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Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 11462 of 2016

(Arising out of OIA:BHV-EXCUS-000-APP-001-002-16-17 dated 15/04/2016 passed by Commissioner of Central Excise and Service Tax- Bhavnagar)

Bharat Sheth **.....Appellant**
Plot No. 619,
B-2, Geetha Chowk, Jain Derasar Road,
Bhavnagar,Gujarat

VERSUS

C.C.E. & S.T.-Bhavnagar **.....Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

WITH

- **Excise Appeal No. 11313 of 2018 (Madhav Industrial Corporation)**
- **Excise Appeal No. 11315 of 2018 (Madhav Steel)**
- **Excise Appeal No. 11316 of 2018 (Jivrajbhai R Patel)**
- **Excise Appeal No. 11502 of 2018 (Jivrajbhai R Patel)**
- **Excise Appeal No. 11514 of 2018 (Vinodbhai Amarshibhai Patel)**
- **Excise Appeal No. 11556 of 2018 (Shri Bharat Manharbhai Sheth)**
- **Excise Appeal No. 11727 of 2018 (Shri Bharat Manharbhai Sheth)**
- **Excise Appeal No. 12066 of 2018 (Guru Ashish Ship Breakers)**
- **Excise Appeal No. 12067 of 2018 (Sukesh Aggarwal)**
- **Excise Appeal No. 12134 of 2018 (Vinodbhai Amarshibhai Patel)**
- **Excise Appeal No. 12162 of 2018 (Kishorbhai Amarshibhai Patel)**
- **Excise Appeal No. 12276 of 2018 (Shree Ram Shipping Industries Pvt Ltd)**
- **Excise Appeal No. 12278 of 2018 (Talshibhai Shamjibhai Patel)**
- **Excise Appeal No. 12488 of 2018 (Vinodbhai Amarshibhai Patel)**
- **Excise Appeal No. 12509 of 2018 (Kishorbhai Amarshibhai Patel)**
- **Excise Appeal No. 12678 of 2018 (Kishorbhai Amarshibhai Patel)**
- **Excise Appeal No. 12679 of 2018 (Vinodbhai Amarshibhai Patel)**
- **Excise Appeal No. 12859 of 2018 (Salasar Balaji Ship Breakers Pvt Ltd)**
- **Excise Appeal No. 12860 of 2018 (Sanjivkumar Shyamsunder Chaudhary)**
- **Excise Appeal No. 10281 of 2019 (Shree Bharat Manharbhai Sheth)**
- **Excise Appeal No. 10596 of 2019 (Bhadresh Jaysukhal Shah)**
- **Excise Appeal No. 10597 of 2019 (Dalkan Ship Breaking Ltd.)**

- **Excise Appeal No. 10614 of 2019 (Shree Bharat Manharbhai Sheth)**
- **Excise Appeal No. 10670 of 2019 (Vijaykumar And Co)**
- **Excise Appeal No. 10804 of 2019 (Iqbal Ahmed Lakhani)**
- **Excise Appeal No. 10805 of 2019 (Malwi Ship Breaking Co.)**
- **Excise Appeal No. 10614 of 2019 (Shree Bharat Manharbhai Sheth)**
- **Excise Appeal No. 10851 of 2019 (Kishorbhai Amarshibhai Patel)**
- **Excise Appeal No. 10852 of 2019 (Vinodbhai Amarshibhai Patel)**
- **Excise Appeal No. 10856 of 2019 (Vinodbhai Amarshibhai Patel)**
- **Excise Appeal No. 10859 of 2019 (Kishorbhai Amarshibhai Patel)**
- **Excise Appeal No. 10924 of 2019 (Vinodbhai Amarshibhai Patel)**
- **Excise Appeal No. 10937 of 2019 (Kishorbhai Amarshibhai Patel)**
- **Excise Appeal No. 10961 of 2019 (Shree Saibaba Ispat India Pvt Ltd)**
- **Excise Appeal No. 10968 of 2019 (Marilines Ship Breakers Pvt Ltd)**
- **Excise Appeal No. 10969 of 2019 (Kamal Khemka)**
- **Excise Appeal No. 10970 of 2019 (Shri Vijaykumar Kakaram Bansal)**
- **Excise Appeal No. 11060 of 2019 (Hatimi Steels)**
- **Excise Appeal No. 11260 of 2019 (Kishorbhai Amarshibhai Patel)**
- **Excise Appeal No. 11329 of 2019 (Vk Bansal)**
- **Excise Appeal No. 11330 of 2019 (Bansal Infracon Ltd)**
- **Excise Appeal No. 11662 of 2019 (Vinodbhai Amarshibhai Patel)**
- **Excise Appeal No. 11665 of 2019 (Kishorbhai Amarshibhai Patel)**
- **Excise Appeal No. 11693 of 2019 (Vinodbhai Amarshibhai Patel)**
- **Excise Appeal No. 11785 of 2019 (Vinodbhai Amarshibhai Patel)**
- **Excise Appeal No. 11813 of 2019 (Vinodbhai Amarshibhai Patel)**
- **Excise Appeal No. 11888 of 2019 (Kishorbhai Amarshibhai Patel)**
- **Excise Appeal No. 11963 of 2019 (Vinodbhai Amarshibhai Patel)**
- **Excise Appeal No. 11968 of 2019 (Shri Krishna Enterprise)**
- **Excise Appeal No. 12134 of 2019 (Priya Blue Industries Pvt Ltd)**
- **Excise Appeal No. 12135 of 2019 (Shri Sanjay P Mehta)**
- **Excise Appeal No. 12201 of 2019 (Vinodbhai Amarshibhai Patel)**
- **Excise Appeal No. 12202 of 2019 (Hareshbhai Gajendrasinh Parmar)**
- **Excise Appeal No. 12203 of 2019 (Shiv Corporation)**
- **Excise Appeal No. 12212 of 2019 (Hareshbhai Gajendrasinh Parmar)**
- **Excise Appeal No. 12214 of 2019 (Shiv Ship Breaking Co)**
- **Excise Appeal No. 12228 of 2019 (Kishorbhai Amarshibhai Patel)**
- **Excise Appeal No. 12259 of 2019 (Mahendra Ambalal Rana)**
- **Excise Appeal No. 12319 of 2019 (Paras Steel Corporatin)**
- **Excise Appeal No. 12320 of 2019 (Dalkan Ship Breaking Ltd.)**

