

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(73)80/Ahd-III/2016-17/Appeal-I / 4254 to 4259

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-041 to 042-17-18

दिनांक Date : 10.07.2017 जारी करने की तारीख Date of Issue: 17-07-17

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

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

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

Arising out of Order-in-Original: AHM-CEX-003-ADC-DSN-013-16-17 Date: 30.08.2016
Issued by: Additional Commissioner, Central Excise, Din: Mehsana, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Bhairav Rolling Mills Pvt. Ltd.

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 प्रक्रिया के दौरान हुई हो।

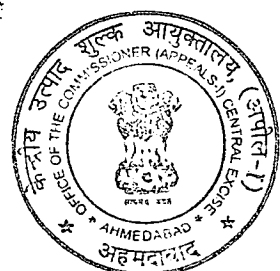
(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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 हों।

(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- ए0बी/35-इ के अंतर्गत:-

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

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

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 इ.ए-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 रुपये 5 लाख या उससे कम है वहाँ रुपये 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपये 5 लाख या 50 लाख तक हो तो रुपये 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपये 50 लाख या उससे ज्यादा है वहाँ रुपये 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 पढ़ी 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 not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 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 (सीस्टैट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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 हैं

- (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 अर्जों एवं अपील को लागू नहीं होंगे।

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 cuty and penalty are in dispute, or penalty, where penalty alone is in dispute."

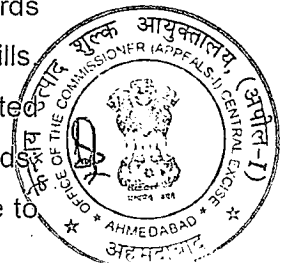


ORDER-IN-APPEAL

This order covers 2 appeals filed against Order-in-original No.AHM-CEX-003-ADC-DSN-013-16-17 dated 30/08/2016 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Central Excise, Ahmedabad-III (hereinafter referred to as 'the adjudicating authority'). The appeals have been filed by

- (i) M/s Bhairav Rolling Mills Pvt. Ltd., Survey No. 76/3, At: Vadavi, Near Vamaj, Taluka: Kadi, District: Mehsana (hereinafter referred to as 'the appellant') and
- (ii) M/s Super Traders, Plot No. 101/1/15, Sector-28, G.I.D.C., Gandhinagar (hereinafter referred to as 'M/s Super Traders')

2. Briefly stated, the facts of the case are that the appellant is holding Central Excise Registration ECC No.AADCB5123HXM001 and is engaged in the manufacture of **M.S. Pipes, M.S. Sheet and Scrap** falling under Chapter 73 of the First Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). The appellant is availing CENVAT credit of inputs and capital goods used in or in relation to the manufacture of its final products under Cenvat Credit Rules, 2004 (CCR, 2004). On the basis of information to the effect that the appellant was indulging in clandestine removal of goods without payment of Central Excise duty under the cover of parallel invoices, a search was commenced on 20/07/2015 by Central Excise officers at the factory premises of the appellant in the presence of independent Panchas and Shri Rakesh Kumar Suntwal, Senior Supervisor of the appellant. During the search operation, on opening a locked labour quarter room, the officers recovered blank invoice books for preparing parallel invoices that did not contain serially pre-printed numbers, one numbering machine to print the invoice number, loose written papers, payment vouchers, gas bills, one private note book containing details of what appeared to be illicit sales and purchase and used as well as empty invoice book covers. The officers also found huge stock of finished goods that were not accounted for in their books of accounts, ascertained on physical verification and confirmed by Shri Rakesh Kumar Suntwal as well as by Shri Jugal Kishor Palod, Director of the appellant during the panchnama proceedings to be **120.65 MT** valued at **Rs.39,69,320/-** lying in excess as compared to the R.G.-1 Register. These goods were placed under seizure under Panchnama dated 20-22/07/2015 on the reasonable belief that the excess goods not entered in R.G.1 register was intended to be cleared without payment of Central Excise duty and the seized goods was handed over to Shri Jugal Kishor Palod under supratnama dated 22/07/2015 for safe custody. In a statement dated 20/07/2015, Shri Rakesh Kumar Suntwal, Sr. Supervisor had admitted that the appellant generated fake bills for illicit clearance of goods without payment of Central Excise duty; that such bills were not entered in the official records and that a separate bill book and a franking machine were used to generate such bills. Shri Yogiraj Ratava, Cashier of the appellant in a statement dated 20/07/2015 admitted that on a daily basis 03 to 05 fake bills were generated involving 08 to 10 MTs of goods that such bills were handed over to the transporters with directions that the bills were to



