



::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

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रजिस्टर्ड टाक ए.डी. द्वारा :-

DIN-20221064SX0000999B43

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक / Date
	V2/467 to 476/RAJ/2021	20/D/2021-22	06-07-2021

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

RAJ-EXCUS-000-APP-346 TO 355-2022

आदेश का दिनांक /
Date of Order: **29.09.2022** जारी करने की तारीख /
Date of issue: **06.10.2022**

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 / सेवा कर वस्तु एवं सेवा कर,
 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. Sonex Ceramics, Survey No. 129/1, 8-A National Highway,
 Lalpur, Morbi-363642**

इस आदेश (अपील) से व्यक्ति 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 सेवा कर 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 को 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 मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं
 2, आर के पुरम, नई दिल्ली, को 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 सेवा कर अपीलीय न्यायाधिकरण
 (सिस्टम) की पश्चिम क्षेत्रीय पीठों को, द्वितीय तल, बहुमाली भवन आसर्वा अहमदाबाद- 360016 को 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) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित
 किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग
 और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/-
 रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय
 न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए।
 संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर)
 के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of
 Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be
 accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty
 demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of
 crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where
 the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated.
 Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवा कर नियमवली, 1994, के नियम 9(1) के तहत
 निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें
 (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवा कर की मांग, ब्याज की मांग और लगाया गया
 जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/-
 रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा
 के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का
 भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-
 पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed
 in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be
 accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be
 accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is
 Rs. 5 Lakhs or less, Rs.5000/- 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 88 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 प्रामाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलवाली 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 अपीलवाली 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 अपीलवाली प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जमा मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये 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) सेनवेट जमा की ली गई मूलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलवाली प्राधिकारी के समक्ष विचाराधीन स्थान अर्थात् अपील की लागू नहीं होगी।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

- (C) भारत सरकार 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 अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के परगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परगमन के दौरान, या किसी भंडार गृह में भी 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 an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट 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 समायावधि पर या बाद में पारित किए गए हैं। /
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 - का भुगतान किया 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 उपायुक्त दंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की किसी पदों कार्य से बचने के लिए यथास्थिति अपीलवाली न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाते हैं। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थान आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लेना 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 अपीलवाली न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों को 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 अपीलवाली 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. 10', as detailed in Table below) against Order-in-Original No. 20/D/2021-22 dated 06.07.2021 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division, Morbi-I (hereinafter referred to as 'adjudicating authority'):-

Sl. No.	Appeal No.	Appellants	Name & Address of the Appellant
1.	V2/467/RAJ/2021	Appellant No.1	M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642
2.	V2/468/RAJ/2021	Appellant No.2	Dinaben K. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642
3.	V2/469/RAJ/2021	Appellant No.3	Ajay K. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642
4.	V2/470/RAJ/2021	Appellant No.4	Kantila P. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642
5.	V2/471/RAJ/2021	Appellant No.5	Jayaben K. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642
6.	V2/472/RAJ/2021	Appellant No.6	Shailesh M. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642
7.	V2/473/RAJ/2021	Appellant No.7	Jayantilal P. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642
8.	V2/474/RAJ/2021	Appellant No.8	Karshan P. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642
9.	V2/475/RAJ/2021	Appellant No.9	Lalit M. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642
10.	V2/476/RAJ/2021	Appellant No.10	Prabhaben J. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642

The facts of the case, in brief, are that Appellant No. 1 was engaged in



manufacture of Ceramic Floor & Wall Tiles falling under Chapter 69 of the erstwhile Central Excise Tariff Act, 1985 and was holding Central Excise Registration No. AAHF54767RXM001. 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 Tiles 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 Tiles 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 P. C. Enterprise, Rajkot, both Shroffs, it was revealed that the said Shroffs had received total amount of Rs.92,38,399/- in their bank accounts during the period from August, 2015 to December, 2015, which were passed on to Appellant No. 1 in cash through Broker / Middleman M/s Sarvodaya Shroff, Morbi. The said amount was alleged to be sale proceeds of goods removed clandestinely by Appellant No. 1.