- **Excise Appeal No. 12323 of 2019 (Vijaykumar & Co)**
- **Excise Appeal No. 12336 of 2019 (Kishorbhai Amarshibhai Patel)**
- **Excise Appeal No. 12445 of 2019 (VINODBHAI AMARSHIBHAI PATEL)**
- **Excise Appeal No. 12469 of 2019 (R K Industries Llp)**
- **Excise Appeal No. 12470 of 2019 (Mukesh Balabhai Patel)**
- **Excise Appeal No. 12497 of 2019 (KISHORBHAI AMARSHIBHAI PATEL)**
- **Excise Appeal No. 12498 of 2019 (KISHORBHAI AMARSHIBHAI PATEL)**
- **Excise Appeal No. 12562 of 2019 (Kishorbhai Amarshibhai Patel)**
- **Excise Appeal No. 12565 of 2019 (MAHENDRA AMBALAL RANA)**
- **Excise Appeal No. 12599 of 2019 (VINODBHA AMARSHIBHAI PATEL)**
- **Excise Appeal No. 12635 of 2019 (VINODBHAI AMARSHIBHAI PATEL)**
- **Excise Appeal No. 12636 of 2019 (SHREE RAM STEEL & ROLLING INDUSTRIES)**
- **Excise Appeal No. 12736 of 2019 (BATUKBHAI BALABHAI PATEL)**
- **Excise Appeal No. 10200 of 2021 (VINODBHAI AMARSHIBHAI PATEL)**
- **Excise Appeal No. 10268 of 2021 (KISHORBHAI AMARSHIBHAI PATEL)**
- **Excise Appeal No. 10269 of 2021 (CHETANBHAI M PATEL)**
- **Excise Appeal No. 10270 of 2021 (SHREE RAM VESSEL SCRAP PVT LTD)**
- **Excise Appeal No. 10278 of 2021 (MAHENDRA AMBALAL RANA)**
- **Excise Appeal No. 10504 of 2021 (VINODBHAI AMARSHIBHAI PATEL)**

APPEARANCE:

Shri. J C Patel, Ms. Shamita Patel, Shri. Rahul Gajera, Shri. Uday Madhukar Joshi Shri. S J Vyas Shri P.D Rachchh, (Advocates) & Shri. Sarju Mehta (C.A) & Shri. R C Prasad, (Consultant) appeared for the Appellant

Shri Dharmendra Kanjani, Superintendent (Authorized Representative)for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 10428-10506 /2022

DATE OF HEARING: 11.03.2022
DATE OF DECISION: 11.05.2022

RAMESH NAIR

The following appeals are arising out of orders wherein a common investigations/evidences were relied upon therefore, they are taken up together for disposal. A chart showing the details of Appeals and demand therein is as under:-

