

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद- 380015. :

क फाइल संख्या : File No : V2(72)31/Ahd-III/2016-17/Appeal-I
V2(72)32/Ahd-III/2016-17/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-209 to 210-16-17

दिनांक Date : 23.01.2017 जारी करने की तारीख Date of Issue 23/1/17

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-I) Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल
आदेश सं _____ दिनांक : _____ से सृजित

Arising out of Order-in-Original: AHM-CEX-003-ADC-MLM-042-15-16 Date: 31.03.2016
Issued by: Additional Commissioner, Central Excise, Din: Kadi, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. AS PER ORDER

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे
बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as
the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में
पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार,
वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को
की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision
Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the
following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने
में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में
चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क
कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित
है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside
India of on excisable material used in the manufacture of the goods which are exported to any
country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया
माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of
duty.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, 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 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten 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.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, 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.



ORDER-IN-APPEAL

Two appeals have been filed as detailed below:

Sr. No.	Name of the appellant	OIO No. and date	Appeal No.
1	Grace Casting Limited	AHM-STX-003-ADC-MLM-42-15-16 dated 31.1.2016	31/Ahd-III/2016-17
2	Vidhyutbhai Vinodchandra Kapadia	-do-	32/Ahd-III/2016-17

Both the appeals are against the same impugned original order dated 31.1.2016 passed by the Additional Commissioner, Central Excise, Ahmedabad-III Commissionerate. The issue being similar, both the appeals are being taken up in this OIA.

2. Briefly, the facts are that DGCEI carried out a search on M/s. Vishal Engineering, M/s.-Jindal Ispat and M/s Vishal Casteels, engaged in the manufacture of MS Ingots. Documents seized during the search revealed that these manufacturers had clandestinely cleared M S Ingots, without invoices and without payment of Central Excise duty, to various units, including M/s. Grace Casting Limited [for short 'appellant']. Investigations were thereafter conducted against the three manufacturers and the appellant. A notice was subsequently issued to the appellant, *inter-alia*, alleging that they had manufactured and cleared TMT bars, Round bars, Square Bars,, MS Angles, channels, etc from MS ingots received from the aforementioned three manufacturers and had thereafter cleared it without invoices and without payment of Central Excise duty. The notice therefore, demanded Central Excise duty of Rs. 7.07 lacs along with interest on 245 MTs of TMT bars, Round bars, Square Bars,, MS Angles, channels, allegedly manufactured. Penalty was also proposed on the appellant and Shri Vidyut Kapadia, Director [for short – 'appellant 2'].

3. Additional Commissioner, Central Excise, Ahmedabad-III, [for short – 'adjudicating authority'] confirmed the demand along with interest and also imposed penalty on both the appellant and appellant-2.

4. Feeling aggrieved, both the appellant and appellant-2 have filed appeals on the following grounds:

Appellant

- Observance of principles of natural justice contemplates an opportunity to cross examine the co-accused, witness and person whose statements are relied upon; that the entire case was based on statements and therefore to bring out vital facts, cross examination was requested, which was not granted;
- that there is no material evidence of goods received by appellants from the said three firms;
- that as far as cross examination is concerned, they wish to rely on the case of Rajendra Bajaj [2010(235) ELT 165], Premier Alloys Limited [2015(328) ELT 567], R M Brothers [2015(328) ELT 124], Gujarat Cypromet [2013(289) ELT 467], Slotco Steel Products



[2015(327) ELT 596], Chander Gauba [2015(327) ELT 506], Kurele Pan Products [2014(307) ELT 42], Basudev Garg [2013(294) ELT 353];

- the adjudicating authority has disregarded the contentions and ratio of decisions relied upon by the appellants;
- that no inquiry or investigation was carried out at the appellants end; there is no evidence of illicit clearance of goods; that it is not clear as to whom cash payment was made and who made such payment;
- that there was no direct correlation of payment of cash to the supply of goods;
- that there is no admission of illicit purchase by the authorized representative of the appellant; that there is no evidence or any material to prove the illicit purchase of goods, leave apart clearance of goods without payment of duty;
- that it is a settled law that third party document cannot be relied upon to establish illicit removal;
- that they wish to rely on the case of Pubjab Fibres[2002(141) ELT 819], Durolam Limited [2007(212) ELT. 419], Tetra Plastics Private Limited [2008(227) ELT 74], Rama Shyama Papers [2004(168) ELT 494], R M Brothers [2015(328) ELT 124], Sanghamitra Cotton Mills [2004(163) ELT 472] and Haryana Petrochemicals [2002(149) ELT 902].

