



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,  
 रैस कोर्स रिंग रोड, / Race Course Ring Road,  
 राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in  
 DIN-20220764SX0000999BEE



रजिस्टर्ड टैक्स डी. द्वारा :-

अपील / फाइल नं./ Appeal / File No.	मूल नद्वार / OIONo.	दिनांक / Date
V2/146/RAJ/2021	17/BB/AC/2020-21	24-02-2021
V2/147/RAJ/2021	17/BB/AC/2020-21	24-02-2021
V2/148/RAJ/2021	17/BB/AC/2020-21	24-02-2021
V2/149/RAJ/2021	17/BB/AC/2020-21	24-02-2021

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

**RAJ-EXCUS-000-APP-128 TO 131 -2022**

आदेश का दिनांक / 22.06.2022 जारी करने की तारीख / 04.07.2022  
 Date of Order: Date of issue:

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित/  
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,  
 राजकोट / जामनगर / गांधीधाम द्वारा उपरोक्त जारी मूल आदेश से सुचित: /  
 Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central  
 Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

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

**M/s Samrat Sanitarywares Pvt Ltd, 8-A, National Highway At: Dhuva-363621, Taluka-  
 Wankaner Distt: Morbi**

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

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 360016 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-360016 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) 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, जहाँ 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 रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉजिस्ट बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं 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.5,000/- 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 place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहाँ 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 रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉजिस्ट बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं 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 fee of Rs. 1,000/- 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/-.



(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 प्रथम S.T.-7 में की जा सकेगी एवं उसके साथ अप्रयुक्त, केन्द्रीय उत्पाद शुल्क अध्यादेश (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और अप्रयुक्त द्वारा सहायक अप्रयुक्त अध्यादेश (अपील), 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 (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक 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, बशर्त कि इस धारा के अंतर्गत जमा किए जाने वाली अपेक्षित देय राशि इस करीब रूप 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 गई बतल राशि
- (iii) सेनबेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं- 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान नहीं 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 be filed 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 मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत जबरन संचित, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त विभाग, 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, जहाँ 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 मामले के विनिर्माण में प्रयुक्त कच्चे माल पर गयी गई केन्द्रीय उत्पाद शुल्क के छूट (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 कटौती क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो अप्रयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा निवृत्त की गई करीब अध्यादेश समाप्ति 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 प्रथम संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संघेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आवेदन 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 साथ-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 आवेदों का समावेश है तो प्रत्येक मूल आवेद के लिए शुल्क का भुगतान, उपरोक्त संघ से किया जाना चाहिए। इस उच्च के होते हुए भी की निम्न पत्रों के साथ प्रत्येक मूल आवेद के लिए अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।  
 In case if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट नगरी 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) नियमवली, 1982 में बर्णित एवं अन्य संबंधित मामलों को सम्बन्धित 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.cbcc.gov.in](http://www.cbcc.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.cbcc.gov.in](http://www.cbcc.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. 4", as detailed in Table below) against Order-in-Original No. 17/BB/AC/2020-21 dated 24.02.2021 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division, Morbi-II (hereinafter referred to as 'adjudicating authority') :-

Sl. No.	Appeal No.	Appellants	Name & Address of the Appellant
1.	V2/146/RAJ/2021	Appellant No.1	M/s Samrat Sanitarywares Pvt. Ltd. 8-A National Highway, At Dhuva, Wankaner, Distt. Morbi-363621.
2.	V2/147/RAJ/2021	Appellant No.2	Shri Devendra Bachubhai Patel, Director of M/s Samrat Sanitarywares Pvt. Ltd, Morbi.
3.	V2/148/RAJ/2021	Appellant No.3	Shri Harshad Kumar Ramjibhai Amrutiya, Director of M/s Samrat Sanitarywares Pvt. Ltd, Morbi
4.	V2/149/RAJ/2021	Appellant No. 4	Shri Pragjibhai Bachubhai Chatrola, Share Holder of M/s Samrat Sanitarywares Pvt. Ltd, Morbi