Sr. no	Name	Appeal No	Impugned Order	Date	Duty	Penalty
1	Vinodbhai Amarshibhai patel	E/10924/2019	OIA : BHV-EXCUS-000-APP-016-019-2019	24/01/2019	0	1655682
2	Vijay kumar & Co	E/10670/2019	OIA : BHV-EXCUS-000-APP-337-339-2018-19	26.12.2018	5202584	5202584
3	Kishorbhai Amarshibhai Patel	E/11665/2019	OIA : BHV-EXCUS-000-APP-055-058-2019	27/02/2019	0	751488
4	Vinodbhai Amarshibhai patel	E/11662/2019	OIA : BHV-EXCUS-000-APP-055-058-2019	27/02/2019	0	751488
5	Kishorbhai Amarshibhai Patel	E/11888/2019	OIA : BHV-EXCUS-000-APP-048-053-2019	25/02/2019	0	829631
6	Vinodbhai Amarshibhai patel	E/12488/2018	OIA : BHV-EXCUS-000-APP-228-231-2017-18	9.3.2018	0	2082765
7	Vinodbhai Amarshibhai patel	E/10200/2021	OIO : BHV-EXCUS-000-COMM-007-2020-21	26/11/2020	0	2000000
8	Shree Ram Steel & Rolling Industries	E/12636/2019	OIA : BHV-EXCUS-000-APP-188-195-2019	27.6.2019	5292904	5292904
9	Vinodbhai Amarshibhai patel	E/12635/2019	OIA : BHV-EXCUS-000-APP-188-195-2019	27/06/2019	0	1295021
10	Vinodbhai Amarshibhai patel	E/12599/2019	OIA : BHV-EXCUS-000-APP-184-187-2019	27/06/2019	0	350000
11	Shree Ram Shipping Industries P Ltd	E/12276/2019	OIA : BHV-EXCUS-000-APP-239-242-2017-18	23/03/2018	1470476	5832920
12	Sukesh Aggarwal	E/12067/2018	OIA : BHV-EXCUS-000-APP-181-184-2017-18	8.3.2018	0	1598759
13	Vinodbhai Amarshibhai patel	E/12134/2018	OIA : BHV-EXCUS-000-APP-181-184-2017-18	8.3.2018	0	18051
14	Kishorbhai Amarshibhai Patel	E/12162/2018	OIA : BHV-EXCUS-000-APP-181-184-2017-18	8.3.2018	0	18051
15	Guru Ashish Ship Breakers	E/12066/2018	OIA : BHV-EXCUS-000-APP-181-184-2017-18	8.3.2018	1598759	1598759
16	Salasar Balaji Ship Breakers P Ltd	E/12859/2018	OIA : BHV-EXCUS-000-APP-132-136-2018-19	12.6.2018	2860021	2860021
17	Sanjivkumar Shyamsunder Chaudhary	E/12860/2018	OIA : BHV-EXCUS-000-APP-132-136-2018-19	12.6.2018	0	3101633
18	Kishorbhai Amarshibhai Patel	E/12509/2018	OIA : BHV-EXCUS-000-APP-239-242-2017-18	23/03/2018	0	2891968
19	Vinodbhai Amarshibhai patel	E/12679/2019	OIA : BHV-EXCUS-000-APP-132-136-2018-19	06-12-18	0	48380
20	Kishorbhai Amarshibhai Patel	E/12678/2018	OIA : BHV-EXCUS-000-APP-132-136-2018-19	06-12-18	0	48380
21	Bharat Manharbhai Sheth	E/11556/2018	OIA : BHV-EXCUS-000-APP-142-147-2017-18	27/02/2018	0	107114
22	Bharat Manharbhai Sheth	E/11727/2018	OIA : BHV-EXCUS-000-APP-228-231-2017-18	26/03/2018	0	764606
23	Bharat Sheth	E/11462/2016	OIA : BHV-EXCUS-000-APP-002-16-17	15/04/2016	0	19500

