X in a circle' against that entry. Different code mark has been allotted to different Shroffs. For example "Star" has been allotted to Shri Lalit Gangwani of Rajkot, 'Triangle' has been allotted to Shri Nitin Chikani of Rajkot and 'X in a circle' has been allotted to Shri Sandeep of Jamnagar."

8. On analyzing the documentary evidences collected during search at the office premises of M/s K.N. Brothers, Rajkot, M/s Maruti Enterprise, Rajkot, both Shroffs, and Shri Thakarshi Premji Kasundra, Morbi, broker/ middlemen, as well as deposition made by Shri Lalit Ashumal Gangwani, owner of M/s K.N. Brothers, Shri Nitinbhai Arjanbhai Chikani, actual owner of M/s. Maruti Enterprise, Rajkot and Shri Thakarshi Premji Kasundra in their respective Statements recorded under Section 14 of the Act, I find that customers of Appellant No, 1 had deposited cash amount in bank accounts of Shroff M/s K.N. Brothers, Rajkot, and M/s. Maruti Enterprise, Rajkot, which was converted into cash by them and handed over to Shri Thakarshi Premji Kasundra, Morbi, Broker/Middlemen, who admittedly handed over the said cash amount to Appellant No. 1.



8.1 On examining the Statements of Shri Lalit Ashumal Gangwani, owner of M/s K.N. Brothers, Rajkot, Shri Nitinbhai Arjanbhai Chikani, actual owner of M/s. Maruti Enterprise, Rajkot and Shri Thakarshi Premji Kasundra, Morbi, it is apparent that the said Statements contained plethora of the facts, which are in the knowledge of the deponents only. For example, Shri Thakarshi Premji Kasundra deciphered the meaning of each and every entry written in the private records seized from his premises. He also gave details of when and how much cash was delivered to which manufacturer. It is not the case that the said statements were recorded under duress or threat. Further, said statements have not been retracted. So, veracity of deposition made in said Statements is not under dispute.

8.2 I find that the Appellant No. 1 had devised such a *modus operandi* that it was almost impossible to identify buyers of goods or transporters who transported the goods. The Appellant No. 1 used to inform M/s K.N. Brothers, Rajkot, M/s Maruti Enterprise, Rajkot or Shri Thakarshi Premji Kasundra, Morbi, Middlemen, about deposit of cash in bank accounts of Shroff on receipt of communication from their buyers and such cash amount would reach to them through middlemen/brokers. When cash amount was deposited by buyers of goods in bank accounts of Shroff, the same was not reflected in bank statements, as emerging from the records. So, there was no details of buyers available who had deposited cash amount in bank accounts of Shroff. This way Appellant No. 1 was able to hide the identity of buyers of illicitly removed goods. It is a basic common sense that no person will maintain authentic records of the illegal activities or manufacture being done by it. It is also not possible to unearth all evidences involved in the case. The adjudicating authority is required to examine the evidences on record and decide the case. The Hon'ble High Court in the case of International Cylinders Pvt Ltd reported at 2010 (255) ELT 68 (H.P.) has held that once the Department proves that something illegal had been done by the manufacturer which *prima facie* shows that illegal activities were being carried, the burden would shift to the manufacturer.

8.3 It is also pertinent to mention that the adjudicating authority was not conducting a trial of a criminal case, but was adjudicating a Show Cause Notice as to whether there has been clandestine removal of excisable goods without payment of excise duty. In such cases, preponderance of probabilities would be sufficient and case is not required to be proved beyond reasonable doubt. I rely on the Order passed by the Hon'ble CESTAT, Bangalore passed in the case of Ramachandra Rexins Pvt. Ltd. Reported as 2013 (295) E.L.T. 116 (Tri. - Bang.),

wherein it has been held that,

“7.2 In a case of clandestine activity involving suppression of production and clandestine removal, it is not expected that such evasion has to be established by the Department in a mathematical precision. After all, a person indulging in clandestine activity takes sufficient precaution to hide/destroy the evidence. The evidence available shall be those left in spite of the best care taken by the persons involved in such clandestine activity. In such a situation, the entire facts and circumstances of the case have to be looked into and a decision has to be arrived at on the yardstick of ‘preponderance of probability’ and not on the yardstick of ‘beyond reasonable doubt’, as the decision is being rendered in quasi-judicial proceedings.”

8.4 I also rely on the Order passed by the Hon’ble Tribunal in the case of A.N. Guha & Co. reported in 1996 (86) E.L.T. 333(Tri.), wherein it has been held that,

“In all such cases of clandestine removal, it is not possible for the Department to prove the same with mathematical precision. The Department is deemed to have discharged their burden if they place so much of evidence which, *prima facie*, shows that there was a clandestine removal if such evidence is produced by the Department. Then the onus shifts on to the Appellants to prove that there was no clandestine removal”.