2. The facts of the case, in brief, are that Appellant No. 1 was engaged in manufacture of Sanitary Ware, Home Decor Ceramic Sanitary Ware, Ceramic Toilet Seats, Ceramic Wash Basin (commonly known as Ceramic Sanitaryware) falling under Chapter Sub Heading No. 69109000 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AADCS9206QEM002. Intelligence gathered by the officers of Directorate General of Central Excise Intelligence, Zonal Unit, Ahmedabad (DGCEI) 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 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, and M/s Maruti Enterprise, Rajkot, both Shroffs, and Shri Pravin Shirvi, Broker, it was revealed that the said Shroffs had received total amount of Rs. 2,48,21,781/- in their bank accounts during the period from 1.5.2014 to 26.11.2015, which were passed on to Appellant No. 1 in cash through Shri Pravin Shirvi, 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/Gr-C/Samrat/36-57/2019-20 dated 30.09.2019 was issued to Appellant No. 1 calling them to show cause as to why Central Excise duty amounting to Rs. 30,81,699/- 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 Nos. 2 to 4 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. 30,81,699/- was confirmed under Section 11A(4) along with interest under Section 11AA of the Act. The impugned order imposed penalty of Rs. 30,81,699/- 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. 2,50,000/- each upon Appellant No. 2, Appellant No 3 and Appellant No.4 under Rule 26(1) of the Rules.

4. Being aggrieved with the impugned order, Appellant Nos. 1 to 4 have preferred appeals on various grounds, *inter alia*, as below :-

Appellant No. 1:-

(i) The adjudicating authority has relied upon Statements of Shroff, Middleman/Broker and Partners while confirming the demand raised in the show cause notice. However, the adjudicating authority has passed the order without allowing cross examination of Departmental witnesses inspite of specific request made for the same. It is settled position of law that any statement recorded under Section 14 of the Central Excise Act, 1944 can be admitted as evidence only when its authenticity is established under provisions of Section 9D(1) of the Act and relied upon following case laws:

- (a) J.K. Cigarettes Ltd. Vs. CCE - 2009 (242) ELT 189 (Del).
- (b) M/s Jindal Drugs Pvt Ltd - 2016 (340) E.L.T. 67 (P & H)
- (c) Ambika International - 2018 (361) E.L.T. 90 (P & H)
- (d) G-Tech Industries - 2016 (339) E.L.T. 209 (P & H)
- (e) Andaman Timber Industries -2015-TIOL-255-SC-CX
- (f) Parmarth Iron Pvt. Ltd - 2010 (255) E.L.T. 496 (All.)

(ii) In view of the provisions of Section 9D of the Central Excise Act, 1944 and settled position of law by way of above referred judgments, since cross examination of departmental witnesses were not allowed their statements cannot be relied upon while passing the order and determining the duty amount payable by it. Especially when, there is no other evidence except so called oral evidences in the form of those statements and un-authenticated third-party private records. Therefore, in view of the above, impugned order passed by the learned Assistant Commissioner is liable to be set aside on this ground too.

(iii) That root cause of investigation which lead to demand of Central Excise duty viz. Bank Statements of various bank accounts referred in Statement dated 23.12.2015 of Shri Lalit Ashumal Gangawani, Actual Owner of M/s. K. N. Brothers, Rajkot, and also other bank accounts referred in Annexure - A to the SCN are neither supplied with SCN nor relied upon for demanding the duty. The same are neither seized from the premises of M/s. K. N. Brother nor produced by any of the person owner of M/s K.N. Brother during recording of their statements. When the source of the amount received by the Shroff is not relied



upon, how documents of middleman/broker can be relied upon? Certainly, same cannot be relied upon as Annexure - A is said to have been prepared on the basis of said two documents viz. Bank Statements of Shroff based at Rajkot and Daily Sheets maintained by the middlemen/brokers of Morbi. In absence of relying upon proof of receipt of fund by Shroff, it cannot be presumed that middlemen/brokers had received the funds which were distributed to tile manufacturer.