24	Jivrajbhai R patel	E/11316/2018	OIA : BHV-EXCUS-000-APP-228-231-2017-18	3.9.2018	0	4785885
25	Jivrajbhai R patel	E/11502/2018	OIA : BHV-EXCUS-000-APP-139-141/2017-18	19/02/2018	0	3834615
26	Vinodbhai Amarshibhai patel	E/11514/2018	OIA : BHV-EXCUS-000-APP-139-141/2017-18	19/02/2018	0	1097853
27	Madhav Industrial Corporation	E/11313/2018	OIA : BHV-EXCUS-000-APP-139-141/2017-18	19.2.2018	3834615	3834615
28	Madhav Steel	E/11315/2018	OIA : BHV-EXCUS-000-APP-228-231-2017-18	9.3.2018	4785882	4785882
29	Mahendra Ambalal Rana	E/12565/2019	OIA : BHV-EXCUS-000-APP-188-195-2019	27/06/2019	0	796849
30	Kishorbhai Amarshibhai Patel	E/12562/2019	OIA : BHV-EXCUS-000-APP-176-179-2019	21.6.2019	0	232080
31	Kishorbhai Amarshibhai Patel	E/12498/2019	OIA : BHV-EXCUS-000-APP-188-195-2019	27/06/2019	0	1295021
32	Kishorbhai Amarshibhai Patel	E/12497/2019	OIA : BHV-EXCUS-000-APP-184-187-2019	27/06/2019	0	350000
33	Mukesh Balabhai Patel	E/12470/2019	OIA : BHV-EXCUS-000-APP-134-141-2019	30/05/2019	0	1500000
34	R K Industries	E/12469/2019	OIA : BHV-EXCUS-000-APP-134-141-2019	30/05/2019	15203892	15203892
35	Talshibhai Shamjibhai Patel	E/12278/2018	OIA : BHV-EXCUS-000-APP-239-242-2017-18	23/03/2018	0	4362444
36	Dalkan Ship Breaking Ltd	E/10597/2019	OIA : BHV-EXCUS-000-APP-343-346-2018-19	31/12/2018	7197648	7197648
37	Bansal Infracon Ltd	E/11330/2019	OIA : BHV-EXCUS-000-APP-016-019-2019	24/01/2019	9023902	9023902
38	V K Bansal	E/11329/2019	OIA : BHV-EXCUS-000-APP-016-019-2019	4.2.2019	0	2534038
39	Batukbhai Blabhai Patel	E/12736/2019	OIA : BHV-EXCUS-000-APP-188-195-2019	27/06/2019	0	639939
40	Hareshbhai Gajendrasinh Parmar	E/12212/2019	OIA : BHV-EXCUS-000-APP-184-187-2019	27/06/2019	0	1000000
41	Shiv Ship Breaking Co	E/12214/2019	OIA : BHV-EXCUS-000-APP-184-187-2019	27/06/2019	2294967	5506860
42	Iqbal Ahmed Lakhani	E/10804/2019	OIA : BHV-EXCUS-000-APP-010-011-2019	24/01/2019	0	550000
43	Malwi Ship Breaking Co	E/10805/2019	OIA : BHV-EXCUS-000-APP-010-011-2019	24/01/2019	0	5368630
44	Shiv Corporation	E/12203/2019	OIA : BHV-EXCUS-000-APP-176-179-2019	26/06/2019	10601392	10601392
45	Hareshbhai Gajendrasinh Parmar	E/12202/2019	OIA : BHV-EXCUS-000-APP-176-179-2019	21.6.2019	0	2036827
46	Marinelines ship breakers p ltd	E/10968/2019	OIA : BHV-EXCUS-000-APP-055-058-2019	27/02/2019	8237636	8237636
47	Shree Saibaba Ispat India P Ltd	E/10961/2019	OIA : BHV-EXCUS-000-APP-048-053-2019	25/02/2019	7513872	7513872
48	Vinodbhai Amarshibhai patel	E/11813/2019	OIA : BHV-EXCUS-000-APP-048-053-2019	25/02/2019	0	829631
49	Kamal Khemkha	E/10969/2019	OIA : BHV-EXCUS-000-APP-055-058-2019	27/02/2019	0	600000
50	Kishorbhai Amarshibhai Patel	E/10851/2019	OIA : BHV-EXCUS-000-APP-337-339-2018-19	24/12/2018	0	689348
51	Vinodbhai Amarshibhai patel	E/10852/2019	OIA : BHV-EXCUS-000-APP-337-339-2018-19	24/12/2018	0	46276
52	Priya Blue Industries P Ltd	E/12134/2019	OIA : BHV-EXCUS-000-APP-168-172-2019	21/06/2019	10323438	10323438
53	Sanjay P Mehta	E/12135/2019	OIA : BHV-EXCUS-000-APP-168-172-2019	21/06/2019	0	6097913
54	Vinodbhai Amarshibhai patel	E/10856/2019	OIA : BHV-EXCUS-000-APP-343-346-2018-19	27.12.2018	0	500000
55	Bharat Manharbhai Sheth	E/10281/2019	OIA : BHV-EXCUS-000-APP-233-235-2018-19	14/08/2018	0	31378
56	Bharat Manharbhai Sheth	E/10614/2019	OIA : BHV-EXCUS-000-APP-241-18-19	23/08/2018	0	1572839
57	Vijaykumar Kakaram Bansal	E/10970/2019	OIA : BHV-EXCUS-000-APP-048-053-2019	27.2.2019	0	1122578
58	Vinodbhai Amarshibhai patel	E/10504/2019	OIO : BHV-EXCUS-000-COMM-007-2020-21	23/03/2018	0	2891968
59	Mahendra Ambalal Rana	E/10278/2021	OIA : BVR-EXCUS-000-COMM-007-2020-21	26/11/2020	0	2000000
60	Shree Ram Steel & Rolling Industries	E/10270/2021	OIA : BVR-EXCUS-000-COMM-007-2020-21	26/11/2020	20355586	20355586