Show Cause Notice No. DGGI/AZU/Group-A/Sonex/36-169/2019-20 dated



31.12.2019 was issued to Appellant No. 1 calling them to show cause as to why Central Excise duty amounting to Rs.11,54,800/- 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 10 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.11,54,800/- was confirmed under Section 11A(4) along with interest under Section 11AA of the Act. The impugned order imposed penalty of Rs.11,54,800/- 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. 50,000/- each upon Appellant Nos. 2 to 10 under Rule 26(1) of the Rules.

4. Being aggrieved with the impugned order, Appellant Nos.1 to 10 have preferred appeals on various grounds, *inter alia*, as below :-

Appellant No. 1:-

- (i) The adjudicating authority has demanded the Central Excise duty of Rs. 11,54,800/- on a total amount of Rs. 92,38,399/- allegedly received by the Appellant No. 1 through broker/ middlemen, namely M/s. Sarvodaya Shroff as per details given in Annexure-B to the SCN; that the adjudicating authority erred in failing to appreciate that Shri Shailesh Marvania, owner, and Shri Sandip Sanariya, Accountant-cum-cashier of M/s. Sarvodaya Shroff stated in their respective statements that they had made the payment of such cash amounts to M/s. Sonex Plus (Sl. No. 39 *ibid*) and M/s. Sonex Gold (Sr. No. 58 *ibid*) which are separate excisable units engaged in manufacture of ceramic tiles; that they have not named the appellant No. 1 as recipient of any cash on any account; that observation made by adjudicating authority that "Sonex Plus" / "Sonex Gold" and authorized person "Dev"/ "Valjibhai" stands for Appellant No. 1 are baseless as both are separate excisable units engaged in the manufacture of ceramic tiles and no statement of Shri Dev and Valjibhai is recorded and relied on in the SCN; that the entire proceedings demanding Central Excise duty, interest and penalty is liable to be quashed and set aside.



- (ii) The adjudicating authority erred in failing to appreciate that the Central Excise duty is leviable on manufacturing activity resulting in excisable goods and not movement of cash; that duty cannot be demanded by applying rate of Central Excise duty any amount without establishing the quantum of excisable purportedly manufactured by such person and hence the pre-requisite is to establish the activity of manufacture; that there is no an iota of evidence to establish even one of i.e. quantum of excisable goods manufactured, receipt and consumption of raw material, consumption of electricity, labor, packing material, transportation etc. and hence the impugned order is liable to be quashed.
- (iii) That the proceedings have been carried out behind the back of appellant inasmuch as no statement of appellant was recorded; that statement of not even one buyer is cited in the SCN and hence the allegation of clandestine manufacture and removal of excisable goods is not established; that no demand of tax and imposition of penalty can be carried out on mere assumptions and presumptions and hence the impugned order is liable to be quashed and set aside.
- (iv) That the impugned order has also travelled beyond the scope of Show Cause Notice inasmuch as the SCN does not cite the statements of Shri Sandipbhai Sanariya and Shri Shaileshbhai Marvania of M/s. Sarvodaya Shroff to support the allegations of clandestine removal against the appellant and hence the impugned order is liable to be quashed and set aside.

Appellant Nos. 2 to 10:-

That the penalty imposed on all 09 partners in an indiscriminate manner without pinpointing their individual role; that the appellant's unit is not even named by the middleman as recipient of cash; that there is no direct or indirect evidence against appellant warranting penal action and hence the appellant No. 2 to 10 are not liable to penalty under Rule 26(1) of the Act; that when penalty is imposed on partnership firm, separate penalty on the partners is not warranted.

4. Personal Hearing in the matter was scheduled on 06.09.2022. Shri Vikas Mehta, Consultant, appeared on behalf of Appellant Nos. 1 to 10. He re-iterated



submissions made in appeal memorandum in respect of all the appeals. He further stated that he would make additional written submission based on which case may be decided.

