



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240564SW000000B711

(क)	फाइल संख्या / File No.	GAPPL/COM/CEXP/397, 317 & 396/2023-APPEAL/ 4933-39
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-010 to 012/2024-25 and 25.04.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	01.05.2024
(ङ)	Arising out of Order-In-Original No. KLL DIV/EX/YOGENDRA SINGH RAWAT/227/23-24 dated 30.05.2023 passed by the Assistant Commissioner, CGST, Division- Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	1. M/s Laxmi Bulk Carrier, Shop No. G/30-31, Himalaya Complex, Opp. Rathod Toyota Showroom, NH 48, Shamshan Bhoomi Road, Balitha, Vapi - 396195. 2. Shri Jigar Kothari, Proprietor of M/s Aristo Chemicals, 204, Quantum Tower, Ram Baug Lane, Malad (West), Mumbai - 400063. 3. M/s Hari Om Bulk Carrier (Prop. - Shri Lal Bahadur Indrajit Yadav), Office No. 3, Brahmadev Complex, Opp Brahmadev Temple, NH-8, Balitha, Vapi.

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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.

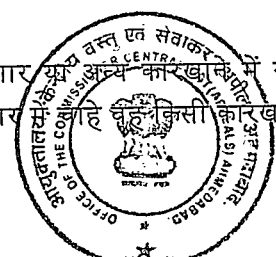
भारत सरकार का पुनरीक्षण आवेदन:-

Revision application to Government of India:

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

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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 से किसी भण्डागार में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।



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।

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।

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

(घ) 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

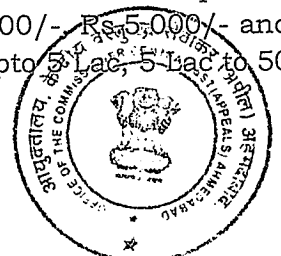
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

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.

(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।

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."



अपीलिय आदेश/ ORDER-IN-APPEAL

On similar issue, following appeals have been filed by the appellants against the Order in Original No. KLL DIV/EX/YOGENDRA SINGH RAWAT/227/23-24 dated 30.05.2023 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST & Central Excise, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

Table-A

Sr. No.	Appeal No.	Name of Appellant	Amount Involved
01	GAPPL/COM/CEXP/397/2023	M/s. Laxmi Bulk Carrier Shop No. G-30/31, Himalaya Complex, Samshan Road, Balitha, Vapi-396195 (hereinafter referred to as 'Appellant-1')	Penalty Rs.8,18,736/- u/r 26 (2) of CER, 2002
02	GAPPL/COM/CEXP/317/2023	Shri Jigar Kothari Proprietor & Director M/s. Aristo Chemicals, 204, Quantam Tower, Ram Baug Lane, Malad (West), Mumbai-400063 (hereinafter referred to as 'Appellant-2')	Penalty Rs.10,75,919/- u/r 26(2) of CER, 2002
03	GAPPL/COM/CEXP/396/2023	M/s Hari Om Bulk Carrier Office No. 03, Brahmadev Complex, Opposite Brahmadev Temple, NH-8, Balitha, Vapi (hereinafter referred to as 'Appellant-3')	Penalty Rs.17,36,743/- u/r 26 (2) of CER, 2002

2. The M/s Laxmi Bulk Carrier- **Appellant-1** and M/s. Hari Om Bulk Carrier- **Appellant-3** both are engaged in transportation of goods mainly bulk cargo. Shri Jigar Kothari- **Appellant-2** is the Proprietor & Director of M/s. Aristo Chemical. They are Dealer/Trader of base oils & petroleum products. All the appellants are registered with the department

2.1 Briefly stated the fact of the case are that based on an intelligence gathered by DGGI, , RU, Vapi, it was observed that **M/s. Aristo Chemicals** and M/s Aristo Oil Chem Pvt Ltd, 204, Quantum Tower, Ram Baug Lane, S.V.Road, Malad (W), Mumbai-64, were engaged in trading of various petroleum products like Lubricating Oil, Base Oil and Light Liquid Paraffin etc. falling under Chapter 27 of First Schedule to the CETA, 1985 and HSN code 2710 and were facilitating the manufacturers/industrial users to avail the irregular Cenvat credit/ITC without actual receipt and use of inputs in or in relation to manufacture of excisable goods or without actual supply and receipt of the goods by way of issuing the Duty/Tax invoice without actual delivery of the goods specified therein. Intelligence further indicated that the business firms or persons who were actual recipient of these goods were re-packing/re-selling or selling their resultant goods clandestinely without preparing any bill/invoice for sale or supply of goods to their buyers and evading payment of Central Excise duty/Tax.