- (iv) That the adjudicating authority based on the scan copy of certain bank accounts of Shroff and scan copy of private records of middleman/broker and general statements of Shroff and middleman/broker tried to discard vital discrepancies raised by the appellant without any cogent grounds. There is no link between the bank accounts of Shroff and private records of middleman/broker. Therefore, in absence of receipt of cash by the Shroff, link of such payment to middleman/broker and payment of cash to appellant, it is erroneous to uphold the allegations against appellant. He not only failed to judge the allegations, documentary evidences and defence neutrally but also failed as quasi-judicial authority and following principal of natural justice by passing speaking order as well as following judicial discipline too. Therefore, impugned order passed by him is liable to be set aside on this ground too.
- (v) That in the entire case except for so called evidences of receipt of money from the buyers of tiles that too without identity of buyers of the goods as well as identity of receiver of such cash from the middleman, no other evidence of manufacture of tiles, procurement of raw materials including fuel and power for manufacture of tiles, deployment of staff, manufacture, transportation of raw materials as well as finished goods, payment to all including raw material suppliers, transporters etc. in cash, no inculpatory statement of manufacturer viz. appellant, no statement of any of buyer, no statement of transporters who transported raw materials, who transported finished goods etc. are relied upon or even available. It is settled position of law that in absence of such evidences, grave allegations clandestine removal cannot sustain. It is also settled position of law that grave allegation of clandestine removal cannot sustain on the basis of assumption and presumption and relied upon following case laws:
- (a) Synergy Steels Ltd.- 2020 (372) ELT 129 (Tri. - Del.)  
 (b) Savitri Concast Ltd. - 2015 (329) ELT 213 (Tri. - Del.)



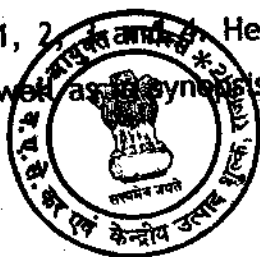
- (c) Aswani & Co. - 2015 (327) ELT 81 (Del.)  
 (d) Shiv Prasad Mills Pvt. Ltd. - 2015 (329) ELT 250 (Tri. - Del.)  
 (e) Shree Maruti Fabrics - 2014 (311) ELT 345 (Tri. - Ahmd.)

- (vi) That all the allegations are baseless and totally unsubstantiated, therefore, question of alleged suppression of facts etc. also does not arise. None of the situation suppression of facts, wilful mis-statement, fraud, collusion etc. as stated in Section 11A(4) of the Central Excise Act, 1944 exists in the instant case but it is alleged suppression of facts in the impugned notice based on the above referred general allegation.

Appellant Nos. 2, 3 and 4:-

- (i) Their firm has already filed appeal against the impugned order as per the submission made therein contending that impugned order is liable to be set aside *in limine* and therefore, order imposing penalty upon them is also liable to be set aside.
- (ii) That no penalty is imposable upon them under Rule 26(1) of the Central Excise Rules, 2002, as there is no reason to believe on their part that goods were liable to confiscation.
- (iii) That there is no single documentary evidence to sustain the allegations; that the seized documents are not at all sustainable as evidence for the reasons detailed in reply filed by the Appellant No. 1. Investigating officers has not recorded statement of any buyers, transporter, supplier etc. Allegation of clandestine manufacture and removal of goods itself is fallacious.
- (iv) That even duty demand has been worked out based on adverse inference drawn by investigation from the seized documents which itself are not sustainable evidence for various reasons discussed by their firm i.e. Appellant No.1 in their reply; that under the given circumstances no penalty can be imposed upon them under Rule 26 *ibid* and relied upon the following case laws:  
 (a) Manoj Kumar Pani - 2020 (260) ELT 92 (Tri. Delhi)  
 (b) Aarti Steel Industries - 2010 (262) ELT 462 (Tri. Mumbai)  
 (c) Nirmal Inductomet Pvt. Ltd. - 2010 (259) ELT 243 (Tri. Delhi)
- (v) In view of above, no penalty is imposable upon them under Rule 26 of the Central Excise Rules, 2002.