61	Chetanbhai M Patel	E/10269/2021	OIO : BHV-EXCUS-000-COMM-007-2020-21	26/11/2020	0	2000000
62	Kishorbhai Amarshibhai Patel	E/10268/2021	OIO : BHV-EXCUS-000-COMM-007-2020-21	26/11/2020	0	2000000
63	Vinodbhai Amarshibhai patel	E/11963/2019	OIA : BHV-EXCUS-000-APP-099-102-2019	9.4.2019	0	23435
64	Kishorbhai Amarshibhai Patel	E/11260/2019	OIA : BHV-EXCUS-000-APP-028-031-2019	31/01/2019	0	2777814
65	Hatimi Steels	E/11060/2019	OIA : BHV-EXCUS-000-APP-099-102-2019	04-09-19	5824199	5824199
66	Kishorbhai Amarshibhai Patel	E/11968/2019	OIA : BHV-EXCUS-000-APP-099-102-2019	9.4.2019	0	23435
67	Kishorbhai Amarshibhai Patel	E/10859/2019	OIA : BHV-EXCUS-000-APP-343-346-2018-19	27/12/2018	0	500000
68	Vinodbhai Amarshibhai patel	E/12445/2019	OIA : BHV-EXCUS-000-APP-176-179-2019	21/06/2019	0	232080
69	Kishorbhai Amarshibhai Patel	E/12336/2019	OIA : BHV-EXCUS-000-APP-168-172-2019	21/06/2019	0	5611180
70	Mahendra Ambalal Rana	E/12259/2019	OIA : BHV-EXCUS-000-APP-134-141-2019	30/05/2019	0	269860
71	Kishorbhai Amarshibhai Patel	E/12228/2019	OIA : BHV-EXCUS-000-APP-134-141-2019	30/05/2019	0	7670197
72	Vinodbhai Amarshibhai patel	E/12201/2019	OIA : BHV-EXCUS-000-APP-134-141-2019	30/05/2019	0	7670197
73	Kishorbhai Amarshibhai Patel	E/10937/2019	OIA : BHV-EXCUS-000-APP-016-019-2019	24.1.2019	0	1655682
74	Vinodbhai Amarshibhai patel	E/11785/2019	OIA : BHV-EXCUS-000-APP-43-45-2019	18.2.2019	0	1974938
75	Vinodbhai Amarshibhai patel	E/11693/2019	OIA : BHV-EXCUS-000-APP-028-031-2019	31/01/2019	0	2777814
76	Bhadresh Jaysukhlal Shah	E/10596/2019	OIA : BHV-EXCUS-000-APP-343-346-2018-19	31.12.2018	0	1000000
77	Paras Steel Corporation	E/12319/2019	OIA : BHV-EXCUS-000-APP-211-213-2019	16.7.2019		100000
			Cash of Rs. 17.50 lacs confiscated			
78	Dalkan Ship Breaking Ltd	E/12320/2019	OIA : BHV-EXCUS-000-APP-211-213-2019	18.7.2019		100000
79	Vijaykumar and Company	E/12323/2019	OIA : BHV-EXCUS-000-APP-211-213-2019	18.7.2019		100000

1.1 The common facts of the cases in brief, as per records are that the appellants are engaged in the process of obtaining goods and materials by breaking of ships, boats and other floating structures. DGCEI gathered intelligence which indicate that most of ship breaking units are engaged in large scale of evasion of Central Excise Duty. DGCEI conducted the coordinated search operations of some of major brokers at Bhavnagar. Officers conducted the search at office premises of appellants and documents were seized for further investigation. Search operations at premises of transporters also carried out. Based on the Trip/Booking registers of seized / produced by transporters enquiries were made with the various Brokers and statements of various persons have also been recorded. Based on the entries appearing in the Trips/Booking Registers of transporters a worksheet was prepared showing the booking truck/ vehicles for loading of goods made by or on behalf of the appellants. The details of worksheet were compared with the invoices of appellants. During the comparison of said booking registers of transport agent it was found by the investigation that in respect of some of the entries made in such booking register, invoices were not issued and it was alleged that the goods of entries made in the registers for which no excise invoices were issued, have been removed

clandestinely. Investigation also conducted at the end of Shri Bharat Seth, Shri Vinod Patel and Krishna Patel brokers. After completion of the investigation, show cause notices were issued to the appellants who are ship breaking manufacturer and also other persons such as transporters, transport agent, sales brokers. On consideration of the appellants' replies which they filed, the adjudicating authority vide impugned orders rejected their defence and confirmed the duty demand. Penalties were imposed on all the noticees. Being aggrieved with, in majority cases appellants preferred the appealsbefore Commissioner (Appeals). The appeals having been dismissed by the Commissioner (Appeals), they have approached this Tribunal by the present appeals. One impugned original order bearing No.BHV-EXCUS-000-COMM-007-2020-21 dated 26/11/2020 was passed by the Commissioner as adjudicating authority against which appellants directly filed appeals in this Tribunal.

02. Shri J.C.Patel, learned Counsel appeared for the appellant M/s. Madhav Industrial Corporation and it's partner Shri. Jivrajbhai R. Patel submits that demand of Central Excise Duty was made on the basis of investigation carried out with transport commission agents who had supplied trucks for loading of scrap.He submits that clandestine removal cannot be established on the basis of the entries in Booking registers of transport commission agents. Firstly the statement of the appellants' partner Shri Jivabhai R. Patel in respect of the said entries is exculpatory and he has not confessed to any clandestine removal and has specifically denied having cleared any goods as per entries in Annexure T.R.1.2. Shri Jivabhai in his statement stated that the transport vehicles are not called for by the appellants and that the appellants do not know the aforesaid transporters and not dealt with the said tranporters. He further stated that many a times it so happens that though the Broker may have booked a vehicle, on account of cancellation of orders by the buyers or any other reasons the vehicle though earlier booked is not loaded with the goods from the appellants' plot but may go to some other plot and hence no Central excise Invoice is issued by the appellants in respect of vehicle so booked. Further, on being shown entries of vehicles in Register maintained by Gujarat Maritime Board, the Partner of the appellants stated that such entries merely show that a given vehicle had entered the Alang Ship recycling yard but such entries cannot in themselves be evidence of the fact that the given vehicle was loaded at the appellants' plot because in cases of last minute cancellation of orders by the buyers or for any other reasons, the vehicle would not be loaded from the appellants' plot and may go to some other Plot for being loaded. The appellants' Partner categorically stated that the Trucks mentioned in Annexure T.R.1.2 were not loaded from the appellants' unit.