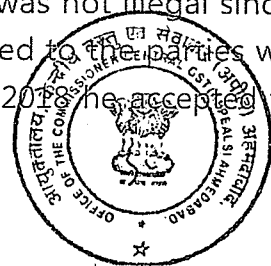
2.2 Intelligence further suggested that they were supplying a substantial quantity of the procured goods viz. Base Oil and Light Liquid Paraffin on cash basis without bill to the buyers who were engaged in repacking and selling. Besides genuine supply



of these products to the industrial users under proper invoices, these dealers were also issuing the Cenvatable invoices in the name of such industrial users to facilitate these buyers to avail Cenvat credit/ITC without actual delivery of the goods to them, but the same goods were actually delivered to the buyers engaged in re-packing and selling business, who subsequently used to sale these goods in the market on cash basis. Since, the aforesaid goods were transported through tankers, the entire quantity of the consignment covered under manufacturer/supplier's invoice were being sold to the different buyers on cash basis other than the buyer to whom the Cenvatable/ITC invoices were raised. The information received indicated that these dealers were procuring their inputs from M/s Savita Oil Technologies Ltd, Silly, Silvassa, M/s Gandhar Oil Refinery Pvt Ltd, Silvassa, M/s Apar Industries Ltd, Silvassa, M/s Panama Petrochemicals Ltd, Daman and M/s Jell Pharmaceuticals Pvt Ltd, Silvassa etc. and were undertaking this business activity mainly through the transporters namely M/s Sanjay Road lines, Kurla, Mumbai and M/s Laxmi Bulk Carrier, Vapi etc.

2.3 During investigation in the case of M/s. Laxmi Bulk Carrier- **Appellant-1**, it has been found that in many cases the goods loaded from the premises of the suppliers were not unloaded at the address or location of the consignee or customer but were actually delivered or unloaded at the different locations. Further the amount of freight payable for delivery of the goods other than the place of customers was not charged in the transport bills, whereas their LR's have been used for showing transportation to M/s Green Petro Fuels LLP, **M/s Arham Petrochem Pvt Ltd**, M/s Command Resources, M/s Bagwan Petroleum, M/s Rossari Bio Tech Ltd, M/s Cauvery Petrochemicals Pvt Ltd, M/s Hindustan Enviro Life Protection Ltd, M/s Apex Traders etc. The details of the said transportation are not appearing in the records of Transporter and hence only LRs of M/s. Laxmi Bulk Carrier- **Appellant-1** have been used for keeping evidence of transportation; the appellant have accepted that they have not transported goods vide LR 15 dated 7.4.2016 to M/s. Arham Petrochem Pvt. Ltd., Kalal for which invoice has been issued by Aristo Oil Chem Pvt Ltd., but the consignment was diverted to M/s. Swastik, Ahmedabad. Shri Sudhakar B. Shah, Partner of Laxmi Bulk Carrier stated in his statement that on instruction of the Arham Petrochem, the goods were delivered to the party mentioned in the table during the period of 2016-17 and 2017-18. He stated that they did not transport and deliver any consignments of the Noticee during the period 2014-15 to September 2018 as mentioned in the answer to Question No. 4.

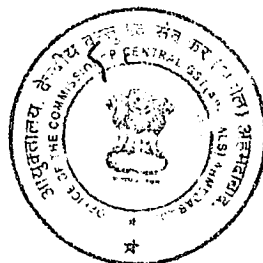
2.4 Investigation also revealed that Shri Jigar B. Kothari- **Appellant-2**, Director of M/s. Aristo Oil Chem Pvt Ltd and M/s. Aristo Chemicals, 204, were selling the goods to buyers under cover of three types of invoices viz. Tax Invoice, Retail Invoice and Central Excise Dealer Invoice; that on some cases where some transporters had given their lorry receipt books to them which were issued by them to cover the sale invoices of the goods sold by us and M/s Sanjay Roadlines, Mumbai, M/s. Sandhu Roadlines, Mumbai are such transporters He accepted in his statement recorded on **19.11.2018** that there are certain cases where they have actually supplied the goods to different parties and raised the bills/ invoices to different parties without supply of goods to them; that he was under impression that such practice adopted by them was not illegal since they have discharged the tax liabilities in respect of the bills issued to the parties without actual supply of goods. In his statement recorded on 27.12.2018 he accepted that as