4. Personal Hearing in the matter was scheduled in virtual mode on 27.04.20221. Shri P.D. Rachchh, Advocate, appeared on behalf of Appellant No. 1, 2, 3 and 4. He reiterated the submissions made in appeal memorandum as well as synopsis submitted during hearing. He further stated that Shri Pravin



Shirvi, Middleman/broker, has said to have given name of "Samrat / Pragjibhai" for handing over cash but in private records of Shri Pravin Shirvi - only 'Pragjibhai' is written without any reference to M/s Samrat Sanitaryware Pvt Ltd. He further stated that statements of Shri Harshadbhai Amrutia, Director, and Shri Pragjibhai Chatrola, Shareholder, were recorded by the investigation and both have denied/ discarded the statement of Shri Pravin Shirvi. Statement of both are exculpatory. Therefore, in absence of any other evidence, demand cannot survive and may be dropped.

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 in the case is whether the impugned order, in the facts of this case, confirming demand on Appellant No. 1 and imposing penalty on Appellant Nos. 1 to 4 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 Tile 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 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 Pravin Shirvi, Morbi, Broker, to allege clandestine removal of goods by the Appellant 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



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 in turn 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 MARUTI 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 MARUTI 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.

*deu*



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 MARUTI 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 Pravin Shirvi, 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 Statement of Shri Pravin Shirvi, Morbi, recorded on 24.12.2015 under Section 14 of the Act. In the said statement, Shri Pravin Shirvi, *inter alia*, deposed that,

“Q.4. Please give the details of Ceramic Tile Manufacturers and Ceramic Tiles Showroom owners to whom do you give the cash which you receive from above mentioned Shroff located in Rajkot.

A.4. I am disbursing the cash to the following Tiles manufactures:

- (i) Sunheart Ceramics
- (ii) Famous Ceramics
- (iii) Samrat Sanitary (Sanitary wares manufacturers)
- (iv) Sunbeam Ceramics
- (v) Ramco Ceramics
- (vi) Akash Ceramics (at Kadi-Mansa)
- (vii) Gangotri Ceramics

....

Q-6 : I am showing you page 959 of seized file (1) (seized from his premises) which shows the details of transaction dated 31.7.2014. Please go through the same and explain the entries.

A.6 : I have gone through all the pages filed in seized file (1) and I state that all the documents filed in this file pertain to my business of disbursing cash. I explain the entries made in page 959 as under:

- (i) The entries pertain to transaction made by me on 31.7.2014
- (ii) The left side shows the amount received by me. ....

....

The right side shows the cash disbursed to respective persons as under:

Rs. 2,78,600/- has been paid in cash to Shri Viren of M/s Sunheart Ceramics.



*dy*

- (ii) 2<sup>nd</sup> and 3<sup>rd</sup> entry pertains to cash disbursement to watch manufacturers.
- (iii) 4<sup>th</sup> entry also pertains to cash disbursement to watch manufacturers except of Rs. 3,07,400/(1,00,000/+ 2,07,400/-) where the amount has been paid to Shri Kanti of Ramco Ceramics).
- (iv) 5<sup>th</sup> entry pertains to payment made to watch manufacturers.
- (v) 6<sup>th</sup> entry pertains to cash payment of Rs. 2,50,000/- to Shri Ravi of M/s Famous Ceramics.
- (vi) 7<sup>th</sup> entry pertains to payment of Rs. 27,00,000/- made to Shri Nilesh of GEB.
- (vii) 8<sup>th</sup> to 11<sup>th</sup> entries pertain to payment made to watch manufacturers.

Thus, in brief, I have made cash payment of Rs. 2,78,600/- to Shri Viren of Sunheart Ceramics (Brand name of M/s. Sunshine Tiles), Rs. 3,07,400/- to Shri Kanti of M/s Ramco (Brand name of M/s. Ramoji) and Rs. 2,50,000/- to Shri Ravi of M/s Famous Ceramics on 31.07.2014.

I further state that I have made the entries in similar manner in all the pages which you have seized.

I further state that on the pages where ever the cash have been paid, the name of the person of Tiles Manufacturers and the name of tile manufacturer has been mentioned as can be seen above.

Q.7. Please give the names of the tile manufacturer located in Morbi and other areas to whom you have made cash payment?