He further submits that it is settled law that clandestine removal cannot be established on the basis of third party's records. He placed reliance on the following judgments:

- SULEKHRAM STEELS P. LTD v CCE,- 2011 (273) ELT 140
- CHARMINAR BOTTLING CO.P. Ltd. V CCE- 2005 (192) ELT 1057
- RAMA SHYAM PAPERS LTD v CCE- 2004 (168) ELT 494
- STAR ALLOYS & CHEMICALS P.LTD v CCE- 2019 (21) GSTL 174
- ATUL BANSAL v CCE- 2019 (8) TMI 959

Thirdly the said transporters have not been examined in the adjudication proceedings as required by Section 9D of the Central Excise Act, 1944 and an opportunity to cross examine them has not been given to the appellants. Consequently their booking registers and their statements have no evidentiary value for establishing the alleged clandestine removal. He placed reliance on the following judgments:

- J & K CIGARETTES LTD v CCE- 2009 (242) ELT 189 (Del)
- BASUDEV GARG v CC- 2013 (294) ELT 353
- ANDAMAN TIMBER INDUSTRIES Vs. CCE, KOLKATA- 2015 (324) E.L.T. 641 (S.C.)
- ATUL BANSAL v CCE- 2019 (8) TMI 959.

The approach of the adjudicating authority and Commissioner appeals in denying the cross examination is totally contrary to the law laid down in the aforesaid judgments.

2.1 Without prejudice to the above submissions, he further submits that in any event the mere entry in the booking register of transport commission agent does not by itself establish that the trucks mentioned therein were actually loaded with the goods at the appellants' premises and cleared by the appellants. As is evident from Annexure T.R.1.2 the booking was not done by the Brokers named therein. There is not a single statement of any other Brokers named in the said Annexure T.R.1.2. the brokers whose statements are referred to in the show cause notice are not the brokers named in the Annexure T.R.1.2 nor are their statements in respect of the 14 entries appearing in Annexure T.R.1.2.

2.2 He further submits that no statement of any of the drivers or owners of the trucks mentioned in the said Annexure T.R.1.2 has been recorded. Not a single lorry receipt in respect of any of the said entries in Annexure T.R.1.2 has been shown. There is no evidence of payment of freight by the appellants in respect of

the entries shown in the booking registers. Not a single buyer of the goods alleged to be transported in the trucks mentioned in the said entries of booking registers has been identified and there is not a single statement of any alleged buyer of the said goods. He submits that only on the basis of the entries appearing in the booking registers of the transport commission agents, clandestine removal cannot be established.

2.3 As regard to the duty demand on the basis of loose papers, diaries and pen drive recovered from the residence of Broker, Shri Vinod Patel, he submits that only on this basis demand is not tenable. He submits that Shri Vinod Patel has not been examined under Section 9D of the Central Excise Act, 1944 therefore his statement cannot be relied upon. Regarding documents, it is his submissions that there is no corroboration with the said documents such as no buyer was identified except one i.e. Maruti Metal who was also not examined under Section 9D. No evidence with regard to the transportation of the goods. Moreover the statement of appellant's representative is exculpatory. On reliance of third party records, he reiterates reliance on judgments cited in the above paras.

2.4 As regards demand on the allegation of undervaluation of excisable goods on the basis of rates published in the publication by M/s. Major and Minor, he submits that excise duty was paid on the transaction value which is in terms of Section 4 of the Central Excise Act, 1944. He submits that in section 4 or under any law there is no concept of deemed normal price. He submits that there is no evidence whatever to show that any amount over and above the invoice price/transaction value was recovered/ received by the appellants from the buyers. Therefore the basis of alleged undervaluation is without any support of law.

2.5 On behalf of other appellants, S/Shri. Uday Madhukar Joshi, Rahul Patel, S.J. Vyas, Rahul Gajera, Sarju Mehta (CA), P.D. Rachchh and Ms. Shamita Patel, Advocates and Shri R.C. Prasad-Consultant appeared and they adapted the argument made by Shri. J.C. Patel learned counsel. Some of the appellants thru their Advocates/Consultant/Chartered Accountant filed additional submissions which are taken on record.

2.6 As regard appellant M/s. Vijay Kumar & Co., there is confiscation of cash of Rs.17.50Lacs. In this regard the learned counsel Shri S.J. Vyas submits that the investigation could not establish that the said cash is generated as sale proceeds of alleged clandestine removal. He submits that confiscation of cash was ordered

under Section 121 of Customs Act read with Section 12 of the Central Excise Act, 1944. However the conditions of the said section for confiscation of the cash were not fulfilled. Hence the confiscation of cash is illegal. It is his further submission that the cash was reflected in the account books of the appellant which has not been disputed. The cash seized and subsequently confiscated is accounted for and the same is legitimate. The cash book of the appellant was also submitted to the adjudicating authority with reply to show cause notice which was not considered.