dealer of excisable goods in pre GST period M/s Aristo Chemicals , Mumbai have issued Excise Invoice to M/s K.R & Company, M/s Kashiram & Sons, M/s Green Petro Fuels LLP, M/s Zymio Cosmetics, **M/s Arham Petrochem Pvt Ltd**, M/s Command Resources, M/s N.J.Pharma, M/s Apex Traders, M/s Bagwan Petroleum, M/s Rossari Bio Tech Ltd, M/s Cauvery Petrochemicals Pvt Ltd, M/s Harmony Additives Pvt Ltd.; that they have not engaged any transporter for transportation of goods to M/s Green Petro Fuels LLP, **M/s Arham Petrochem Pvt Ltd**, M/s Command Resources, M/s Bagwan Petroleum, M/s Rossari Bio Tech Ltd, M/s Cauvery Petrochemicals Pvt Ltd, M/s Hindustan Enviro Life Protection Ltd, M/s Apex Traders etc as they have not supplied any goods to these parties; that no physical movement of goods to these parties M/s Green Petro Fuels LLP, **M/s Arham Petrochem Pvt Ltd**, M/s Command Resources, M/s Bagwan Petroleum, M/s Rossari Bio Tech Ltd, M/s Cauvery Petrochemicals Pvt Ltd, M/s Hindustan Enviro Life Protection Ltd, M/s Apex Traders etc. were involved therefore, there is no question to engage any transporter for transportation of the goods; that M/s Sanjay Roadlines, has not transported the goods in respect of the 24 invoices issued by our company M/s Aristo Oil Chem Pvt Ltd, Mumbai listed in Annexure-B(1) of the statement and they have used the lorry receipts of the M/s Sanjay Roadlines in support of these invoices; that M/s Sanjay Roadlines, has not transported the goods in respect of the 14 invoices issued by his firm M/s Aristo Chemicals, Mumbai listed in Annexure-B(2) of the statement and they have used the lorry receipts of the M/s Sanjay Roadlines in support of these invoices. M/s Sanjay Roadlines, has not transported and delivered the goods from any location to their warehouse and they have transported the goods to their buyers only; that M/s Om Transport, Kadi has never transported any goods of M/s Aristo Oil Chem P Ltd/M/s Aristo Chemicals, Mumbai to M/s Rossari Biotech Ltd, Silvassa, M/s Hindustan Enviro Life Protection Services Ltd, Khambhat, Dist-Anand, M/s Gandhar Oil Refinery (India) Ltd, Silvassa, M/s Cauvery Petrochemicals Pvt Ltd, Malur, Karnataka, M/s Shree Shyam Chemicals, Raipur M/s Pooja Corporation, Surat.

2.5 Further, investigation also revealed that that 21 consignment of M/s Rajkamal Industrial Pvt Ltd, Valued at Rs. 1,46,27,691/- wherein Cenvat Credit amounting to Rs. 17,36,743/- is involved, have been shown to be transported through M/s Hari Om Transport- **Appellant-3** but the details of transportation of said consignments is not available with the records of transporters indicating that the said consignments have been diverted. Shri Lal Bahadur Yadav-, Proprietor of M/s. Hariom Bulk Carrier in his statement recorded on 04.05.2018, have accepted that some of the blank LR's are missing whereas some of the consignor do not want to disclose the name of consignee, hence left the column blank. Possibly the consignments shown to be transported to M/s Arham Petrochem Pvt Ltd, Kalol, may have arised by misuse to the said LR's. They failed to safe guard the important documents such as LRs and also failed to maintain proper records by abetting, to defraud the government revenue.

2.6 A SCN No. V/15-21/DGGI/Vapi/2018-19 dated 16.09.2020 was issued to **Appellant-1, Appellant-2 & Appellant-3** proposing penalty under Rule 26(2) of the CER, 2002.

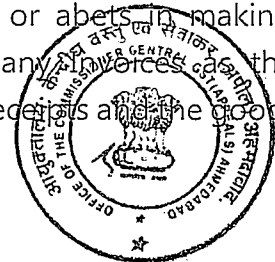


3. The said SCN was adjudicated vide the impugned order wherein, the penalty of Rs.8,18,736/- Rs.10,75,919/- & Rs.17,36,743/- each was imposed on the Appellant-1, Appellant-2 & Appellant-3 respectively.