be returned after delivery of goods and the returned bills were destroyed. He also agreed with that facts narrated by Shri Rakesh Kumar Suntwal, Sr. Supervisor in his statement dated 20/07/2015. Another statement of Shri Rakesh Kumar Suntwal, Sr. Supervisor was recorded on 21/07/2015 wherein he admitted the proceedings of the Panchnama and the facts narrated in his statement of 20/07/2015. Further, Shri Jugal Kishor Palod, Director of the appellant, in a statement recorded on 21/07/2015 admitted the proceedings of the Panchnama and corroborated the statements of the employees. In another statement dated 03/08/2015, Shri Jugal Kishor Palod, Director once again admitted the recorded facts.

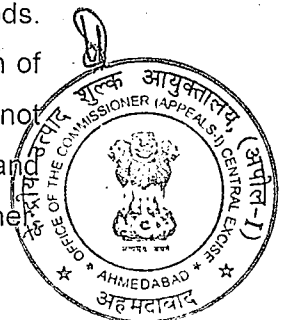
3. Searches were also carried out at the premises of M/s Super Traders situated at Plot No. 101/1/15, Sector 28, G.I.D.C., Gandhinagar on 21/07/2015 when certain documents were withdrawn and stock taking of goods was undertaken. Shri Harishbhai Bholabhai Patel, proprietor of M/s Super Traders admitted that he had purchased 38 M.T. of M.S. Pipes valued at Rs.15.49 Lakhs in cash from the appellant in the recent past without bills, out of which 8.954 M.T.s of goods valued at Rs.3,53,667/- was lying in stock, which was placed under seizure and handed over to M/s Super Traders. Shri Harishbhai Bholabhai Patel, proprietor of M/s Super Traders, in a statement dated 22/07/2015 corroborated the facts recorded in the panchnama. Thus it appeared that the appellant had failed to record the production of 129.603 M.T.s of M.S. Pipes valued at Rs.43.23 Lakhs (hereinafter referred to as the impugned goods) in its Daily Stock Register and had failed to issue valid invoices rendering the goods liable to confiscation under Rule 25(1)(b)&(d) of the Central Excise Rules, 2002 (CER, 2002). Therefore, a Show Cause Notice F.No.V.73/15-137/OFF/OA/1516 dated 15/01/2016 (hereinafter referred to as 'the SCN') was issued to the appellant proposing to confiscate the impugned goods under Rule 25(1)(b)&(d) of CER, 2002; demanding Central Excise duty amounting to Rs.44,208/- under section 11A of the Central Excise Act, 1944 (CEA, 1944) along with interest under Section 11AA/AB of CEA, 1944; proposing to impose penalty on the appellant under Section 11AC of CEA, 1944 and Rule 25(1) of CER, 2002 and proposing to impose penalty on M/s Super Traders under Rule 26(1) of CER, 2002. The SCN was adjudicated vide the impugned order where the confiscation as proposed in the SCN was confirmed and redemption fine of Rs.9,90,000/- was imposed on goods seized from the premises of the appellant and redemption fine of Rs.88,000/- was imposed on goods seized from the premises of M/s Super Traders. The demand of Central Excise duty amounting to Rs.44,208/- was confirmed under Section 11A of CEA, 1944 along with interest under Section 11AA/ AB of CEA, 1944. A penalty of Rs.44,208/- was imposed on the appellant under proviso to clause (a) of sub-section (1) of Section 11AC of CEA, 1944 read with Rule 25 of CER, 2002. A penalty of Rs.50,000/- was imposed on the appellant under Rule 25 of CER, 2002 and a penalty of Rs. 10,000/- was imposed on M/s Super Traders under Rule 26(1) of CER, 2002.



4. Being aggrieved by the impugned order, the appellant has preferred the instant appeal mainly on the following grounds:

i. The adjudicating authority has passed the impugned order in violation of the principles of natural justice as he had failed to discuss the submissions made by the appellants and failed to negate the disagreed points. The adjudicating authority in para 47.1 of the impugned order has considered some extraneous and irrelevant facts not connected with the present proceedings. The seizure of blank invoice book, franking machine, loose papers, gas bills etc. does not *ipso facto* lead to the conclusion that goods lying in the factory premises were in ready to dispatch condition and the same was intended to be cleared without accounting and without payment of duty. The cross examination of the production supervisor which was disallowed without assigning any reason. The Hon'ble High Court of Haryana and Punjab in the case of Jindal Drugs Pvt. Ltd. vs UOI – 2016 (340) E.L.T. 67 (P&H) has held that the statements recorded during investigation cannot be straight away relied by the adjudicating authority without allowing cross examination. In the case of Mahek Glaze Pvt. Ltd. vs UOI – 2014 (300) E.L.T. 25 (Guj.) it was held by Hon'ble High Court of Gujarat that the request for cross examination has to be dealt with by a separate order. The adjudicating authority had distinguished the citations relied upon by the appellant in their defence submissions without considering the facts. The appellant's claim that the weighment of the seized goods were carried out on the basis of eye estimation has been set aside without substantiating the correctness by way of weighment slips. The goods had not reached the stage and form in which they were to be dispatched and hence the same was not accounted for in R.G.1 register.

ii. As regards the confiscation of goods seized from the premises of M/s Super Traders, the proprietor in his statement had deposed that the purchases were made from the appellants in cash through a certain Mr. Vivek Pandey and provided the contact details of the person. However, no evidence had been brought on record from the side of Mr. Vivek Pardey. No duty liability can be fastened on the basis of deficient investigation and the onus was on the department to bring on record positive and tangible evidence in support of clandestine manufacture and clearance of goods. No reason whatsoever has been given in the impugned order for imposing huge redemption fines on the confiscated goods. The quantum of redemption fine should be the margin of profit which the manufacturer would have normally earned on the said goods. The adjudicating authority had not made any attempt to determine the margin of profit and hence the order imposing redemption fine was not sustainable. It is not brought on record as to what facts had been suppressed by the appellant and hence imposition of penalty under Section 11AC was not sustainable. Further



penalty has been imposed on the appellant under Rule 25 for offences described under clauses (a), (b), (c) and (d) of Rule 25 of CER, 2002, whereas these clauses are not applicable to goods lying in the factory. As regards recovery of interest, the same has to be imposed after determining the duty liability. There was no evidence that the goods seized from the premises of M/s Super Traders were manufactured and cleared clandestinely by the appellant and hence interest was not recoverable from the appellant.

4.1 In the grounds of appeal filed by M/s Super Traders the main reference is to the submissions made by the appellant in their defence submissions before the adjudicating authority and it has been submitted that the department had not considered the recorded facts in the seized computer and that the Panchnama was fabricated and the contents of the Panchnama and statements were not retracted as the seized computer had not been released by the department.

5. Personal hearing was availed by M/s Super Traders 19/04/2017 when Shri M.K. Kothari, and Shri B.R Pathan, both Consultants appeared and reiterated the grounds of appeal. In the case of the appellant, the personal hearing was held on 17/05/2017 when Shri N.K. Tiwari, Consultant appeared and reiterated the grounds of appeal.

6. I have carefully gone through the facts of the case on records and submissions made by the appellant as well as M/s Super Traders in their grounds of appeals. The pertinent fact of the case is that on the basis of specific intelligence that the appellant was indulging in clandestine manufacture and clearance of goods, the officers of the department had searched the factory premises of the appellant and the premises of M/s Super Traders leading to detection of unaccounted finished goods at both the premises. Further, materials such as unnumbered invoice books, a numbering machine, a private note-book containing details of unaccounted purchases and sales etc were recovered from a closed room in the factory premises of the appellant. During inquiries in the course of the search operations in the form of statements recorded under Section 14 of the CEA, 1944, it was admitted by the employees of the appellant and affirmed by the Director of the appellant as well as corroborated by the proprietor of M/s Super Traders that the appellant had manufactured and cleared goods clandestinely without payment of Central Excise duty under the cover of fake / parallel invoices. It has been recorded by the adjudicating authority in paragraph 50.2 of the impugned order that Shri Rakesh Kumar Suntwal, Senior Supervisor of the appellant and Shri Jugal Kishor Palod, Director of the appellant, in their respective statements dated 21/07/2015, 03/08/2015, 20/07/2015, 21/07/2015 and 30/07/2015 had confirmed and corroborated the *modus operandi* of clandestine clearance of goods manufactured by the appellant out of raw materials purchased from local market in cash; using coal for furnace purchased from local retail market in cash; by hiring laborers who were paid in cash and the goods thus



manufactured were cleared without payment of Central Excise duty under cover of parallel / fake invoices. It is also noteworthy that none of the statements relied upon in the instant case have been retracted at any stage by the deponents.