Appellant-2

- the penalty has been imposed on the basis of grounds mentioned in the notice;
- that before imposition of penalty under rule 26 the person should have been found guilty of having dealt with the goods in the manner specified in the rule;
- that there is no allegation in the show cause notice that appellant had dealt with any goods which was liable to confiscation;
- Department has not brought any evidence of illicit clearance by the appellant;
- adjudicating authority has imposed penalty without establishing illicit clearance by the appellant or appellant-2;
- no statement was taken of appellant-2;
- that when charges of clandestine removal cannot be confirmed on the basis of presumption, implicating the appellant based on far too many assumptions is against the law.

5. Personal hearing in the matter was held on 09.01.2017. Shri P.G.Mehta, Advocate, appeared on behalf of both the appellant and appellant-2, and reiterated the arguments made in the grounds of appeal.

6. I have gone through the facts of the case, the grounds of appeal and the oral averments, raised during the course of personal hearing.

7. The short question to be decided is whether the appellant is liable to pay duty in respect of clandestine removal and whether both the appellant and appellant-2 are liable to penalty.

8. The adjudicating authority, vide the impugned OIO has confirmed the demand on the following grounds:

- search at the premises of M/s. Vishal Engineering, M/s. Jindal Ispat and M/s Vishal Casteels revealed that they were clearing MS Ingots without the cover of invoices;
- the corroborative evidence suggests that the diary seized is genuine and contains truthful reflection of all transaction for MS Ingots made by the aforementioned three units;
- since the appellant was not engaged in trading, the inputs received without the cover of invoice from the three units were utilized for manufacture of final products which were not accounted for and cleared without payment of duty;



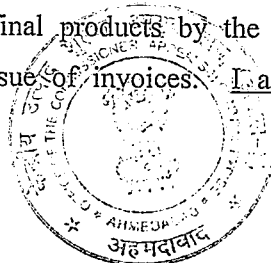
- the above confirmation of facts is indicative of clandestine clearance of MS Ingots to various manufacturers including those made to the appellant;
- that there is no categorical denial of receipt of the material but only a statement that it is not reflected in their records.

9. I have briefly laid out the facts in para 2 *supra*. The allegation against the appellant is that [a] they had received inputs i.e. MS Ingots from three manufacturers, without any invoice and on which no excise duty was paid; and [b] that these inputs were used by the appellant in the manufacture of final product, which was clandestinely removed without payment of central excise duty and without the cover of invoices.

10. As far as [a] *supra* goes, I find that the department has put forth a plethora of evidences to substantiate the charge that the three manufacturers had cleared MS ingots to various persons including the appellant, clandestinely. The appellant it is further alleged used these goods to further manufacture final products which thereafter, were clandestinely removed without payment of duty. As the dispute before me is pertaining to demand in respect of clearance of final product, clandestinely by the appellant, I am interested only in so as far as [b] *supra*, is concerned. The clearance of MS ingots is anyway covered in a separate proceeding.

11. Hence, my findings would be restricted to [b] *supra* only. I find that the documents seized by DGCEI, revealed that the appellant had booked 13 *saudas*, for supply of 900 MT of materials, of which 12 *saudas* were completed and 850 MT of material was supplied to the appellant. Of these 600 MT was under cover of invoices. The remaining 250 MTs, it is alleged, were supplied to the appellant, without any invoices or without payment of central excise duty. I find that the show cause notice [on page 41, para 7.2.1], has alleged that the appellant had received 250 MTs of MS Ingots from the three firms during the period from 11.1.2010 to 29.3.2010; that they had manufactured and cleared 245 MTs of TMT bars, round bars, square bars, MS Angles/Channels etc. after considering a melting loss and end cutting of 2%; that the sale proceeds were received in cash ; that the valuation was arrived on the basis of landed cost of MS ingots + average value addition @ Rs. 5000 per ton. The show cause notice thereafter, lists the contraventions of the various provisions. The show cause notice [on page 35] also lists the free translation of a statement recorded of Shri S B Patel, authorized signatory of the appellant wherein he states that these purchases are not reflected in their records; that they had purchased only 600 MT from M/s. Vishal Engineering, Daman, M/s. Jalaram Ispat, Daman and M/s. Vishal Casteels, Silvassa.

12. The appellant in his appeal has stated that there was no acceptance that the inputs said to have been clandestinely removed, were received by them; that there is no investigation conducted regarding manufacture of final products by the appellant and clearance without payment of duty and without issue of invoices. I agree with the



contention raised. Department has adduced no evidence as to what was manufactured. All the final products of the appellant have been listed to have been manufactured. There is no evidence produced as to whom the allegedly manufactured goods were supplied. Further, there is no evidence in respect of the final goods having been transported. There is no financial flow/investigation. There is no correlation drawn with electricity consumption to link it with production.

