

	केन्द्रीय कर आयुक्त (अपील)	
0/O THE COMMISSIONER (APPEALS), CENTRAL TAX, नस्तु एव सेवा कर भवन	GSIB Building, 7 th Floor, Near Polytechnic, Ambayadi, Ahmedabad- 380015	
सत्यमेव जयते	सानवी मंजिल पॉलिटेक्निक के पास आम्बावाडी, अहमदाबाद-380015	
☎ 079-26305065		टेलिफैक्स: 079-26305136

क फाइल संख्या :File No : V2/145,146,147/GNR/2018-19

ख अपील आदेश संख्या :Order-In-Appeal No.: AHM-EXCUS-003-APP-163-165-18-19

दिनांक Date :31-12-2018 जारी करने की तारीख Date of Issue:

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :AHM-CEX-003-ADC-AJS-005-18-19 दिनांक : 30-08-2018 से सृजित

Arising out of Order-in-Original: AHM-CEX-003-ADC-AJS-005-18-19, Date: 30-08-2018
Issued by: Additional Commissioner,CGST, Div:RRA, HQ, Gandhinagar
Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Sohni Ceramics

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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।

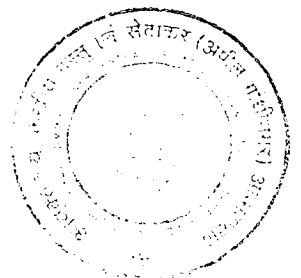
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

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 दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

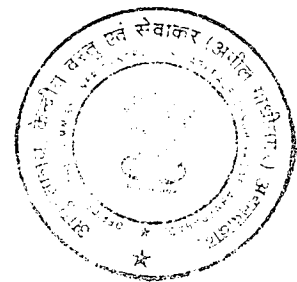
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(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 रूपर 5 लाख या उससे कम है वहाँ रूपर 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहाँ रूपर 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 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 (सीस्तेत) 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 अर्ज़ी 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:

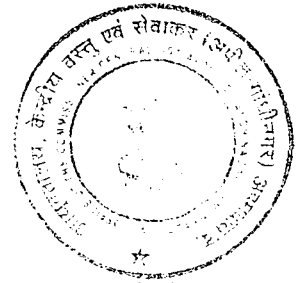
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

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

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER IN APPEAL

The below mentioned three appeals have been filed against OIO No. AHM-CEX-003-ADC-AJS-005-18-19 dated 30.8.2018, passed by the Additional Commissioner, Central GST and Central Excise, Gandhinagar Commissionerate [for short - 'adjudicating authority'], the details of which are as follows:

Sr. No.	Name of the appellant and address	Appeal No.
1	M/s. Sohni Ceramics, N H 8, Government Polytechnic College Road, Motipura, Himmatnagar, Gujarat.	V2/147/GNR/17-18
2	Shri Mansukhbhai B Patel, Partner M/s. Sohni Ceramics, N H 8, Government Polytechnic College Road, Motipura, Himmatnagar, Gujarat.	V2/146/GNR/17-18
3	Shri Dineshbhai I Patel, Partner M/s. Sohni Ceramics, N H 8, Government Polytechnic College Road, Motipura, Himmatnagar, Gujarat.	V2/145/GNR/17-18

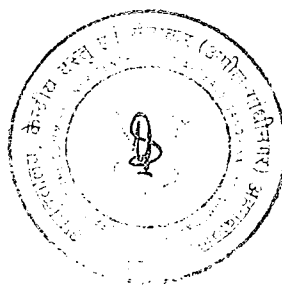
2. Briefly, the facts are that based on a preventive case, a show cause notice dated 4.10.2013 was issued to the aforementioned three appellants and one Shri Ishwarbhai D Patel. The notice *inter alia* proposed demanding central excise duty of Rs. 14,04,620/- along with interest and further proposed penalty on the appellant mentioned at Sr. No. 1 under Section 11AC read with Rule 25 of the Central Excise Rules, 2002. The notice further proposed penalty on the appellant mentioned at Sr. No. 2 and 3 and Shri I. D. Patel under Rule 26 of the Central Excise Rules. This notice was adjudicated vide OIO No. AHM-CEX-003-ADC-010-14-15 dated 29.9.2014 by the Additional Commissioner, Central Excise, Ahmedabad-III Commissionerate wherein he confirmed the demand & imposed penalties. On an appeal being filed it was decided by the then Commissioner(Appeal) vide his OIA No. 189 to 192/2014-15 dated 31.3.2015 issued on 1.4.2015. The appellant again preferred an appeal before the Hon'ble CESTAT, who vide its order No. A/13199-13201/2017 dated 11.10.2017, remanded back the matter to the original adjudicating authority, for denovo adjudication.