4. Aggrieved by the impugned order, all the three appellants (**Appellant-1, Appellant-2 & Appellant-3**) have preferred the appeal and have contested the penalty on following grounds;

Submissions of Appellant-1 & 3

- Appellants are into the business of transportation of goods since many years. They are having a heavy vehicles such as Oil tankers and indulged in the business of transporting of bulk cargo viz. Lubricating Oil, Liquid Paraffin and Transformer Oil from the manufacture of base Oil and petroleum products to the company where the related products are manufactured. They are dealing with the goods supplied by M/s Aristo Chemicals /Aristo Oil Chem/ Rajkamal Industries and other trading firms and the goods are transported under proper transport documents such as Lorry receipts and also carry the tax paid documents during the transit of the goods. The payment of the transport charges are paid by these traders (Consignors) and not by the consignee.
- Appellants pertinently mentions that the Proprietors of the firm **Appellant-1 (Shri Sudhakar B Singh)** & Proprietor of **Appellant-3** firm (**Shri Lal Bahadur Yadav**) doesn't know to read or write English and do not understand English language. But the DGGI officers recorded the statement and typed the same in English. Also the said statement was recorded under duress and threat and forcibly asked to sign the said statement without allowing to going through the same. There is no other corroborative evidence of the purported confession from independent sources, therefore, the Statements of the Appellants representative loses its evidentiary value and hence it cannot be relied.
- Appellants have relied upon judgment passed by Hon'ble Bombay High Court in the case of Union of India vs Kisan Ratan Singh & Ors on 7 January, 2020, wherein it is mentioned that the Section 108 of the Customs Act 1962, is admissible in evidence. However, the statement cannot be accepted blindly without corroboration. In the statement dated 11.08.2020, Shri Ashish S. Agarwal of M/s. Arham Petrochem Pvt. Ltd stated that they had paid Service Tax under RCM on the freight paid by them to various transporters and further he submitted that his Company has availed the Cenvat of Rs 99,910/- on the invoices issued by M/s Aristo Oil Chem Pvt Ltd, Cenvat of Rs 9,76 009/- on the invoices issued by M/s. Aristo Chemicals and Rs.39,14,648/ on the invoices issued by M/s Rajkamal Industrial Pvt. Ltd. Total amounting to Rs.49,90,567/ as the same has been actually received by them and the entries in RG23 Part-I and RG23 Part II are the testimony of the goods received in their factory.
- Penalty under Rule 26(2) shall be imposed on any person who issues an excise duty invoice without delivery of the goods specified therein or abets in making such invoice. Appellant is not the person who had issued any invoices as they are transported the goods Appellant has issued proper Lorry receipts and the goods were

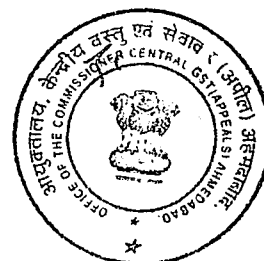


delivered to the consignee mentioned on the Lorry receipts. Thus, it is sufficiently clear that the Appellant has issued the legitimate transport documents and the relevant goods are also delivered to the recipient of the goods. Further, the recipient of goods, viz. M/s. Arham Petrochem Pvt Ltd has also confirmed that they have received the goods and on the basis of the proper tax paid Invoices for the said goods they have availed the CENVAT credit. Therefore, it is evident that the Appellant is not the person who had issued any excise duty invoice without delivery of the goods. Hence the penalty imposed under Rules 26(2) of the Central Excise Rules 2002 amounting to **Rs.8,18,736/- & Rs.17,36,743/-** imposed upon the **Appellant-1 & 3** respectively, vide impugned Order in Original has to be set aside.