4.1 In additional written submission filed vide email dated 9.9.2022, it has, inter alia, been contended that,

(i) The Appellant vide letter dated 22.02.2021 had made categorical submissions before the adjudicating authority that:

1. They are engaged in manufacture of sanitary ware items only and never manufactured wall tiles or floor tiles.
2. They also produced Certificate dated 30.06.2020 of Chartered Engineer as well as Certificate dated 07.07.2020 of Chartered Accountants to support the above factual position.
3. Show Cause Notice was mis-directed to them inasmuch as Shri Sailesh Marvania and Shri Sandipbhai Samariya of M/s. Sarvodaya Shroff, named as middleman in the case, have named M/s. Sonex Plus and M/s. Sonex Gold, which are entirely different manufacturing units.

The above facts have not been controverted by Ld. Adjudicating Authority by citing any cogent evidences.

(ii) It is urged to give due consideration to the above facts and allow the appeals filed by M/s. Sonex Ceramics and Partners, with consequential relief.

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 Appellant Nos. 1 to 10 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 Tiles 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 Tiles 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 Tiles 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 Tiles 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 Tiles 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 Tiles 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 M/s K. N. Brothers, Rajkot, and M/s P C Enterprises, Rajkot, both Shroffs, and M/s Sarvodaya Shroff, 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



"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 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 P.C. 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 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 Siddhanth 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 have gone through the Statement of Shri Sandipbhai Bachubhai Sanariya, Accountant-Cum-Cashier of M/s. Sarvodaya Shroff, Morbi, recorded on 24.12.2015 under Section 14 of the Act. In the said statement, Shri Sandipbhai Bachubhai Sanariya, *inter alia*, deposed that,

"Q.2 Please state about business or service activities and working pattern of your firm, M/s. Sarvodaya Shroff?"

A.2 I am working as an Account-Cum Cashier in M/s. Sarvodaya Shroff, having office at 1st floor, Above Shree Ram Farsan, Chandramuli Complex, Ravapar Road, Bapa Sitaram Chowk, Morbi since five years. Shri Shaileshbhai Odhavjibhai Marvaniya, is the owner of M/s. Sarvodaya Shroff who is residing at "Keshav", Darpan-3, Ravapar Road, Morbi. Shri Shaileshbhai Odhavjibhai Marvaniya, is also one of the partner of M/s. Sun World Vitrified, Ghuntu Road, Rajkot, a tiles manufacturer, having share of 20%. I state that M/s. Sarvodaya Shroff is doing the business of commission agent for disbursing the cash deposited by the customers of various Tile manufacturers, Traders & Showroom located at Rajkot, throughout India, since last seven years. We are charging commission Rs.50/- to Rs.100/- per lakh from our client and varies from client to client. Our main Shroffs are M/s. Maruti Enterprises, M/s. JP Enterprise, M/s. India Enterprise & M/s. PC Enterprise, all belonged to Shri Nitinbhai of Rajkot and M/s. Ambaji Enterprise, 101 1st Floor, Sathguru Arcade, Dhebar Road, One Way, Rajkot (now closed) and M/s. K. N. Brothers, Office No. 505, 5th Floor Unicorn Centre, Near Panchnath Mandir, Main Road, Rajkot.

The procedure is that initially we take the bank account details from our main Shroff and convey the same to the tile manufacturers and also to Tiles showroom owners. These manufacturers and Tiles showroom owners in turn forward the said details to their customers located all over India, who wish to deposit cash against sale of tiles by them. The customers, as per instructions of these manufacturers and showroom owners, deposit cash in these accounts and inform them about the deposits made by them. These manufacturers and showroom owners in turn inform us about the details of the account in which the amount has been deposited and also the amount and the city from where the amount has been deposited. We then inform the concerned Shroff, in whose account the cash amount to us in Morbi at our office and we after deducting our commission, hand over the cash to the concerned Ceramic Tiles manufacturers and Ceramic Tiles Showroom owners. I further state Shri



Shaileshbhai Odhavjibhai Marvaniya used to come to our office in morning to give cash & detail statements of the parties to whom cash is to be delivered and in the evening I used to hand over day to day details of all transactions Cash Balance, Cash acknowledgement slips, Cash Book statement to Shri Shaileshbhai Ordhavjibhai Marvaniya.