3. Based on the aforementioned direction of the Hon'ble CESTAT, the show cause notice dated 4.10.2013, was adjudicated vide the impugned OIO dated 30.8.2013, wherein the adjudicating authority has dropped the demand of Rs. 5,38,033/-, confirmed demand of Rs. 8,66,588/- along with interest and further imposed penalty on the appellant mentioned in the table *supra*. No penalty was imposed on Shri I.D.Patel.

4. Feeling aggrieved, the aforementioned appellants have filed this appeal raising the following grounds:

M/s. Sohni Ceramics

- the impugned OIO is not legal and proper;



- that as per the findings of the adjudicating authority at paras 14.1 to 14.9, it is evident that they have neither purchased raw materials nor manufactured the goods illicitly and have not cleared them on parallel invoices;
- that there is no corroborative evidence found for the clandestine clearances;
- that the alleged parallel invoice were generated from the computer installed in labour room yet the report of the Directorate of Forensic Science, Gandhinagar, was not relied ; that adjudicating authority confirmed the demand in the absence of crucial evidence from the author of the documents Shri Vikas Trivedi, Billing clerk and Shri Krunal Chauhan, Accountant;
- the computer printout is only base for demand of duty on alleged parallel invoices under which goods were cleared clandestinely;
- that the condition of Section 36B of the Central Excise Act, 1944, by relying on the computer printout was not fulfilled;
- that Shri Dinesh Patni, Partner of Sigma Tiles, during cross examination stated that they had never received any goods from the appellants without invoice;
- that Shri Amratlal Sheshmal Shah, Proprietor of M/s. Vardhman Ceramic, Surat did not appear for cross examination and therefore under the provision of Section 9D of the Central Excise Act, 1944, his statement cannot be considered as evidence and relied upon;
- the receipt of goods by other buyers is not forthcoming in the impugned OIO;
- that the findings in para 14.4 and 15.4 are contradictory;
- that though various judgements were relied upon to set aside the demand in respect of Annexure A-3, the same was overlooked while dealing with the demand in respect of A-3;
- that they wish to rely on the case of Gopi Synthetics [2014(302) ELT 435], Sakeen Alloys P Limited [2014(308) ELT 655], Shree Nathjee Industries [2011(267) ELT 241], and Nova Petrochemicals [Tribunals order no. A/11207-11219/2013 dated 26.9.2013; Hindustan Machines [2013(294) ELT 43, Vishwa Traders P Ltd [2012(278) ELT 362];
- that no interest is recoverable and no penalty is imposable.

Shri Mansukhbhai B Patel, Partner

- that he was not aware of the so called parallel invoices; that the statement of Shri Dineshbhai Patel was never shown to him;
- that no goods were cleared clandestinely which is corroborated by the buyers;
- that the annexures confirmed by the other partner vide his statement were never shown;
- that there is no evidence found for illicitly clearance of goods or of huge cash for illicit purchase of raw materials;
- that the confirmation of the authors of the parallel invoices was never taken;
- that he has not violated the provisions of Rule 26 of the Central Excise Rules, 2002;
- that they wish to rely on the case of Jai Prakash Motwani [2010(258) ELT 204;

Shri Dineshbhai I Patel, Partner

- that the annexures were got confirmed though he was not dealing with tax matters;
- that the statement of the partner dealing with tax matters was not recorded & the annexures were got confirmed by him;
- that the authors of the parallel invoices were not reporting to him except in case of some emergency;
- that the appellants had studied in vernacular language and the statements were recorded in English and Hindi which he could not follow;
- since the buyers during cross examination have clearly stated that they have not received any goods without invoice he has not violated Rule 26 of the Central Excise Rules, 2002.