- Statements can only be relied upon if the same is corroborated by independent and cogent evidence, which department failed to adduce. Moreover, this sole evidence was relied upon, which contradictory to the statement is given by the other related persons. Further, statements of third person without cross-examination and without support of corroborative evidence cannot be used against the Appellant. They placed reliance on decision passed in the case of;
- Modern Ex-Servicemen Engg. Co. P – 2014 (304)ELT 298 (Tri-Del)
 - Meenakshi Ferro Ingots Pvt. Ltd. - 2016(344) ELT 1085 (Tr-Mumbai)

Submissions of Appellant-2

- With regard to the statements recorded of the Appellant and his employee. Appellant would like to state that the statements of the Appellant were recorded on 19-11-2018, 26-12-2018 and 20-06-2020 in the office of DGGI Vapi, the said statements were typed by the Senior Intelligence Officer of DGGI Vapi Regional as per their own requirement and DGGI Officers had forcefully asked the Appellant under threat of arrest to sign the statements without allowing to see and verify the contents of the statement. The statements were not given voluntary and it was under duress. More important is that the copy of the Statements were not provided to the Appellant neither on the day of the statement nor along with the Show cause Notice till date. The contents of the Statements were not known to the Appellant when the subject Show Cause Notice was received by the Appellant and on perusal of the Show cause Notice, the Appellant came to know the contents of the forcefully extracted statements. Appellant was in utter shock on going through the wordings, as it was not at all his wordings or his answers given to the questions asked by the officers. Therefore, at that first available opportunity, **Appellant had retracted statements vide Affidavit dated 21-07-2020**. The retraction letter/Affidavit was submitted to the Assistant Director/Deputy Director DGGI Vapi Regional Unit having office at 3rd Floor, Royal Fortune Building , Daman Road, Vapi vide letter dated 21st July 2020 which was received in the office of the Assistant Director /Deputy Director, DGGI Vapi regional Unit , 3rd Floor, Royal Fortune Building , Daman Road, Vapi on 25-07-2020. It is pertinent to mention that the retraction has not been rebutted by the DGGI officers which seems that the same is accepted by the DGGI officers. Therefore, the Statements of the Appellant loses its evidentiary value and hence it cannot be relied.



- The allegation levelled has been based only on his forcibly extracted statements and no other corroborative evidence are produced in the investigation. However, in the contention/ reply to show cause notice Appellant has submitted all the relevant documents such as invoices, transport document showing exact movements of goods from the manufacture to the consumer (M/s Arham Petrochem Pvt Ltd) details of receipt of payments, filing of returns of Central Excise and Service tax in stipulated time, proper correspondence for sale and purchase of the goods, Purchase documents for the goods purchased from the manufacturers directly and sold in the same quantity to the buyer who himself is consumer. The Respondent has erred in consideration of the all the evidence for the legitimate sale of goods under proper documents of Sale and transportation.
- If retraction at any point of time of investigation is not rebutted, thus, it is considered as accepted and therefore Appellant's statements has lost his evidentiary value. It is a trite law that evidence brought on record by way of confession which stood retracted must be substantially corroborated by other independent and cogent evidence, which would lend adequate assurance to the court that it may seek to rely thereupon. The base of the allegation is lost and therefore the penalty imposed against the appellant under Rule 26(2) of Central Excise Rules 2002 is incorrect and hence it is prayed before the Learned Commissioner (Appeals) that the impugned Order has to be set aside. Appellant would like to rely upon the following case laws/judgement for supporting his above contention.
- i) *Francis Stanly @ Stalin v. Intelligence Officer, Narcotic Control Bureau, Thiruvanthapuram (2006) 13 SCC 210;*
 - ii) *Vinod Solanki Vs Union Of India (2009)233 E.L.T.157.S.C*
 - iii) *Tele Brands (India) Pvt. Ltd. Vs Commissioner Of Cus. (Import), Mumbai (2016)336 Elt 97 (Tri. Mumbai)*
- Appellant would like to state that whenever any cases of wrong availment of the Cenvat Credit are investigated, it is settled law that the stand of the said Company shall be considered as the positive, because, they are in the correct position to explain the receipt and actual usage of the raw materials and on the basis of their records of input of raw materials and clearance of the finished goods made out of the said raw materials.
- The Appellant has submitted the relevant documents in lieu of the Invoices mentioned in Annexure- A to the Show cause Notice such as Tax Invoices, Delivery Challans of the goods purchased from the manufactures, Lorry receipt of transportation of goods. Appellant also submitted the details of the proper records of the entry and exit of excisable goods which is apparent to their Central Excise Returns filed during relevant period Appellant also submitted the Service tax returns for payment of Service tax under RCM for transportation charges. Thus, the said documents clearly signifies that the excisable goods are supplied by the Appellant to M/s. Arham Petrochem Pvt Ltd. Thus, the Appellant has supplied the goods vide the 13 Invoices mentioned in the Annexure A to the show cause Notice. Appellant is not



the person who had issued any excise duty invoice without delivery of the goods. Hence the penalty under Rules 26(2) of the Central Excise Rules 2002 is not applicable on him and requested to set aside the penalty of **Rs.10,75,919/-** imposed under Rule 26(2) of Central Excise Rules 2002 in the impugned Order in Original.