9. After careful examination of evidences available on record in the form of documentary evidences as well as oral evidence, I am of the considered opinion that the Department has discharged initial burden of proof for alleging clandestine removal of goods and the burden of proof shifts to the assessee to establish by independent evidence that there was no clandestine removal and the assessee cannot escape from the rigour of law by picking loopholes in the evidences placed by the Department. I rely on the decision rendered by the Hon’ble Madras High Court in the case of Lawn Textile Mills Pvt. Ltd. Reported as 2018 (362) E.L.T. 559 (Mad.), wherein it has been held that,

“30. The above facts will clearly show that the allegation is one of clandestine removal. It may be true that the burden of proving such an allegation is on the Department. However, clandestine removal with an intention to evade payment of duty is always done in a secret manner and not as an open transaction for the Department to immediately detect the same. Therefore, in case of clandestine removal, where secrecies involved, there may be cases where direct documentary evidence will not be available. However, based on the seized records, if the Department is able to *prima facie* establish the case of clandestine removal and the assessee is not able to give



any plausible explanation for the same, then the allegation of clandestine removal has to be held to be proved. In other words, the standard and degree of proof, which is required in such cases, may not be the same, as in other cases where there is no allegation of clandestine removal.”

10. The Appellant has contended that the Adjudicating authority erred in confirming the demand without allowing cross examination of the witnesses and in absence of the cross examination, the statement of third party cannot be relied upon by the Department. In this regard I find that the Appellant No. 1 had sought cross examination of proprietors of M/s K.N. Brothers and M/s Maruti Enterprise, Rajkot and Shri Thakarshi Premji Kasundra, Morbi during the course of adjudication. The adjudicating authority denied the request of cross examination by observing in the impugned order, *inter alia*, as under:

“16.3 On perusal of the material facts and relevant records, I observed that during the investigation, it is admitted facts by M/s. K. N. Brothers, Rajkot (Shroff) that cash transactions were routed from M/s. K. N. Brothers, Rajkot (Shroff) to Tile Manufacture. Further it is not a case here to establish whether Shroff has delivered the cash at Rajkot and distributed to Tile Manufacturer. Therefore, I do not find any merit on the point raised by the Noticee and is not sustainable and relevant to the case. In this connection, it is to stated that all the persons had admitted their respective role in this case, under Section 14 of the Central Excise Act, 1944, voluntarily, which is binding upon them and relied upon in the case of the Noticee. Further, I find that all the persons had not retracted their statements. Therefore, the same are legal and valid pieces of evidence in the eyes of law. It is a settled legal position that cross examination is not required to be allowed in all cases. Moreover, there is no provision under the Central Excise law to allow cross examination of the persons, during Adjudication of the case. The denial of opportunity of cross examination does not vitiate the Adjudication proceedings. The Adjudicating Authority was not conducting a trail of a criminal case, but was Adjudicating a SCN as to whether there has been clandestine removal of excisable goods without payment of duty. In this regard, I placed reliance upon the Hon'ble High Court of Madras judgment in the case of Commissioner of Central Excise Salem Vs. M/s. Erode Annai Spinning Mills (Pvt.) Ltd, reported at 2019(366) ELT, 647, wherein it was held that where opportunity of cross examination was not allowed, the entire proceedings will not be vitiated.”

10.1 I find that none of the Statements of Shroff/ Middlemen/Brokers recorded during investigation have been retracted nor there is any allegation of duress or threat during recording of Statements. Further, Shroff/Middlemen/broker have no reason to depose before the investigating officers something which is contrary to facts. It is also pertinent to mention that the present case was not one off case involving clandestine removal of goods by Tile manufacturers. It is on record that DGCEI had simultaneously booked offence cases against 186 such manufacturers for evasion of Central Excise duty who had adopted similar *modus operandi* by routing sale proceeds of illicitly cleared finished goods through Shroffs / Middlemen/brokers. It is also on records that out of said 186 manufacturers, 61 had admitted and had also paid duty evaded by them. So, the

documentary evidences gathered by the investigating officers from the premises of Shroffs / middlemen contained trails of illicitly removed goods and preponderance of probability is certainly against Appellant No. 1. It has been consistently held by the higher appellate authority that cross examination is not mandatory and it depends on facts of each and every case. I rely on the decision rendered by the Hon'ble Bombay High Court in the case of Patel Engineering Ltd reported as 2014 (307) E.L.T. 862 (Bom.), wherein it has been held that,

“23. Therefore, we are of the opinion that it will not be correct to hold that irrespective of the facts and circumstances and in all inquiries, the right of cross examination can be asserted. Further, as held above which rule or principle of natural justice must be applied and followed depends upon several factors and as enumerated above. Even if there is denial of the request to cross examine the witnesses in an inquiry, without anything more, by such denial alone, it will not be enough to conclude that principles of natural justice have been violated. Therefore, the judgments relied upon by Shri Kantawala must be seen in the factual backdrop and peculiar circumstances of the assessee's case before this Court.”