03. Countering the arguments, Shri Dharmendra Kanjani, learned AR, reiterated the findings of the Commissioner in the impugned Order. He placed reliance on the following decisions :-

- PATEL ENGINEERING LTD., 2014(307)ELT 862
- K BALAN 1982(10)ELT 386
- KANUNGO & CO, 1983 (13) ELT 1486 (SC)
- P C ABRAHAM 1999 (109) ELT 95 (KER)
- AHMEDABAD ROLLING MILLS 2014(300)ELT 119
- KALVERT FOODS 2011-TIOL-76-SC-CX
- NARESH SUKHWANI 1996(83)ELT 258(SC)
- D BHORMULL 1983 (13) ELT 1546 (SC)
- GOPAL INDUSTRIES 2007(214)ELT 19 (TRI. LB)
- INTERNATIONAL CYLINDERS 2010(255)ELT 68
- KRISHAN SCREEN ART 2015(316)ELT 534 (GUJ)

04. Heard both sides and perused the records. We find that allegation of clandestine removal of excisable goods was totally based on entries found/ recorded in the records of transporters and brokers against the name of the appellant and transporters and brokers have admitted in their statements recorded by the department specifically that they have loaded and transported the said alleged goods without the cover of invoices from the premises of the appellant. However, department has not produced any loading advices or consignment notes issued by the transporters in respect of alleged quantity of excisable goods. Further on a careful consideration of the facts and records, we notice that mere entries found recorded in the records of said Transporters and brokers are not sufficient to confirm the demand of duty and allegation of clandestine removal. It is well settled law that there has to be some evidence in the form of receipt of raw materials, shortage of raw materials, clandestine manufacture including use of electricity, excess or shortage of inputs found in the

stock, flow back of funds, purchase of final products by parties alleging receipt and removal of goods and any such evidence which would show clandestine manufacture of goods. Mere entries in third parties' records of Transporters and brokers cannot be basis for clandestine removal.

4.1 It is settled law that documents recovered from a third party can be used against the manufacturer to prove clandestine removal only when these are supported with corroborative evidences. The Revenue has alleged that huge quantity of finished products have been manufactured and cleared clandestinely without payment of Central Excise duty. The data/ records recovered from the premises of third party, no doubt, may give rise to suspicion. However, clandestine manufacture and clearance alleged against the appellant is a very serious charge which needs to be proved by Revenue by producing tangible and reliable evidences. For clandestine clearance of such huge quantities of finished products, corresponding quantity of raw materials is also required. The investigation could not adduce a tip of evidence in this regard. The finished products allegedly have been cleared to various customers. In fact, in the transporters and brokers records, names of several buyers have been indicated. However, we are in utter surprise that investigation has not tried to approach any of the buyers to corroborate the documents recovered from transporter and broker. The investigation also failed to establish the procurement of raw materials attributed to the huge quantity of alleged clandestine removal. In fact on the date of search, no discrepancy was recorded in respect of stock of raw materials and finished goods vis-a-vis that recorded in statutory records.

4.2 It is true that the evidence which is required to be produced in *quasi judicial* proceedings should be such that the charges get established on the basis of preponderance of probability. The standard of evidences need not be as high as in criminal proceedings, where the charges are required to be established beyond reasonable doubts. But in the present case, we are of the view that the allegation of clandestine manufacture and clearance has not been substantiated by any tangible evidences. The only evidence unearthed by Revenue in the form of records of third party which alone cannot be considered as sufficient proof to support such allegation. This is particularly so since the authenticity of the evidence has been questioned. The Revenue has failed to produce any corroborative evidence. The evidence, at best, raises suspicion in the minds but is not sufficient to prove the charges of clandestine removal. In the absence of any corroborative evidence, benefit of doubt goes in favour of the appellant. In these circumstances, we hold that Revenue has failed to prove their case.

4.3 We also find that the law as to whether the third party records can be admitted as an evidence for arriving at the findings of clandestine removal, in the absence of any corroborative evidence, is well established. Reference can be made to Hon'ble Allahabad High Court decision in the cases of Continental Cement Company v. Union of India - 2014 (309) E.L.T. 411 (All.) as also Tribunal's decision in the case of Raipur Forging Pvt. Ltd. v. CCE, Raipur-I - 2016 (335) E.L.T. 297 (Tri. - Del.), CCE & ST, Raipur v. P.D. Industries Pvt. Ltd. - 2016 (340) E.L.T. 249 (Tri. - Del.) and CCE & ST, Ludhiana v. Anand Founders & Engineers - 2016 (331) E.L.T. 340 (P & H). It stands held in all these judgments that the findings of clandestine removal cannot be upheld based upon the third party documents, unless there is clinching evidence of clandestine manufacture and removal of the goods.

4.4 We further found that in the present case, there is no evidence recovered from the appellant manufacturers. The entire case was made out on the basis of third party records and statements. It is admitted fact that appellant have strongly objected the statements given by third parties which were used against the appellants (manufacturers). The appellants during the adjudication requested for cross-examination of the witnesses however, the same was not provided by the adjudicating authority. In any case, the statements recorded under Section 14 of Central Excise Act can be admitted as an evidence only when the same is examined during the adjudication as mandated under Section 9D of Central Excise Act. In the present case, the statements being given by third parties it became more important to examine those witnesses for using their statements against the appellant for fastening the demand. Since the demand is made on the basis of statements and the third parties records without providing the cross examination. The entire case of the department gets demolished only on this ground alone. In this regard the appellant gets support from the judgments which are reproduced below:-

- Andaman timbers Industries V/s. CCE, Kolkata- 2015 (324) ELT 641 (SC)

> ***"6.*** *According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would*

be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

7. *As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17-3-2005 [2005 (187) E.L.T. A33 (S.C.)] was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.*

8. *In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the show cause notice."*

- BASUDEV GARG V/s. CC.2013 (294) ELT 353.