5. Personal hearing in the matter was held on 12.04.2024. Shri Lilesh P. Sawant, Advocate, appeared for personal hearing on behalf of all the three Appellants and reiterated the submissions made in the appeal memorandum and requested to allow the appeals.

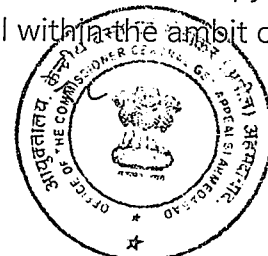
6. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, oral submissions made during personal hearing, the impugned order passed by the adjudicating authority and other case records. The issue before me for decision in the present appeal is, whether imposition of following penalty under Rule 26(2); vide the impugned order passed by the adjudicating authority in the facts and circumstances of the case is legal and proper or otherwise?

- a) Penalty of Rs.8,18,736/- on Appellant-1,
- b) Penalty of Rs.10,75,919/- on Appellant-2
- c) Penalty of Rs.17,36,743/- on Appellant-3

The demand pertains to the period **F.Y. 2015 to up to June 2017.**

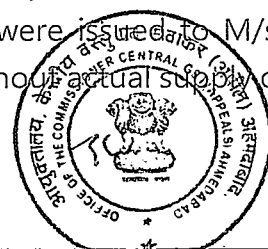
6.1 It is observed that the adjudicating authority at the impugned order confirmed the imposition of penalty on Appellant-1, 2 & 3 on the findings discussed below;

6.2 In respect of **Appellant-1**, the adjudicating authority observed that the major clients of M/s Sanjay Roadlines, Mumbai, for transportation are M/s Apar Industries Ltd, Silvassa, M/s Raj Petro Specialities Pvt Ltd, Silvassa, M/s Gandhar Oil Refinery India Ltd, Silvassa, M/s Aristo Chemicals, Mumbai, M/s Aristo Oil Chem Pvt Ltd, Mumbai and M/s Rajkamal Industrial Pvt Ltd, Ahmedabad have stated that they give four blank copies of lorry receipt to the driver wherein the vehicle number is only mentioned; that that at the time of booking of the vehicle where the payment of freight is made in cash by the consignee, the customer i.e. buyers of the goods say M/s Aristo Chemicals pass the instruction on phone that the goods are to be unloaded at the particular place or at the premises of particular buyer and also pass the instruction that two lorry receipts has to be prepared, one for the place of supplier say M/s Apar Industries Ltd to place of buyer say M/s Aristo Chemicals Mumbai and other for the place of customer say M/s Aristo Chemicals Mumbai to place of their buyers say M/s Balaji Oil. In such cases the first lorry receipt alongwith invoice of supplier were retained by the customer say M/s Aristo Chemicals and the second lorry receipt and copy of the invoice of customer say M/s Aristo Chemicals Mumbai were handed over to their buyers say M/s Balaji Oil where the goods were unloaded; that on receipt of work orders on phone from the clients, they ask driver to reach at the address of the consignor for loading of the goods. After loading weighment is done and the blank lorry receipts are either filled by the driver himself or by the person available at the loading site. The adjudicating authority therefore finds that Appellant-1 has abetted by way of issuance of documents such as blank copy of LRs without transporting the goods, this act of the Appellant is well within the ambit of Rules



26(2) of Central Excise Rules, 2002, thus, rendered themselves liable for penalty. As the Cenvat Credit claim on such LRs amounts to Rs.8,18,736/-, therefore, he imposed penalty amounting to **Rs.8,18,736/- on Appellant-1.**