Q.3. Please produce the documents / details relating to the transactions made with Shroffs and clients, Cash acknowledgement slips showing handing over cash to respective client, Cash Book Statements, Commission for the last five years of your firm M/S. Sarvodaya Shroff?

A.3. As I have been asked to produce above documents, I immediately contacted my owner Shri Shaileshbhai to hand over the documents /details as asked for submission. In turn Shri Shaileshbhai asked his nephew, Shri Chirag Rameshbhai Marvaniya, to deliver some documents to me which I produce today as detailed below.

- (i) A file containing copy of statements showing detail of cash deposits in respective bank accounts, throughout India, for the period from 03.12.2015 to 19.12.2015, Rajkot office Rojmel for December'2015 Cash Acknowledgement Slip, containing pages from 1 to 799.
- (ii) A file containing Cash Acknowledgement Slip, containing pages from 1 to 849.
- (iii) A file containing Cash Acknowledgement Slip, containing pages from 1 to 701.

I further state, we maintain a diary wherein entries of all transactions relating to receipts of cash from Shroffs and disbursement of the same to the respective clients with commission deducted are being shown by us. Shri Shaileshbhai keeps the diary in his own custody and every morning he gives us the same along with cash balance for making daily entries and we hand over back the diary to Shri Shaileshbhai at the end of each day. Therefore, I am not in a position to produce the same. However, I assure that I will inform my owner Shri Shaileshbhai to produce the same

I further state that in Cash Acknowledgement slip as per the direction of Shri Shaileshbhai, we used to mention the cash amount delivered in thousands viz. Rs.99,000/- would be written as "99". In the cash acknowledgement slip we used to write the name of the person along with his mobile number to whom cash delivered and on the back side we write the code name of the client representing the tiles factories / showrooms with details of amounts deposited in bank accounts at each center. The figures are also mentioned in the same pattern i.e. in thousand on each slip.

I further state that I don't know the place where Shri Shaileshbhai Odhavjibhai Marvaniya keeps details of all transactions, Cash, Cash Acknowledgement slips, Cash Book Statements etc. on everyday and where all these documents of the past period are lying. Only Shri Shaileshbhai knows about the whereabouts of the documents of the past period.

Q.4. Please give details of Ceramic Tiles manufacturer and Ceramic Tile Showroom along with name of the persons with mobile numbers to whom you used to deliver cash received from above mentioned Shroffs located in Rajkot.

.....

Q.8 I am showing you the statement dated 22.12.2015 of Shri Solanki JS Mohanlal S/o Shri Mohan Lal Solanki, Proprietor of M/s. K.N. Brothers, Office No. 505, 5th Floor, Unicorn Centre Near Panchnath Mandir, Main Road, Rajkot and statement dated 24.12.2015 of Shri Nitinbhai Arjanbhai Chikani, S/o Shri Arjanbhai Jadavjibhai Chikani, Block No. 403 Vasant Vihar Patidar Chowk Sadhu Vasvani Road, Rajkot. Please go through it and officer your comments.

A.8 I have gone through the statement dated 22.12.2015 of Shri Solanki JS Mohanlal S/O Shri Mohan Lal Solanki, Proprietor of M/s. K. N. Brothers, Office No. 505, 5th Floor, Unicorn Centre, Near Panchnath Mandir, Main Road, Rajkot and statement dated 24.12.2015 of Shri Nitinbhai Arjanbhai Chikani S/o Shri Arjanbhai Jadavjibhai Chikani, Block No. 403, Vasant Vihar Patidar Chowk, Sadhu Vasvani Road, Rajkot and put my dated signature in token of the correctness of the facts mentioned therein and I am in full agreement of the same.