A.7.: I am giving you the name of the Tile Manufacturers and also the code name of the person and their mobile numbers of the said Tile manufacturer to whom I have handed cash:

- (i) Famous Ceramics (Wall Tiles) - Hitesh (Ravi) 9825150439.
- (ii) Famous Ceramics (Vitrified tiles)- Piyush - 9727770092.
- (iii) Exotica Ceramics – Jignesh - 9978916203.
- (iv) Samrat Sanitary Pragjibhai - 9825390308.
- (v) Gangotri Ceramics - Arun /Timber 9099014477.
- (vi) Akash Ceramics - Madam - 9925009871.
- (vii) Sunheart Ceramics - Viren - 9825627770.
- (viii) Sunbeam Ceramics - Sabi – 9825052244 ”

7.6 I have gone through Statement of Shri Pravin Patel, Partner of M/s Patel Sales Depot, Hyderabad recorded on 29.5.2019 under Section 14 of the Act. In the said statement, Shri Pravin Patel, *inter alia*, deposed that,

“प्रश्न 5. आपकी फ़र्म मेसर्स पटेल सेल्स डेपो, मियापुर, हैदराबाद किस – किस टाइल उत्पादकों से फाइनेंसियल ईयर 2014-15 से टाइल खरीद रही है उनके नाम बताइए ?

उत्तर 5. हमारी फ़र्म मेसर्स पटेल सेल्स डेपो, मियापुर, हैदराबाद निम्न टाइल उत्पादकों से टाइल खरीदते हैं

1. M/s. Exotica Ceramic Pvt. Ltd., Morbi.
2. M/s. Samrat Sanitaryware Pvt. Ltd. Morbi.
3. M/s. Vento Ceramic, Morbi
4. M/s. Santosh Cera Tilles, Morbi.
5. M/s. Coral Granito Pvt. Ltd., Morbi.
6. M/s. Zibba Ceramic Pvt. Ltd., Morbi.
7. M/s. Hillstone Ceramic Pvt. Ltd., Morbi.
8. M/s. Vegas Ceramic, Morbi.
9. M/s. Asta Ceramic Pvt. Ltd., Morbi.
10. M/s. Lorenzo Vitrified Tiles Pvt. Ltd., Morbi.



11. M/s. Kordiya Ceramic Pvt. Ltd., Morbi
12. M/s. Claystone Granito Pvt. Ltd., Morbi.
13. M/s. Alcora Ceramic, Morbi.
14. M/s. Itaca Ceramic Pvt. Ltd., Morbi.

प्रश्न 10. क्या आपने उपरोक्त वर्णित आपके सप्लायर मेसर्स एक्सोटिका सिरेमिक प्रा. लि., मोरबी, मेसर्स सम्राट सेनेटरिवेयर प्रा. लि., मोरबी, मेसर्स संतोष सेरा टाइल्स मोरबी, एवं मेसर्स कोरल ग्रनिटो प्रा. लि., मोरबी से बिना सेंट्रल एक्साइज़ इन्वाइस प्राप्त किये एवं बिना सेंट्रल एक्साइज़ ड्यूटि टाइल्स की खरीद फाइनेंसियल ईयर 2014-15 एवं 2015-16 में की है और उसका पेमेंट कैश में किया है ?

उत्तर 10. आप साहब के पूछने पर मैं बताता हूँ की मेरी फ़र्म मेसर्स पटेल सेल्स डेपो, मियापुर, हैदराबाद ने फाइनेंसियल ईयर 2014-15 एवं 2015-16 के बीच में मेसर्स एक्सोटिका सिरेमिक प्रा. लि., मोरबी, मेसर्स सम्राट सेनेटरिवेयर प्रा. लि., मोरबी, मेसर्स संतोष सेरा टाइल्स मोरबी से सेंट्रल एक्साइज़ इन्वाइस जारी किये हुये टाइल्स की खरीद की थी और उसका पेमेंट चेक या कैश में किया था । उसके साथ ही ऊपर वर्णित तीनों टाइल उत्पादकों से बिना सेंट्रल एक्साइज़ ड्यूटि भरे टाइल्स की खरीद भी उस पीरियड के दौरान की थी । मेसर्स कोरल ग्रनिटो प्रा. लि., मोरबी से हमने बिना सेंट्रल एक्साइज़ ड्यूटि भरे टाइल्स की खरीद 2014-15 एवं 2015-16 में कभी भी नहीं की है और उसका पेमेंट कैश में नहीं किया है।