10.2 By following the above decision and considering the facts of the case, I hold that the adjudicating authority has not erred by not acceding request for cross examination of the witnesses, as sought by Appellant No. 1.

11. The Appellant has contended that the Adjudicating authority has erred in confirming the demand on the basis of the documentary evidences impounded from third party. It is settled law that no proceedings can be confirmed on the basis of the documents impounded from third party.

11.1 I find that the investigating officers gathered evidences from the premises of M/s K.N. Brothers, Rajkot, M/s Maruti Enterprise, Rajkot, both Shroffs and Shri Thakarshi Premji Kasundra, Morbi, Middlemen, which indicated that Appellant No. 1 routed sales proceeds of illicitly removed goods through the said Shroffs and Middlemen/Broker. The said evidences were corroborated by the depositions made by Shri Lalit Ashumal Gangwani, Owner of M/s K.N. Brothers, Shri Nitinbhai Arjanbhai Chikani, actual owner of M/s. Maruti Enterprise, Rajkot and Shri Thakarshi Premji Kasundra, Morbi during the course of adjudication. Therefore, demand cannot be said to be based only on private records of third party but duly corroborated by host of evidences recovered during investigation. The very fact of many persons involved negate the concept of third party. Further, as discussed supra, Appellant No. 1 had devised such a modus operandi that it was difficult to identify buyers of goods or transporters who transported the goods. In catena of decisions, it has been held that in cases of clandestine removal, it is not possible to unearth all the evidences and Department is not required to prove the case with mathematical precision. I rely on the Order passed by the Hon'ble CESTAT, Ahmedabad in the case of Apurva Aluminium



Corporation reported at 1996 (261) E.L.T. 515 (Tri. AhDirector.), wherein at Para 5.1 of the order, the Tribunal has held that,

“Once again the onus of proving that they have accounted for all the goods produced, shifts to the appellants and they have failed to discharge this burden. They want the department to show challanwise details of goods transported or not transported. There are several decisions of Hon’ble Supreme Court and High Courts wherein it has been held that in such clandestine activities, only the person who indulges in such activities knows all the details and it would not be possible for any investigating officer to unearth all the evidences required and prove with mathematical precision, the evasion or the other illegal activities”.

12. I have also examined the case law of Canon India Pvt. Ltd - 2021 (376) ELT 3 (SC) relied upon by Appellant No. 1. In the said case, Directorate of Revenue Intelligence had issued Show Cause Notice for recovery of Customs duty under Section 28 of the Customs Act, 1962. The Hon’ble Supreme Court held that Deputy Commissioner or Assistant Commissioner of Customs was the proper officer to issue Show Cause Notice under Section 28 ibid and Show Cause Notice issued by Additional Director General of the DRI was invalid and without any authority of law. In the present case, the Show Cause Notice was issued by the Deputy Director, Directorate General of Goods and Service Tax Intelligence, Ahmedabad and not by Directorate of Revenue Intelligence. Hence, facts of the present case are different. In any case, Deputy Director, Directorate General of Goods and Service Tax Intelligence is proper officer under Section 2(b) of the Act to issue Show Cause Notice under Section 11A of the Act, as held by the Hon’ble Allahabad High Court in the case of Raghunath International Ltd. reported as 2012 (280) E.L.T. 321 (All.). I, therefore, discard the reliance placed on the relied upon case law of Canon India Pvt. Ltd.

13. In view of above, the various contentions raised by Appellant No. 1 are of no help to them and they have failed to discharge the burden cast on them that they had not indulged in clandestine removal of goods. On the other hand, the Department has adduced sufficient oral and documentary corroborative evidences to demonstrate that Appellant No.1 indulged in clandestine removal of goods and evaded payment of Central Excise duty. I, therefore, hold that confirmation of demand of Central Excise duty amount of Rs. 9,14,689/- by the adjudicating authority is correct, legal and proper. Since demand is confirmed, it is natural consequence that the confirmed demand is required to be paid along with interest at applicable rate under Section 11AA of the Act. I, therefore, uphold order to pay interest on confirmed demand.

14. Regarding penalty imposed under Section 11AC of the Act, I find that Appellant No. 1 was found indulging in clandestine removal of goods and routed the cash through Shroff/Middlemen/Broker. The *modus operandi* adopted by Appellant No. 1 was unearthed during investigation carried out against them by DGCEI, Ahmedabad. Thus, this is a clear case of suppression of facts with intent to evade payment of duty. Considering the facts of the case, I am of the opinion that the adjudicating authority was justified in invoking extended period of limitation on the grounds of suppression of facts. Since invocation of extended period of limitation on the grounds of suppression of facts is upheld, penalty under Section 11AC of the Act is mandatory, as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold penalty of Rs. 9,14,689/- imposed under Section 11AC of the Act.