13. Time and again, it has been held by the Hon'ble Tribunal that cases relating to illicit removal/ clandestine removal are required to be proved by producing sufficient and tangible evidence and that the appreciation of evidence has to be done after looking into the facts and circumstance of that case. In the case before me, while evidences have been collated in respect of clearances of inputs from the three manufacturers to the appellant, I find that there is no evidence on record to substantiate the allegation of manufacture and clearance of final product by the appellant. While clearances of inputs from the three manufacturers to the appellant, is part of a separate proceeding, even assuming that MS ingots, which are inputs for the appellant have been received by the appellant, it was incumbent to further investigate the production and clearance portion. Evidences were required to be gathered to bolster the case/substantiate the allegation. On going through the proceedings till now, I find that there is nothing on record, in this regard. I find that only one statement is recorded in respect of the appellant, that too wherein the authorized signatory, has denied everything. Central Excise duty cannot be demanded on the final products, without [a] first establishing manufacture of the finished goods out of the illicitly removed inputs; and [b] subsequently, proving that these manufactured excisable goods were cleared without the cover of invoice and without payment of duty [i.e. clandestinely]. As far as both [a] and [b] are concerned, there is nothing on record to positively conclude that the goods were manufactured and that subsequently these manufactured goods were cleared without payment of duty.

14. In cases where clandestine clearances or illicit removal is involved, it is but natural that things cannot be proved with mathematical accuracy. I am also aware of the fact that in such cases, the perpetrators do not keep any trail to hoodwink the investigators, in case they are caught. However, after having said so, it is still the onus of the department to prove the allegations based on the principle of preponderance of probability. The Hon'ble Supreme Court in the case of D. Bhoormul [2002-TIOL-253-SC-CUS], on the question of proof, in a smuggling case relating to Customs has stated as follows :

This is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, or universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it-"all exactness is a fake". El Dorado of absolute Proof being unattainable, the law, accepts for its probability as a working



substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus legal proof is not necessarily perfect proof often it is nothing more than a prudent man's estimate as to the probabilities of the case.

[emphasis supplied]

Hence, even in cases of clandestine removal, there has to be some evidences to corroborate the allegation that the inputs received without invoices and payment of duty, were in-fact used in the manufacture of final products which were subsequently clandestinely removed. I find that no such evidence has been placed on record to substantiate such grave allegation. There are just assumptions and surmises. It is well known that demand in respect of clandestine removal cannot be upheld solely on the basis of assumptions and surmises.

15. The Hon'ble Tribunal has upheld the charge of clandestine removal in numerous cases. I would like to refer to a couple of these judgements, viz.:

[a] Moontex Dyeing and Printing [2007(215) ELT 46]. The Hon'ble Tribunal in this case upheld the charge of clandestine removal as 16 out of the 40 recipient of goods, alleged to have been clandestinely removed had voluntarily given statement of receipt of the said goods.

[b] Global Spin Weave Limited [2006 (193) ELT 478]. The Hon'ble Tribunal in this case upheld the charge of clandestine removal of goods since the production alleged by the department, matched with entries in the private records.

No evidence whatsoever, has been produced/placed on record to even mildly suggest that the goods were produced and thereafter cleared without payment of duty. Therefore, I feel that the department has failed to discharge its onus after alleging that the goods have been manufactured out of the illicitly received inputs and that these manufactured excisable goods were clandestinely cleared without the cover of invoices and without payment of duty. The case therefore, fails.

16. As the allegations of the revenue do not hold, as held *supra*, I do not find any point in discussing the other averments raised by the appellant. As far as penalty against appellant 2 is concerned, since the Revenue has failed to prove the charges, the question of imposing penalty on appellant 2, does not arise. In view of the foregoing, the penalty imposed on the appellant 2 is set aside.

17. In view of the foregoing, the OIO is set aside and the appeals filed by appellant and appellant 2 are upheld.



[Handwritten signature]

18. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
18. The appeal filed by the appellants stand disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 23/1/2017

Attested

Vinod

(Vinod Lukose)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY RPAD.

To,

M/s. Grace Castings Limited, Sur. No. 188 & 189, Karan Nagar, Kalol-Kadi Road, Tal Kadi, District Mehsana.	Shri Vidhyutbhai Vinodchandra Kapadia Director of M/s. Grace Castings Limited, Sur. No. 188 & 189, Karan Nagar, Kalol-Kadi Road, Tal Kadi, District Mehsana.
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Copy to:

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III.
3. The Additional Commissioner (System), Central Excise, Ahmedabad-III.
4. The Deputy/ Assistant Commissioner, Central Excise, Kadi Division, Ahmedabad-III.
5. Guard file.
6. P.A