प्रश्न 11. मेसर्स एक्सोटिका सिरेमिक प्रा. लि., मोरबी, मेसर्स सम्राट सेनेटरिवेयर प्रा. लि., मोरबी, मेसर्स संतोष सेरा टाइल्स मोरबी, से फाइनेंसियल ईयर 2014-15 एवं 2015-16 में बिना सेंट्रल एक्साइज़ ड्यूटि भरे टाइल्स की खरीद जिसका पेमेंट कैश में किया है का विवरण बताइये ?

उत्तर 11. आप साहब के पूछने पर मैं बताता हूँ की उसका कोई डिटेल या डाक्यूमेंट्स मेरे पास उपलब्ध नहीं है क्योंकि बिना सेंट्रल एक्साइज़ ड्यूटि भरे टाइल्स की खरीद व उसका कैश में किया पेमेंट का विवरण हम कहीं भी दर्ज नहीं करते थे व उसका रिकॉर्ड भी नहीं रखते थे इसका कोई बिल या इन्वाइस भी हमने प्राप्त नहीं किया था और इस सारे माल को हमने कैश में ही बेचा था जिसका कोई डिटेल मेरे पास उपलब्ध नहीं है आप साहब के पूछने पर मैं आगे बताता हूँ की कभी - कभी इन्वाइस में दर्ज क्वान्टिटी के अलावा कुछ एक्सट्रा टाइल सिरेमिक बॉक्स भी कंसाइनमेंट के साथ में रिसीव करते थे जो ओवर एंड अबोव इन्वाइस क्वान्टिटी होते है जैसे इन्वाइस में दर्ज क्वान्टिटी 400 टाइल बॉक्स है और 400 टाइल बॉक्स पर सेंट्रल एक्साइज़ ड्यूटि भरी होती थी पर वास्तव में 500 टाइल बॉक्स रिसीव करते थे और इन्वाइस के दर्ज क्वान्टिटी के अलावा बाकी के 100 टाइल बॉक्स बिना सेंट्रल एक्साइज़ ड्यूटि भरे आते थे इसी तरह से इन ऊपर वर्णित टाइल मेन्यूफ़ैक्चरर्स से कुछ एक्सट्रा टाइल बॉक्स बिना सेंट्रल एक्साइज़ ड्यूटि भरे टाइल्स की इस पीरियड में खरीद की थी ।

प्रश्न 12. आप इन टाइल मैनुफ़ैक्चरर्स को कैश पेमेंट कैसे भेजते थे ?

उत्तर 12. हम यह कैश पार्टी अकाउंट में जमा करवाते थे जो अकाउंट उन टाइल मैनुफ़ैक्चरर्स द्वारा दिये जाते थे और कैश जमा करवाने की जानकारी इन टाइल मैनुफ़ैक्चरर्स को दे देते थे ।

प्रश्न 13. क्या आप उपरोक्त थर्ड पार्टी ( तीसरे व्यक्ति ) को व्यक्तिगत रूप से जानते है ?

उत्तर 13. मैं व्यक्तिगत रूप से इनको नहीं जानता हूँ उपरोक्त बैंक अकाउंट नंबर टाइल मैनुफ़ैक्चरर्स द्वारा दिये जाते थे उनके कहे अनुसार हम इनके द्वारा दिये गए बैंक अकाउंट में कैश पेमेंट जमा करवाते थे । "