7. The entire basis of the appeal filed by the appellants is to challenge the Panchnama and statements of various deponents in as much as the method of weighing of impugned goods carried out by the officers has been contested and the reliance placed by the adjudicating authority on the statements in order to confirm confiscation of the impugned goods and confirm demand of duty and interest as well as imposition of penalty has been disputed by the appellant. The appellant has also raised the issue of natural justice on the ground that cross-examination of the deponents was not allowed by the adjudicating authority. The case laws cited by the appellant also pertain to these contentions. M/s Super Traders have referred to the defence reply filed the appellant in order to contest the penalty imposed by the adjudicating authority.

8. As regards the veracity of the weighment of seized goods, the details of the long-drawn-out process of weighing such as registration numbers of vehicles used in the process, the laborers being given adequate rest by halting the weighing process in the evening and resuming the activity on the following morning etc. have been clearly recorded in the Panchnama written in Hindi Language. The contents of this Panchnama including the quantities of M/S. Pipes , M.s Sheets and M.S. Scrap as arrived at by way of the weighing process has been corroborated by the Director of the appellant in all his statements recorded under Section 14 of the Central Excise Act, 1944. No discrepancy was pointed out by the employees of the appellant or the Director during the Panchnama proceedings. The appellant had never submitted any communication pointing out any error or correction required to be made in the details recorded in the Panchnama. The statements of the employees as well as the Director that corroborate the details recorded in the Panchnama have never been retracted. In such a scenario, the appellant fails to explain as to how the Panchnama details can be held to be erroneous. There is no claim that any force or coercion was exerted by the officers during the proceedings. The objections raised by the appellant are not backed by any facts or any corrected details to evidence error in the Panchnama. There is no disagreement on part of the appellant that excess stock was detected during the search operations. It is not a case where the appellant is challenging the quantity of such excess stock with a different set of numbers. The appellant is only disputing the method of weighment carried out during the Panchnama process. In such a factual matrix, the challenge raised by the appellant in the grounds of appeal against the Panchnama and the statements is not sustainable and the adjudicating authority was justified in placing reliance on the facts recorded in the Panchnama as confirmed by the employees and Director of the appellant that are in the form of candid admissions evidencing illicit clearances of goods without payment of Central Excise duty. The details recovered from



the private sheets of paper were corroborated in several confessional statements tendered by the employees and the Director of the appellant on different occasions, which shows that in their subsequent statements, the Director as well the Supervisor for the appellant had ample opportunity to challenge or correct the details of the Panchnama and their earlier statements. But all the subsequent statements confirm and corroborate the facts recorded in the earlier statements. The investigations carried out at the end of M/s Super Traders also revealed that the impugned goods were cleared clandestinely by the appellant without payment of Central Excise duty, which was admitted by the proprietor in his statement. The facts admitted and corroborated in all the statements are valid as these statements have never been retracted by the deponents. This view has been upheld by Hon'ble High Court of Gujarat in the case of **TULIP LAMKRAFT PVT. LTD. vs COMMISSIONER OF CENTRAL EXCISE – 2015 (316) E.L.T. 417 (Guj.)**, as reproduced below:

“4. It can thus be seen that the Dispatch Supervisor as well as one of the Directors of the company who was responsible for the day-to-day functioning of the company had in unequivocal terms admitted the clandestine removal of the goods without payment of Excise Duty. Matching entries were found in their diaries which did not form part of the final records. Raw material was purchased in cash. Clearances were made without raising bills or invoices. Significantly and admittedly these statements were never retracted. The authorities were, therefore, entitled to rely on such statements. When the adjudicating authority and two appellate authorities found that there was enough evidence of clandestine removal of goods, in our opinion, the appeal does not give rise to any question of law. We are prepared to accept the appellant's contention that the question of additional consumption of electricity and procurement of raw material was raised before the lower authorities or that it could have been raised for the first time before the Tribunal. However, such question was not germane at all. When there was overwhelming evidence of **unretracted unequivocal confessional statements**, mere failure on the part of the Excise authorities to produce additional evidence of extra consumption of electricity or source of procurement of raw material would pale into insignificance. The Tribunal's remarks were merely in the nature of passing thoughts. Vulnerability of such observations would not vitiate the order itself.

5. In the result, the Tax Appeal is dismissed.”

Following the above ratio, it is seen that the deficiency pointed out by the appellant that additional evidence had not been adduced by investigation such as statement of the broker Shri Vivek Pandey or details of weighing slips etc. is not significant enough to override the evidentiary value of the confessional statements that remain unretracted on records. Therefore, the adjudicating authority was justified in placing reliance on the Panchnama as corroborated by the confessional and unretracted statements to confirm confiscation of goods, confirm demand of duty along with interest and to impose penalty on the appellant. The penalty imposed on M/s Super Traders is also justified because the proprietor of M/s Super Traders had admitted to the receipt of the impugned goods improperly without payment of Central Excise duty indicating that he had dealt with goods that he had reason to believe were liable for confiscation and such confession has never been retracted by him.