6.3 In respect of **Appellant-2**, the adjudicating authority observed that the statements made under the law before the proper authority is deemed to be true and correct and is admissible as evidence. Any retraction of a clear admission made has to be on the ground of it being either erroneous or factually incorrect or one made under threat or coercion. Whenever an assessee pleads that the statements have been obtained forcefully/by coercion/undue influence without material/contrary to the material, then it should be supported by strong evidence. It is pertinent to mention that Section 31 of the Indian Evidence Act, 1872 states that admissions are not conclusive proof of the matters admitted. Furthermore, in view of Section 94 of the Indian Evidence Act, presumption can be rebutted by proving that the admission or confession was caused by inducement, threat or promise, thereby making the admission irrelevant. Thus, an admission cannot be a foundation, where the admission was made under involuntarily, threat, force, pressure, coercion or erroneous impression or misconception of law. In such circumstances, it is always open for the person making statement to demonstrate and satisfy the authority concerned with documentary evidence and thereby retract from the statement so rendered without any significant delay of time. He relied on various case laws in support of his argument. Retraction of statement after long spell of time is nothing but an afterthought and also no cogent or substantive reason, for duress is brought on record, or nor any affidavit to declare true and correct fact is made. Further he held that the there was no supply of goods and person responsible for transportation of goods have also denied such transportation, the contention made by the appellant is far from the truth and legally not sustainable, on the contrary, the confession made itself is sufficient to hold that there was no supply of goods and only tax invoices were issued to facilitate to avail Cenvat Credit without actual supply of goods. Adjudicating authority also held that the purchase from the renowned supplier and payment of duty/tax or any entries made in the RG-23D register is not the dispute in the matter as it were done to make the transaction legal, the dispute is with regards to transportation of goods, wherein, the transporters as shown in the entries have denied to have transported the said goods to Arham Petrochem Pvt. Ltd., therefore, the contention that goods were cleared on payment of all the appropriate duty and taxes under the legitimate Invoices and challans will not help the Appellant to substantiate the ground advanced by them. He held that no documentary evidence such as weighment slips of truck, toll receipt etc. to support their claim of movement of goods. In absence of such records/evidence, it can be easily hold that there was no transportation of goods. He finds that the appellant has purchased the goods from the manufacturer and LR of transportation of goods is not relevant, as the appellant failed to produce any documentary evidence, regarding transportation of goods in question. It is not established that only Invoices were issued by the appellant to M/s. Arham Petrochem for availment of Cenvat Credit. By this act, the appellant has abetted and facilitated M/s. Arham Petrochem by issuing Invoice without actual supply of goods, hereby the appellant has rendered themselves liable for penal action. The copies of LRs, Statement of Transporters, Trip Register etc. are documentary evidence to prove that there was no actual transport of goods and only Invoices were issued to M/s. Arham Petrochem and facilitated them to avail the Cenvat Credit without actual supply of goods.

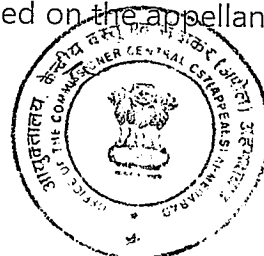


The written submission of M/s. Vapi Jamnagar Transport Co. makes the issue crystal clear that no transportation took place. The appellant in their statement also agreed to the statements given by the transporter and Invoices issued with corresponding LR of the transporter did not tally with the trip register of the transporter. The appellant being a natural person has conducted such activity for the legal entity, knowingly and suppressed the facts from the department. This act has rendered themselves liable for penal action.

6.4 In respect of **M/s Hari Om Bulk Carrier (Appellant-3)**, the adjudicating authority observed that 21 consignment of M/s Rajkamal Industrial Pvt Ltd, Valued at Rs.1,46,27,691/- wherein Cenvat Credit amounting to Rs.17,36,743/- is involved, have been shown to be transported through Appellant-3 but the details of transportation of said consignments is not available with the records of transporters and indicating that the said consignments have been diverted. Shri Lal Bahadur Yadav, proprietor of M/s. Hariom Bulk Carrier, in his statement recorded on 04.05.2018, have accepted that some of the blank LR's are missing whereas some of the consignor do not want to disclose the name of consignee, hence, left the column blank. Possibly the consignments shown to be transported to M/s Arham Petrochem Pvt Ltd, Kalol, may have arised by misuse to the said LR's. From above, it is held that the appellant has failed to safe guard the important documents such as LRs and also failed to maintain proper records by abetting, to defraud the government revenue. Thus, the appellant is liable for penalty under Section 26(2) of Central Excise Rules, 2002 and imposed penalty amounting to Rs.17,36,743/- on him.

7. Both Appellant -1 & 3 have strongly contested the above findings. They have primarily contested that the statements were recorded under duress and threat. The adjudicating authority has not provided the opportunity to cross examine the statements of third persons whose statements were relied without any corroborative evidence. They claim that they have issued legitimate transport documents and delivered the goods to the recipient. The recipient of the goods M/s. Arham Petrochem has also confirmed the receipt of the goods. Thus, they claim that in the absence of any corroborative evidence, when the sole case of the adjudicating authority relies upon the statement of the transporter, cross examination ought to have been granted as such statements have no evidentiary value.