5. Personal hearing in the matter was held on 12.12.2018 wherein Shri B.R.Parmar and Shri Anil Gidwani, both Consultants appeared before me and reiterated the grounds of appeal.

6. I have gone through the facts of the case, the grounds of appeal, the earlier orders, the order of the Hon'ble CESTAT and the oral averments made during the course of personal hearing. I find that the issue to be decided is whether the appellants mentioned at Sr. No. 1 in the

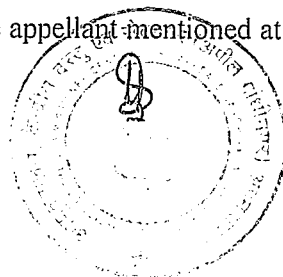


table *supra*, is liable to pay the duty and interest and further whether all the appellants mentioned in the table *supra*, are liable for penalty.

7. I have already briefly recorded the journey of the case above. Let me first put things in perspective. The show cause notice demanded Rs. 4,93,128/- in terms of Annexure A-3 and Rs. 9,11,493/- in terms of Annexure A-2. Now, Annexure A-3 is a worksheet reflecting the amount of Central Excise duty evaded by the appellant [mentioned at Sr. No. 1] by clearing excisable goods under the cover of parallel invoices which is tallied with regular sales invoices but goods cleared twice in cash by way of same serial number of invoice filed in file listed in sr. no. 1.1 of Annexure B to panchnamma. Annexure 2 on the other hand, is a worksheet reflecting the amount of central excise duty evaded by the appellant mentioned at Sr. No. 1 by clearing excisable goods under the cover of parallel invoices, which is not tallied with regular sales invoices filed in the file listed at Sr. No. 1.1 of the annexure B to the panchnamma.

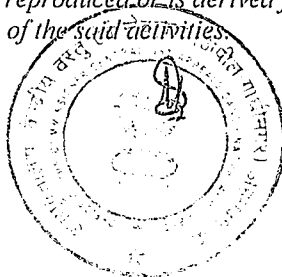
8. In the impugned OIO dated 30.8.2018, the adjudicating authority vide his findings, in paras 14.1 to 14.9, has held that there is no sufficient and supportive cogent, unimpeachable relevant and credible material evidence to establish the clandestine clearance of finished goods on parallel invoice as per Annexure A-3. Further, vide his para no. 14.2, he has included the amount of Rs. 44,905/- in Annexure A-3, by reducing the said amount from Annexure A-2.

9. Now the adjudicating authority has confirmed the demand of Annexure A-2 i.e. [Rs. 9,11,493/- less Rs. 44,905/- = Rs. 8,66,588/-]. It is against this confirmation that the present appeal is filed before me by appellant mentioned at Sr. No. 1, *supra*. The appellant's primary grouse is that since the parallel invoice were generated from the computer installed in the labour room, it was imperative that the condition of Section 36B(2) of the Central Excise Act, 1944 should have been adhered to. Section 36B(2) of the Central Excise Act, 1944, states as follows:

Section [36B. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence. —

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely :—

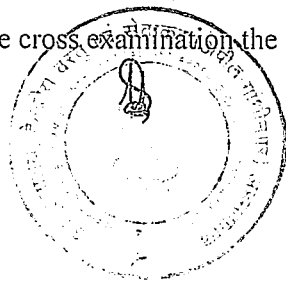
- (a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;*
- (b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;*
- (c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and*
- (d) the information contained in the statement reproduced or is derived from information supplied to the computer in the ordinary course of the said activities.*