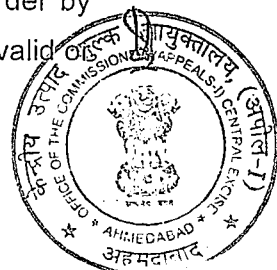


9. The appellant has raised the issue of natural justice and contended that the denial of cross-examination of the deponents amounted to violations of the principles of natural justice. On considering the case laws cited by the appellant in this regard, it is seen that both in the case of *Jindal Drugs Pvt. Ltd. vs U.O.I. – 2016 (340) E.L.T. 67 (P&H)* and *Mahek Glaze Pvt. Ltd. vs U.O.I. – 2014 (300) E.L.T. 25 (Guj.)*, cross-examination of third party deponents were sought for as the statements of these third-party deponents had been relied upon in the adjudication process. The facts of the instant case are distinguished because, as already emphasized in the above paragraph, the adjudicating authority has relied upon the unretracted statements of Shri Rakesh Kumar Suntwal, Senior Supervisor of the appellant and Shri Jugal Kishor Palod, Director of the appellant, recorded on 21/07/2015, 03/08/2015, 20/07/2015, 21/07/2015 and 30/07/2015. These statements were not made by third-party deponents but are confessional accounts of persons directly concerned with daily affairs of the factory who have clearly admitted clandestine clearances by the appellant. These confessional statements have never been retracted and hence cross-examination would have served no purpose. In the case of *SHALINI STEELS PVT. LTD. vs COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, HYDERABAD – 2011 (269) E.L.T. 485 (A.P.)*, it has been held by Hon'ble High Court of Andhra Pradesh that cross examination of employee who had admitted the offence was futile as the Managing Director had accepted the veracity of such statement. The relevant extracts are reproduced below:

“11. In the case on hand the statement of Sri Om Prakash Sharma was relied upon, by the Commissioner of Customs and Central Excise, in demanding payment of excise duty by, and in levying penalty on, the appellant. The statement of Sri Om Prakash Sharma, who was an employee of the Appellant company, was accepted to be true by none other than the Managing Director of the Appellant company. It is evident, therefore, that no prejudice was caused to the appellant on their being denied the opportunity of cross-examining Sri Om Prakash Sharma when its Managing Director had himself accepted the said statement to be true. Even otherwise nothing prevented the Appellant company, if they so chose, from producing Sri Om Prakash Sharma, (who was their employee), as a witness in their defence and to examine him on their behalf. It is evident, therefore, that this plea of denial of opportunity to cross-examine Sri Om Prakash Sharma is an afterthought, and was raised only to wriggle out of the demand of excise duty and the penalty levied on them.

12. No substantial question of law arises for consideration in this appeal necessitating interference by this Court under Section 35-G of the Act. The Appeal fails and is, accordingly, dismissed.”

Following the above principle, even in the instant case, no prejudice has been caused to the appellant by denial of opportunity for cross-examination because the confessions made by the Senior Supervisor has been corroborated by the Director in all his statements recorded on different dates. Thus the challenge of the impugned order by the appellant on the grounds of violation of the principles of natural justice is not valid sustainable.



10. In view of the above, the confiscation of impugned goods, the confirmation of demand and interest and the imposition of penalties in the impugned order are justified and are liable to be upheld. Accordingly, there is no need to intervene in the impugned order and the appeals filed by both the appeals are rejected.

11. दोनों अपीलकर्ताओं द्वारा दर्ज अपीलोंका निपटारा उपरोक्त तरीकेसे किया जाता है।

The appeals filed by both the appellants stand disposed of in above terms.

(Signature)

(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 10/07/2017

Attested

(Signature)

(K. P. Jacob)

Superintendent (Appeals-I)

Central Excise, Ahmedabad.

By R.P.A.D.

- 1) To
M/s Bhirav Rolling Mills Pvt. Ltd.,
Survey No. 76/3, At Vadavi, Near Vamaj,
Taluka: Kadi, District Mehsana.
- 2) M/s Super Traders,
Plot No. 101/1/15, Sector 28,
G.I.D.C., Gandhinagar,
Gandhinagar.

Copy to:

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