8. On analyzing the documentary evidences collected during search at the premises of M/s K.N. Brothers, Rajkot, and M/s Maruti Enterprise, Rajkot, both Shroffs, and Shri Pravin Shirvi, Morbi, broker/ middleman, as well as deposition made by Shri Lalit Ashumal Gangwani, owner of M/s K.N. Brothers, Shri Nitinbhai Arjanbhai Chikani of M/s Maruti Enterprise, and Shri Pravin Shirvi 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 Shroffs M/s K.N. Brothers, Rajkot and M/s Maruti Enterprise, Rajkot, which was converted into cash by them and handed over to Shri Pravin Shirvi, Morbi, Broker/Middleman, 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 of M/s Maruti Enterprise and Shri Pravin Shirvi, 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 Pravin Shirvi 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 Tile manufacturer and even concerned person who had received cash amount. He deposed that he handed over cash to Shri Pragjibhai of Appellant No. 1 herein, and also gave mobile number of Shri Pragjibhai. Further, Shri Pravin Patel, Partner of M/s Patel Sales Depot, Hyderabad, admitted to have purchased goods from Appellant No. 1 without invoices and without payment of Central Excise duty and deposited cash in the bank account given by Appellant No. 1. 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 Pravin Shirvi, 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 the 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".

10. 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.”

11. The Appellant has contended that since cross examination of Departmental witnesses were not allowed, their statements cannot be relied upon while passing the order and determining the duty amount payable by it. In this regard I find that the Appellant No. 1 had sought cross examination of Shri Lalit Ashumal Gangwani and Shri Jayesh Solanki of M/s K.N. Brothers and Shri Pravin Shirvi, 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:

“24.5 Further as discussed above, all the witnesses have 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 witnesses have 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. I find that the Noticee has not provided any independent evidence to show that there was no clandestine removal. In this regard, I place reliance upon the judgement of Hon'ble High Court of Madras in the case of Commissioner of Central Excise Salem Vs M/s Erode Annai Spinning Mills (Pvt.) Ltd, reported at 2019 (366) ELT647, wherein it was held that where opportunity of cross examination was not allowed, the entire proceedings will not be vitiated. ....”

11.1 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 of Morbi. 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 fora 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.”

11.2 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.

13. The Appellant has contended that in the entire case except for so called evidences of receipt of money from the buyers of tiles through Shroff/ Middlemen/ Broker, no other evidence of manufacture of tiles, procurement of raw materials including fuel and power for manufacture of tiles, deployment of staff, manufacture, transportation of raw materials as well as finished goods, payment to all including raw material suppliers, transporters etc. in cash have been gathered. The Appellant further contended that no statement of any of buyers, transporters who transported raw materials and finished goods etc. are relied upon or even available. It is settled position of law that in absence of such evidences, grave allegations of clandestine removal cannot sustain and relied upon various case laws.

13.1 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, or Shri Pravin Shirvi, 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 of M/s Maruti Enterprise and Shri Pravin Shirvi, Morbi, during the course of adjudication. Shri Pravin Patel, Partner of M/s Patel Sales Depot, Hyderabad admitted to have purchased goods from Appellant No. 1 without invoices and without payment of Central Excise duty during the years 2014-15 and 2015-16 and deposited cash in the bank account given by Appellant No. 1. Further, as discussed supra, Appellant No. 1 had devised such a modus operandi that it was difficult to identify all 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. Ahmd.), 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”.

14. Appellant No. 1 has contended that Shri Pravin Shirvi, Middleman/broker, has said to have given name of “Samrat / Pragjibhai’ for handing over cash but in private records of Shri Pravin Shirvi, only ‘Pragjibhai’ is written without any reference to M/s Samrat Sanitaryware Pvt Ltd. In this regard, it is observed from the statement of Shri Pravin Shirvi that he gave name of Pragjibhai and his mobile number to whom he had handed over cash pertaining to Appellant No. 1. Thus, Shri Pravin Shirvi identified that Pragjibhai, whose name was appearing in his private record, was collecting cash from him on behalf of Appellant No.1. Hence, I discard the contention as not sustainable.