Q.9 Please provide the details of bank accounts of main Shroffs wherein the customers of your clients deposit cash on day to day basis.

A.9. I state that Bank Account number 7933005900000048 of Punjab National Bank, Kuvada Branch, Rajkot of our Shroff namely M/s. KN brothers; Bank Account Number 3766002100027112 to Punjab National Bank, Kalavad Road, Rajkot of our Shroff M/s. P. C. Enterprise are the accounts dedicated to our firms, wherein we instruct the clients to deposit cash by their customers on day to day basis from different locations meant to be delivered to the tiles manufacturer/show rooms of the manufactures".

7.4.1 I have also gone through the further Statement of Shri Sandipbhai Bachubhai Sanariya of M/s. Sarvodaya Shroff, Morbi, recorded on 02.01.2016 under Section 14 of the Act. In the said statement, Shri Sandipbhai Bachubhai Sanariya, *inter alia*, deposed that,

"Q.2. During recording your Statement dated 24.12.15, you stated that you maintain a diary for recording all transactions relating to receipts of cash from Shroffs and disbursement of the same to the respective clients. You had further stated that you would inform your owner Shri Shaileshbhai to produce the same. Please produce the same.

A.2. In this regards, I state that I had informed to Shri Shaileshbhai on the same day to handover the diary and other related records to DGCEI Office, Ahmedabad immediately. Sir, I do not know the reason why he has yet not produced the said records to your office till date.

Q.3. Please produce the documents / details relating to the transactions made with Shroffs and clients, cash acknowledgement slips showing handling over cash to respective clients, Cash book statements, commission etc. for the last five years of your firm M/a. Sarvoday Shroff.

A.3. Sir, in my statement dated 24.12.15, I have already stated that the documents / details relating to the transactions made with Shroffs and clients, Cash Acknowledgement slips showing handling over cash to respective clients, Cash book statements, commission etc. in respect of my firm M/S. Sarvoday Shroff have been kept by Shri Shaileshbhai, Owner of the firm. Further, I have already produced records which I received from Shri Chirag, nephew of Shri Shaileshbhai on 24.12.15 to your office during recording my statement. I do



not have any records of the firm with me and therefore I am not in a position to produce the same.

Q.4. please peruse following files produced by you during recording your statement dated 24.12.15

- (i) A file containing copy of a statements showing details of cash deposits in respective bank accounts, throughout India, for the period from 03.12.2015 to 19.12.2015, Rajkot office Rojmel for December'2015, Cash Acknowledgement Slip, containing pages from 1 to 799;
- (ii) A file containing Cash Acknowledgement Slip, containing pages from 1 to 849;
- (iii) A file containing Cash Acknowledgement Slip, containing pages from 1 to 701.

Please explain who has prepared these records.

A.4. Today, I have perused following files which I had produced during recording my statement dated 24.12.15. I state that I have prepared all cash acknowledgement slips which are available in the all three files. I have prepared these slips to record the name and details of the persons who collect cash from us, cash amount, place from where the same was deposited etc. As regards, statements showing details of cash deposits in respective bank accounts as available in File No. 1 at P. No. 31 to 55, I state that the same were prepared by M/S. K.N. Brothers and handed over to us for our record. Further, statements showing details of cash deposits in respective bank accounts as available in File No. 1 at P. No. 01 to 29, I state that the same were prepared by Shri Nitin of M/S. P.C. Enterprise and handed over to us for our record.

Q.5. Please explain and de-code entries as recorded by you in all cash acknowledgement slips produced by you

A.5. Today, I have gone through the records as produced by me. Sir, please provide me blank worksheet containing columns like S. no., Record No., Page No., date, name of the person of the manufacturer who collects the cash, name of the Ceramic Tiles manufacturer at Morbi, Actual cash handed over, City from where the cash was deposited, Remarks etc Please provide me sufficient amount of blank seats with basic data of first three columns. I will sit here and verify acknowledgement slips and fill up the de-coded factual data in the said blank worksheets in my own handwriting.