15. Regarding penalty imposed upon Appellants No. 2 to 7 under Rule 26 of the Rules, I find that the said Appellants were Directors of Appellant No. 1 and were the key persons of Appellant No. 1 and were directly involved in clandestine removal of the goods manufactured by Appellant No. 1 without payment of Central Excise duty and without cover of Central Excise Invoices. They were found concerned in clandestine manufacture and removal of such goods and hence, they were knowing and had reason to believe that the said goods were liable to confiscation under the Act and the Rules. I, therefore, find that imposition of penalty of Rs. 1,00,000/- each upon Appellants No. 2 to 7 under Rule 26(1) of the Rules is correct and legal.

16. In view of above, I uphold the impugned order and reject the appeals of Appellants No. 1 to 7.

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

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



अहमदाबाद,

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मिशन साह

अहमदाबाद

(AKHILESH KUMAR)
Commissioner (Appeals)

2022

By R.P.A.D.

To, 1. M/s Simond Fibertech Limited, Plot No. 2643/44, Kranti Gate, Main Road No. 13, Lodhika Industrial Estate, GIDC, Metoda, Rajkot-360021.	सेवामें, मैसर्स सिमोंड फाइबरटेक लिमिटेड, प्लॉट नंबर 2643/44, क्रांति गेट, मेन रोड नंबर 13, लोधिका इंडस्ट्रियल एस्टेट, जीआईडीसी, मेटोडा, राजकोट-360021।
2. Shri Chhaganbhai M. Patel, Managing Director of M/s Simond Fibertech Limited, Plot No. 2643/44, Kranti Gate, Main Road No. 13, GIDC, Metoda, Rajkot-360021.	श्री छगनभाई एम पटेल, प्रबंध निदेशक मेसर्स सिमोंड फाइबरटेक लिमिटेड, प्लॉट नंबर 2643/44, क्रांति गेट, मेन रोड नंबर 13, जीआईडीसी, मेटोडा, राजकोट-360021।
3. Shri Hemant S. Bhut, Director, M/s Simond Fibertech Limited, Plot No. 2643/44, Kranti Gate, Main Road No. 13, GIDC, Metoda, Rajkot-360021.	श्री हेमंत एस भुट, निर्देशक, मेसर्स सिमोंड फाइबरटेक लिमिटेड, प्लॉट नंबर 2643/44, क्रांति गेट, मेन रोड नंबर 13, जीआईडीसी, मेटोडा, राजकोट-360021।
4. Shri Vinodbhai T. Ramani, Director, M/s Simond Fibertech Limited, Plot No. 2643/44, Kranti Gate, Main Road No. 13, GIDC, Metoda, Rajkot-360021.	श्री विनोदभाई टी रमानी, निर्देशक, मेसर्स सिमोंड फाइबरटेक लिमिटेड, प्लॉट नंबर 2643/44, क्रांति गेट, मेन रोड नंबर 13, जीआईडीसी, मेटोडा, राजकोट-360021।
5. Shri Kantilal C. Chovatia, Director, M/s Simond Fibertech Limited, Plot No. 2643/44, Kranti Gate, Main Road No. 13, GIDC, Metoda, Rajkot-360021.	श्री कांतिलाल सी चौवटिया, निर्देशक, मेसर्स सिमोंड फाइबरटेक लिमिटेड, प्लॉट नंबर 2643/44, क्रांति गेट, मेन रोड नंबर 13, जीआईडीसी, मेटोडा, राजकोट-360021।
6. Shri Anand C. Patel, Director, M/s Simond Fibertech Limited, Plot No. 2643/44, Kranti Gate, Main Road No. 13, GIDC, Metoda, Rajkot-360021.	श्री आनंद सी पटेल, निर्देशक, मेसर्स सिमोंड फाइबरटेक लिमिटेड, प्लॉट नंबर 2643/44, क्रांति गेट, मेन रोड नंबर 13, जीआईडीसी, मेटोडा, राजकोट-360021।
7. Shri Daulatrai B. Pipalia Director, M/s Simond Fibertech Limited, Plot No. 2643/44, Kranti Gate, Main Road No. 13, GIDC, Metoda, Rajkot-360021.	श्री दौलतराय बी पिपलिया निर्देशक, मैसर्स सिमोंड फाइबरटेक लिमिटेड, प्लॉट नंबर 2643/44, क्रांति गेट, मेन रोड नंबर 13, जीआईडीसी, मेटोडा, राजकोट-360021।

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, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) ऊप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-II मंडल, राजकोट आयुक्तालय को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।