15. Appellant No. 1 has contended that statements of Shri Harshadbhai Amrutia, Director, and Shri Pragjibhai Chatrola, Shareholder, were recorded by the investigation and both have denied/ discarded the statement of Shri Pravin Shirvi and therefore, in absence of any other evidence, demand cannot survive and may be dropped. In this regard, as discussed above, the investigating officers gathered evidences from the premises of M/s K.N. Brothers, Rajkot, M/s Maruti Enterprise, Rajkot, both Shroffs, and Shri Pravin Shirvi, Morbi, Middlemen, which indicated that Appellant No. 1 had routed sales proceeds of illicitly removed goods through the said Shroffs and Middlemen/Broker. Further, 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 of M/s Maruti Enterprise and Shri Pravin Shirvi, Morbi, as well as Shri Pravin Patel, Partner of M/s Patel Sales Depot, Hyderabad, who admitted to have purchased goods from Appellant No. 1 without invoices and without payment of Central Excise duty. Thus, non admission by Directors of Appellant No. 1 during investigation will not undermine evidences gathered during investigation. I, therefore, discard this contention as not sustainable.

16. 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. 30,81,699/- by the adjudicating authority is correct, legal and proper. Since demand is confirmed,



*Handwritten signature*

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.

17. The Appellant has contended that all the allegations are baseless and totally unsubstantiated, therefore, question of alleged suppression of facts etc. also does not arise. The Appellant further contended that none of the situation suppression of facts, wilful mis-statement, fraud, collusion etc. as stated in Section 11A(4) of the Central Excise Act, 1944 exists in the instant case but it is alleged suppression of facts in the impugned order based on the general allegation. I find that the 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. 30,81,699/- imposed under Section 11AC of the Act.

18. Regarding penalty imposed upon Appellant No. 2, Appellant No. 3 and Appellant No. 4 under Rule 26 of the Rules, I find that the Appellants were Directors/ Share Holder of Appellant No. 1 and were looking after day-to day affairs 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. Both appellants admitted during investigation about clandestine removal of goods. 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. 2,50,000/- each upon Appellant No. 2, Appellant No. 3 and Appellant No. 4 under Rule 26(1) of the Rules is correct and legal.



19. In view of above, I uphold the impugned order and reject the appeals of Appellants No. 1 to 4.

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

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

सत्यापित, attested

*Dilip J. Pandya*  
दिलिप जे. पंड्या  
Dilip J. Pandya  
अधीक्षक (अपील)  
Superintendent (Appeal)

*Akhilesh Kumar*  
22 June, 2022  
(AKHILESH KUMAR)  
Commissioner (Appeals)

By R.P.A.D.

To, 1. M/s Samrat Sabnitarywares Pvt. Ltd. 8-A National Highway, At Dhuva, Wankaner, Distt. Morbi-363621.	सेवा में, सम्राट सेनेटरीवेर प्रा ली, 8 -ए नेशनल हाइवे दुवा, वांकानेर, डिस्ट्रिक्ट मोरबी - 363621
2. Shri Devendra Bachubhai Patel, Director, M/s Samrat Sabnitarywares Pvt. Ltd. 8-A National Highway, At Dhuva, Wankaner, Distt. Morbi-363621.	श्री देवेन्द्र बचुभाइ पटेल, डाइरेक्टर, सम्राट सेनेटरीवेर प्रा ली, 8 -ए नेशनल हाइवे दुवा, वांकानेर, डिस्ट्रिक्ट मोरबी - 363621
3. Shri Harshad Kumar Ramjibhai Amrutiya Director, M/s Samrat Sabnitarywares Pvt. Ltd., 8-A National Highway, At Dhuva, Wankaner, Distt. Morbi-363621.	श्री हरशदकुमार रंजिभाइ अमृतिया डाइरेक्टर, सम्राट सेनेटरीवेर प्रा ली, 8 -ए नेशनल हाइवे दुवा, वांकानेर, डिस्ट्रिक्ट मोरबी - 363621.
4. Shri Pragjibhai Bachubhai Chatrola, Share Holder, M/s Samrat Sabnitarywares Pvt. Ltd., 8-A National Highway, At Dhuva, Wankaner, Distt. Morbi-363621.	श्री प्रग्जिभाई बचुभाइ छत्रोला, शेर होल्डर, सम्राट सेनेटरीवेर प्रा ली, 8 -ए नेशनल हाइवे दुवा, वांकानेर, डिस्ट्रिक्ट मोरबी - 363621.

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) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल मोरबी-II, राजकोट को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