Q.6. Today, as requested, you are provided following three worksheets having first three columns duly filled up. Please peruse each acknowledgement slip and fill up the de-coded data in respective column and returned all seats duly signed by you.

A.6. Today, I have gone through each cash acknowledgement slips as produced by me. After going through and verification, I have filled up all the details like date, name of the person of the manufacturer who collects the cash, name of the Ceramic Tiles manufacturer at Morbi, Actual cash handed over, City from where the cash was deposited, remarks etc. in my own handwriting and as per my understanding. I hereby submit following worksheets correctly filled up and signed by me.

For File A-I- Worksheet pages from 01 to 27

For File A-I- Worksheet pages from 01 to 31 and

For File A-I- Worksheet pages from 01 to 26

8. On analyzing the documentary evidences collected during investigation from M/s K.N. Brothers, Rajkot, and M/s P.C. Enterprise, Rajkot, both Shroffs, ~~Shri Nitin~~ Shri Nitin, Morbi, broker, as well as deposition made by Shri Lalit



Ashumal Gangwani, owner of M/s K.N. Brothers, Rajkot, and Shri Nitinbhai Arjanbhai Chikani, actual owner of M/s P.C. Enterprise, Rajkot, and Shri Sandipbhai Bachubhai Sanariya of M/s. Sarvodaya Shroff, Morbi, 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 M/s K.N. Brothers, Rajkot and M/s P.C. Enterprise, Rajkot, both Shroffs, which was converted into cash by them and handed over to M/s Sarvodaya Shroff, Morbi, Brokers/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. M/s PC Enterprise, Rajkot, and Shri Sandipbhai Bachubhai Sanariya of M/s. Sarvodaya Shroff, 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 Sandipbhai Bachubhai Sanariya deciphered the meaning of each and every entry written in their private records. They also gave details of when and how much cash was delivered to which Tile manufacturers and even concerned persons who had received cash amount. 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 and information contained in seized documents 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, Shroff, or Shri Sandipbhai Bachubhai Sanariya, broker/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.)

It is 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 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 Appellant 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 2003 (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 failing to appreciate that Shri Shailesh Marvania, owner, and Shri Sandip Sanariya, Accountant-cum-cashier of M/s. Sarvodaya Shroff, stated in their respective statements that they had made the payment of such cash amounts to M/s. Sonex Plus (Sl. No. 39 *ibid*) and M/s. Sonex Gold (Sr. No. 58 *ibid*) which are separate excisable units engaged in manufacture of ceramic tiles; that they have not named the Appellant No. 1 as recipient of any cash on any account.

10.1 In this regard, it is observed from Para 10.2.4 of the Investigation Report annexed with Show Cause Notice dated 31.12.2019 that during the course of investigation Shri Sandip Sanariya identified the name of Appellant No. 1 during de-coding of diaries/ sheets maintained by him. Further, it was identified by Shri Sandip Sanariya during investigation that name of “Valjibhai” was written in daily sheets maintained by them for handing over cash pertaining to Appellant No.1. This is apparent from TABLE-H appended to Para 10.2.4 of the Investigation Report, which is reproduced as under:

Sr. No.	Name of the authorized person of manufacturer written in the daily sheet	Name of the tiles manufacturer identified by the middleman (Broker) viz. Shri Shaileshbhai, Prop. Of M/s. Sarvoday Shroff, Morbi.
1.	Nirav	M/s. Acme Ceramic
2.

50.	Valjibhai	M/s. Sonex Ceramics

59.	Sonalika	M/s. Wagheshwar Tiles Co. (Sonalika)



10.2 In view of above, demand has been raised to Appellant No. 1 on the basis of daily sheets maintained by M/s Sarvodaya Shroff and it has nothing to do with M/s Sonex Plus and M/s Sonex Gold, which may be different legal entities. Thus, arguments advanced by the Appellants are devoid of any merits and not sustainable.