10. *Insofar as the general propositions are concerned, there can be no denying that when any statement is used against the assessee, an opportunity of cross-examining the persons who made those statements ought to be given to the assessee. This is clear from the observations contained in Swadeshi Polytex Ltd. (supra) and Laxman Exports Limited (supra). Apart from this, the decision of this court in J&K Cigarettes Ltd. (supra) clinches the issue in favour of the appellant. In that case, the validity of Section 9D of the Central Excise Act, 1944 was in question. The said Section 9D of the Central Excise Act, 1944 reads as under :-*

> ***"9D. Relevancy of statement under certain circumstances. -*** *(1) A statement made and signed by a person before any Central Excise Officer of a gazette rank during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains :-*
>
> *(a) When the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an*

amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceedings under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court."

11. *We may straightaway say that the provisions of Section 9D of the Central Excise Act, 1944 are identical to the provisions of Section 138B of the Customs Act, 1962 which would be applicable in the present case.*

12. *Section 138B of the Customs Act, 1962 reads as under :-*

"138B. Relevancy of statements under certain circumstances. - *(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -*

(a) When the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable or

(b) When the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

(2) The provisions of sub-section (1) shall so far as may be apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."

It is apparent that both the provisions are identical.

14. *The Division Bench also observed that though it cannot be denied that the right of cross-examination in any quasi judicial proceeding is a valuable right given to the accused/Noticee, as these proceedings may have adverse consequences to the accused, at the same time, under certain circumstances, this right of cross-examination can be taken away. The court also observed that such circumstances have to be exceptional and that those circumstances have been stipulated in Section 9D of the Central Excise Act, 1944. The circumstances referred to in Section 9D, as also in Section 138B, included circumstances where the person who had given a statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay and expense which, under the circumstances of the case, the Court considers unreasonable. It is clear that unless such circumstances exist, the Noticee would have a right to cross-examine the persons whose statements are being relied upon even in quasi judicial proceedings. The Division Bench also observed as under :-*

> *"29. Thus, when we examine the provision as to whether the provision confers unguided powers or not, the conclusion is irresistible, namely, the provision is not uncanalised or uncontrolled and does not confer arbitrary powers upon the quasi judicial authority. The very fact that the statement of such a person can be treated as relevant only when the specified ground is established, it is obvious that there has to be objective formation of opinion based on sufficient material on record to come to the conclusion that such a ground exists. Before forming such an opinion, the quasi judicial authority would confront the assessee as well, during the proceedings, which shall give the assessee a chance to make his submissions in this behalf. It goes without saying that the authority would record reasons, based upon the said material, for such a decision effectively. Therefore, the elements of giving opportunity and recording of reasons are inherent in the exercise of powers. The aggrieved party is not remediless. This order/opinion formed by the quasi judicial authority is subject to judicial review by the appellate authority. The aggrieved party can always challenge that in a particular case invocation of such a provision was not warranted."*

In view of the above settled legal position, it was incumbent upon the adjudicating authority to grant cross-examination to the appellant. However, firstly since the evidence relied upon are of third party and secondly, any cross-examination of those third parties were not allowed. Accordingly, the revenue failed to establish its case by not giving cross examination. Hence, the demand confirmed against the appellants are not sustainable.

4.5 As regard the demand of Central Excise Duty on the ground of undervaluation of the goods, we find that the differential duty demand on this count was worked out by the revenue on the difference of invoice value of the Appellants and steel rate published in the publication of M/s Major & Minors. The data given by M/s Major & Minors indicates the daily prices for various sizes of rolling plates as well as mixed melting scraps obtained out of ship breaking activities. After comparing both data revenue found that Appellant have undervalued the scrap and evaded Central Excise Duty. After undergoing the changes in Section 4 in the year 2000, the value of excisable goods is the transaction value and there is no provision to adopt any other deemed value. Therefore only on the basis of rate published in a publication, the transaction value can not be doubted. Except the basis of publication, there is no charge of extra consideration flowing from buyers of goods to the appellant over and above the invoice value. Therefore charge of under valuation has no legs to stand.

4.6 In one case of Vijay Kumar & Co., the adjudicating authority has confiscated the cash of Rs.17.50Lacs. In this regard we find that the investigation could not establish that the said cash is towards the sale proceed of alleged clandestine removal of goods. On the contrary, the appellant clearly established the source of

the said cash. They have given the names of the buyers from whom they have received the cash and the same was accounted for in the appellant's cash book. Therefore we do not find any reason for confiscation of cash. Hence in our considered view that the confiscation of cash must be vacated and we do so.

05. As per the above discussions and findings, we hold that demands of duty, interest and penalty are not sustainable in the facts of these cases. Consequential penalty imposed on other Appellants also does not survive. Therefore, all the Appeals are allowed with consequential reliefs, if any, as per the law.

(Pronounced in the open court on 11.05.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Mehul