The appellant in his grounds [page 10, para 3] has stated as follows : *“The computer print out is only base of the demand of duty on alleged parallel invoices under which the goods cleared to the buyer clandestinely. These print out did not satisfy the statutory conditions and provisions of Section 36B of the Central Excise Act, 1944 which deal with admissibility of computer print outs etc. as evidence. The statement contained in a computer print out be deemed to be a document for the purposes of Central Excise Act and the rules made thereunder and shall be admissible as evidence of the contents of its original. If the conditions mentioned in sub section 2 of Section 36 and other provisions of the section are satisfied in relation to the statement and the computer in question..... The investigating officers/adjudicating officer failed to comply with the conditions of Section 36B of the Act in respect of relying upon this computer print out. “* But the failure of the investigating officer/adjudicating authority, is not spelt out clearly. Just by relying on Section 36B, I cannot come to any conclusion about the failure of compliance. The failure, should have been pin pointed, instead of vaguely mentioning that the officer/authority failed to comply with the conditions. The contention being vague, it stands rejected.

10. The appellant has further contented that the findings of para 14.4 and 15.4 are contradictory. Let me examine this contention. In para 14.4 , the adjudicating authority, states that none of the transporters have agreed to the fact that they had transported double quantity of goods on the same day on the same number of invoice or on parallel invoice and the transporters have also submitted copies of transport document i.e. bilty while recording the statement. While in para 15.4 the adjudicating authority states that all the transporters have accepted that they had transported the goods. Now, how this is contradictory, is not understood. As far as para 14.4 goes, the adjudicating authority was dealing with Annexure A-3, which dealt with clearing excisable goods under the cover of parallel invoices [which is tallied with regular sales invoices but goods cleared twice in cash by way of same serial number of invoice filed in file listed in sr. no. 1.1 of Annexure B to panchnamma. Hence, the adjudicating authority held that the transporters though stated that they had transported the goods they further stated that they had never transported the double quantity of goods on the same day on the same number of invoice or on parallel invoice. However, as par as para 15.4 is concerned, which deals with Annexure A -2, the transporters have already stated that they had transported the goods, and since the annexue deals with goods cleared under parallel invoice, the findings are not contradictory.

11. Moving on to the next argument, I find that the appellant has contended that that Shri Dinesh Patni, Partner of Sigma Tiles, during cross examination stated that they had never received any goods from the appellant without invoice. I would like to quote the following : *“On being asked further by the representative of the assessee as to whether he has purchased 26 boxes of ceramic tiles from M/s. Sohni Ceramics he stated that he has purchased 26 box of ceramics tiles vide invoice no. 1266 dated 31.12.2009 from M/s. Sohni Ceramics only once and the payment was made in cash.”* On going through Annexure -2 which is a worksheet reflecting the amount of central excise duty evaded by the appellant mentioned at Sr. No. 1 by clearing excisable goods under the cover of parallel invoices which is not tallied with regular sales invoices, I find that at Sr. No. 122 the said clearance finds a mention. Since even during the cross examination the buyer has confirmed



to having received the said goods I find that this clearly confirms the charges of the revenue that the goods were infact cleared clandestinely under parallel invoices since this is not tallied with regular sales invoices and the buyer during cross examination has confirmed receipt of the said goods. In view of the foregoing, the contention of the appellant that there is no corroborative evidence, that the crucial evidence from the author of the documents were absent; that one of the buyer did not appear for the cross examination and that receipt of goods by buyers is not forthcoming, does not hold goods and is not tenable. Further, the appellant has contended that the judgements relied upon by the adjudicating authority, were made applicable to Annexure 3 but not to Annexure 2. The argument is not tenable because in case of Annexure 3, the buyers during cross examination clearly stated that they have received the goods only once, which was in contrast to the allegation made and confirmed by the department. In case of Annexure 2, the buyer whose name figures in the said annexure is on record during cross examination that he had received the said goods, which not only bolsters the confirmation of the demand by the adjudicating authority.