11. The Appellant No. 1 further argued that the adjudicating authority erred in failing to appreciate that the Central Excise duty is leviable on manufacturing activity resulting in excisable goods and not movement of cash; that duty cannot be demanded by applying rate of Central Excise duty any amount without establishing the quantum of excisable items purportedly manufactured by such person and hence the pre-requisite is to establish the activity of manufacture; that statement of not even one buyer is cited in the SCN and hence the allegation of clandestine manufacture and removal of excisable goods is not established; that there is no iota of evidence to establish even one of i.e. quantum of excisable goods manufactured, receipt and consumption of raw material, consumption of electricity, labor, packing material, transportation etc. and hence the impugned order is liable to be quashed.

11.1 I find that the investigating officers gathered evidences from the premises of M/s K.N. Brothers, Rajkot, Shroff, which indicated that Appellant No. 1 routed sales proceeds of illicitly removed goods through the said Shroff 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. P.C. Enterprise, Rajkot and Shri Sandipbhai Bachubhai Sanariya of M/s. Sarvodaya Shroff, Morbi, broker, during the course of adjudication. 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. 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”.

11.2 Apart from above, it is also pertinent to mention that the 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 / Middleman/brokers and 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 / middleman contained trails of illicitly removed goods. Further, Appellant No. 1 has failed to explain the purpose /source of such huge amount of cash, which was received from Shroffs through M/s Sarvodaya Shroff, Morbi and whether the said cash amount was accounted for in their books of account or otherwise. Considering evidences available on record, it is apparent that the cash amount received by Appellant No. 1 from said Shroffs pertained to clandestine removal of goods. I, therefore, discard the contention of Appellant No. 1 as not sustainable.

12. Appellant No.1 has contended that the impugned order has travelled beyond the scope of Show Cause Notice inasmuch as the SCN does not cite the statements of Shri Sandipbhai Sanariya and Shri Shailesh Marvania of M/s. Sarvodaya Shroff to support the allegations of clandestine removal against the appellant.

12.1 It is observed from the Show Cause Notice that common investigation was carried out against 186 Tile manufacturers for alleged clandestine removal of goods and Appellant No. 1 was one of such manufacturers. The outcome of common investigation was elaborated in investigation report and annexed with Show Cause Notice. In the said investigation report, Statements of Shri Sandip Sanariya of M/s Sarvodaya Shroff, middleman/ broker as well as documentary evidences collected from M/s Sarvodaya Shroff have been reproduced and analyzed at Para 10 to 10.3. Further, Statements of Shri Sandip Sanariya and Shri Shailesh Marvania of M/s Sarvodaya Shroff formed part of relied upon documents as per Annexure-RUD of Show Cause Notice. Thus, the impugned order has not travelled beyond the scope Show Cause Notice. I, therefore, discard this contention as not sustainable.

13. Appellant No. 1 contended that they had submitted before the authority that they were engaged in manufacture of sanitary ware



dy
3

items only and never manufactured wall tiles or floor tiles and had also produced Certificate dated 30.6.2020 of Chartered Engineer as well as Certificate dated 7.7.2020 of Chartered Accountants to support the above factual position.

13.1 In this regard, it is observed from the investigation report annexed with Show Cause Notice that common investigation was conducted against 186 manufacturing units involving same *modus operandi* and majority of the said units were engaged in the manufacture of Tiles. This may be a reason for wrongly mentioning in the Show Cause Notice that Appellant No. 1 was engaged in the manufacture of Ceramic Floor and Wall Tiles falling under Chapter 69 of the Central Excise Tariff Act, 1985. It is further observed from Para 3 of Show Cause Notice that summons was issued by the investigating officers to Appellant No. 1 on 15.9.2016 and 22.1.2019 for causing inquiry for alleged evasion of Central Excise duty, directing them to submit certain documents like Sales Register, cash register, Balance Sheets etc, which they partially complied with. Further, Central Excise Registration No. and GST No. of Appellant No. 1 have also been mentioned in Para 1 of the Show Cause Notice. Thus, it is not under dispute that inquiry was being conducted against Appellant No. 1. Further, evidences gathered from the premises M/s K. N. Brothers, Rajkot and M/s P. C. Enterprise, Rajkot, Shroffs and M/s Sarvodaya Shroff, Middleman indicted that Appellant No. 1 was engaged in clandestine removal of goods and had routed sales proceeds of illicitly removed goods through the said Shroff and Middleman/Broker. So, wrong mentioning of product will not vitiate the entire proceedings. I, therefore, discard this contention as not sustainable.