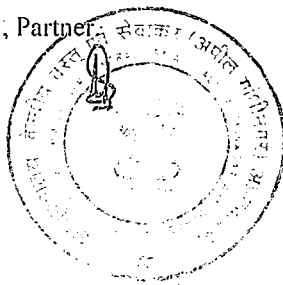
12. The appellant has relied upon a plethora of cases viz. Gopi Synthetics [2014(302) ELT 435], Sakeen Alloys P Limited [2014(308) ELT 655], Shree Nathjee Industries [2011(267) ELT 241], and Nova Petrochemicals [Tribunals order no. A/11207-11219/2013 dated 26.9.2013; Hindustan Machines [2013(294) ELT 43, Vishwa Traders P Ltd [2012(278) ELT 362]. All these cases pertain to clandestine removal. In-fact in the case of M/s. Nova Petrochemical, the Hon'ble Tribunal, has laid down certain fundamental criteria to be established by the Revenue. However, though the department's case may not fulfill the entire criteria, leading to the dropping of the part of the demand, I find that what stands confirmed, is based on solid footing, more so since the buyer has accepted the fact of receipt of goods not only in his statement but also during the cross examination held before the adjudicating authority. This not only confirms the illicit clearance, but proves beyond doubt that the appellant engaged in clandestine clearances as is mentioned in Annexure -2. Since the demand confirmed is upheld, and for the foregoing reasons, I do not find any reason to interfere with the demand of interest and imposition of penalty on the appellant mentioned at Sr. No. 1 of the table supra.

13. I now come to the appeal filed by Shri Mansukhbhai B Patel, Partner of the appellant mentioned at Sr. No. 1 supra. Before moving to the grounds raised by Shri M B Patel, I find that the adjudicating authority in his findings has this to say:[relevant text]

"I find that subsequent statement of other partner namely Shri I D Patel, Shri D I Patel, statement of Shri K B Bhavsar, Accountant and statement of various buyers and transporters recorded were not shown to Shri M B Patel, Partner and his further statements were also not recorded during the investigation in affirmation of his active role in such clandestine clearance of goods under parallel invoice. However since Shri M B Patel, Partner was also somehow directly or indirectly involved in the whole business affairs of the said assesee he deserves to be penalized but leniently keeping in view his role in the whole episode of clandestine clearance. "

[emphasis mine]

For imposition of penalty, clear cut findings are to be given. The findings should have clearly spelt out his role and how he was liable for penalty under Rule 26 of the Central Excise Rules, 2002. There being no such finding on record except a vague line that he was "*somehow directly or indirectly involved*", I set aside the penalty imposed on Shri Mansukhbhai B Patel, Partner.



14. Now moving on to the appeal filed by Shri Dineshbhai I Patel, partner of the appellant mentioned at Sr. No. 1, I find that the appellant has stated that the annexures were got confirmed though he was not dealing with tax matters; that the statement of the partner dealing with tax matters was not recorded nor were annexures confirmed shown to him; that the authors of the parallel invoices were not reporting to him except in case of some emergency; that the appellant studied in vernacular language and the statement were recorded in English and Hindi which he could not follow. The findings of the adjudicating authority is that no decision was taken without his permission; that both the persons who were the involved in preparing the parallel invoices reported to him; that he was actively and knowingly indulged in clandestine clearance. The plea now raised by the appellant, appears to be an afterthought. There is nothing on record to show that when the statements were being recorded or the annexures were being confirmed, neither did he protest nor did he file any retraction. Hence now, putting forth this argument, is not at all tenable and therefore, I do not find any reason to interfere with the imposition of penalty on Shri D.I.Patel, when his role in the clandestine clearance is clearly mentioned by the adjudicating authority on record.

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

उमा शंकर
(उमा शंकर)

आयुक्त (अपील्स)

Date 31.12.2018

Attested

Vinod I. Khose
(Vinod I. Khose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.

By RPAD.

To,

M/s. Sohni Ceramics, N H 8, Government Polytechnic College Road, Motipura, Himmatnagar, Gujarat.	Shri Mansukhbhai B Patel, Partner M/s. Sohni Ceramics, N H 8, Government Polytechnic College Road, Motipura, Himmatnagar, Gujarat.	Shri Dineshbhai I Patel, Partner M/s. Sohni Ceramics, N H 8, Government Polytechnic College Road, Motipura, Himmatnagar, Gujarat.
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Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Gandhinagar Commissionerate.
3. The Assistant Commissioner, Central Tax Division- Gandhinagar, Gandhinagar Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Gandhinagar Commissionerate.
5. Guard File.
6. P.A.