14. 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 upon 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. 11,54,800/- 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.

15. Regarding penalty imposed upon Appellant Nos. 2 to 10 under Rule 26 of the Rules, I find that the said Appellants were Partners 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. 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. 50,000/- each upon Appellant Nos. 2 & 10 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 Appellant Nos. 1 to 10.

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

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

सत्यापित / Attested

Joseph

Superintendent
Central GST (Appeals)
Rajkot

Akhilesh Kumar
29th September, 2022
(AKHILESH KUMAR)
Commissioner (Appeals)

By R.P.A.D.

To,	सेवामें,
1. M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642	मेसर्स सोनेक्स सिरमिक्स, सर्वे संख्या 129/1, राष्ट्रिय धोरीमार्ग 8A, लालपुर, मोरबी, गुजरात-363642
2. Dinaben K. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642	दीनाबेन के। वडावीया, निदेशक, मेसर्स सोनेक्स सिरमिक्स, सर्वे संख्या 129/1, राष्ट्रिय धोरीमार्ग 8A, लालपुर, मोरबी, गुजरात-363642
3. Ajay K. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642	श्री अजय के। वडावीया, निदेशक, मेसर्स सोनेक्स सिरमिक्स, सर्वे संख्या 129/1, राष्ट्रिय धोरीमार्ग 8A, लालपुर, मोरबी, गुजरात-363642
4. Kantila P. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642	श्री कांतिलाल पी। वडावीया, निदेशक, मेसर्स सोनेक्स सिरमिक्स, सर्वे संख्या 129/1, राष्ट्रिय धोरीमार्ग 8A, लालपुर, मोरबी, गुजरात-363642
5. Jayaben K. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642	जयाबेन के। वडावीया, निदेशक, मेसर्स सोनेक्स सिरमिक्स, सर्वे संख्या 129/1, राष्ट्रिय धोरीमार्ग 8A, लालपुर, मोरबी, गुजरात-363642
6. Shailesh M. Vadaviya, Partner of	श्री शैलेश एम। वडावीया, निदेशक,



M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642	मेसर्स सोनेक्स सिरमिक्स, सर्वे संख्या 129/1, राष्ट्रिय धोरीमार्ग 8A, लालपुर, मोरबी, गुजरात-363642
7. Jayantilal P. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642	श्री जयंतिलाल पी। वडावीया, निदेशक, मेसर्स सोनेक्स सिरमिक्स, सर्वे संख्या 129/1, राष्ट्रिय धोरीमार्ग 8A, लालपुर, मोरबी, गुजरात-363642
8. Karshan P. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642	श्री करशन पी। वडावीया, निदेशक, मेसर्स सोनेक्स सिरमिक्स, सर्वे संख्या 129/1, राष्ट्रिय धोरीमार्ग 8A, लालपुर, मोरबी, गुजरात-363642
9. Lalit M. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642	श्री ललित एम। वडावीया, निदेशक, मेसर्स सोनेक्स सिरमिक्स, सर्वे संख्या 129/1, राष्ट्रिय धोरीमार्ग 8A, लालपुर, मोरबी, गुजरात-363642
10. Prabhabeen J. Vadaviya, Partner of M/s. Sonex Ceramics, Survey No. 129/1, 8A National Highway, Lalpur, Morbi -363642	प्रभाबेन जे। वडावीया, निदेशक, मेसर्स सोनेक्स सिरमिक्स, सर्वे संख्या 129/1, राष्ट्रिय धोरीमार्ग 8A, लालपुर, मोरबी, गुजरात-363642

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-1, राजकोट को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।