7.1 It is observed that the adjudicating authority by relying on various case-laws and by countering the case-laws relied by the appellants denied the cross-examination of Transporters. He held that there are various other corroborative evidences and independent evidences which establish the non-receipt of goods. However, the adjudicating authority has not come up with any corroborative evidence to establish the non-receipt of goods in the factory of M/s. Arham Petrochem Pvt Ltd. Penalty has been imposed soley on the grounds that the appellants issued blank lorry receipts and gave them to driver who would either fill the receipt himself or the person available at loading site would fill the same. Admissions made by the Transporters that they did not transport such goods as per the 'Trip Register' and the admissions made by the Suppliers were the base of allegation. No findings is given on the documentary or electronical evidences drawn which prove non-receipt of goods in the factory. In fact the onus to bring on record the substantial and cogent evidence to defend has been placed on the appellants.



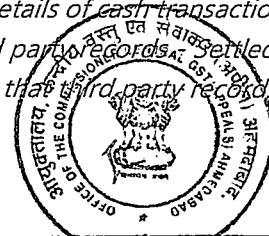
7.2 It is a trite law that the burden of proof of establishing the levy of tax/duty lies on the revenue authorities and without discharging such onus, no recovery of tax/duty could sustain. This finding is support by the judgment of Hon'ble Supreme Court in Cooperative Company Ltd. v. Commissioner of Trade Tax, U.P. [(2007) 4 SCC 480], wherein it has been held that burden of proof of establishing the levy of tax/duty lies on the revenue authorities

7.3 I find that apart from the transporters and their statements there is no material evidence brought out by investigation to establish that the goods did not reach the factory of M/s. Arham Petrochem. Mere statements recorded would not be sufficient to establish the charges alleged in the show cause notice. The statements should be supported by corroborative evidence. If the department alleges that the goods were diverted without reaching the actual consignee, then there should surely be evidence to show how the appellant have substituted the goods since the statutory records show production and clearance of finished goods and clearance thereof on payment of duty by M/s. Arham. There is absolutely no evidence to show the substitution of goods which in in my view would cut the root of the allegation as the statutory records show that goods were manufactured. No shortage of raw material was detected during search of factory. Thus, I find that the Revenue has failed to discharge the onus as regards the source of receipt of goods from any other alternative source rather have made a bald allegation on the appellants that they have diverted the goods on payment in cash in market. It is also observed that these facts are not under dispute that M/s. Arham Petrochem have recorded the receipt of the goods in RG-23 part-I register/stock register and payment of the same was made through cheque. I place my reliance on the decision passed by CESTAT, West Zonal Bench, Ahmedabad in the case of **Commissioner of C. Ex. & S.T., Daman Versus Garg Industries Pvt. Ltd.- 2023 (385) E.L.T. 541 (Tri. - Ahmd.) / (2023) 5 Centax 164 (Tri. - Ahmd.)**, wherein it was held that:

" 5.2 We also noticed that in the present case the department for denying the Cenvat credit placed reliance on third party evidence i.e. transporters documents /statements and RTO records. It is necessary to check the evidentiary value of the third party evidence as held in the judgments in the case of Bajrangbali Ingots & Steel Pvt. Ltd. & Suresh Agarwal v. CCE, Raipur in Appeal Nos. E/52062 & 52066/2018, which is as follows :

9. The law i.e. as to whether the third party records can be adopted as an evidence for arriving at the findings of clandestine removal, in the absence of any corroborative evidence, is well established. Reference can be made to Hon'ble Allahabad High Court decision in the cases of Continental Cement Company v. Union of India - 2014 (309) E.L.T. 411 (All.) as also Tribunal's decision in the case of Raipur Forging Pvt. Ltd. v. CCE, Raipur-I - 2016 (335) E.L.T. 297 (Tri. - Del.), CCE & ST, Raipur v. P.D. Industries Pvt. Ltd. - 2016 (340) E.L.T. 249 (Tri. - Del.) and CCE & ST, Ludhiana v. Anand Founders & Engineers - 2016 (331) E.L.T. 340 (P & H). It stand held in all these judgments that the findings of clandestine removal cannot be upheld based upon the third party documents, unless there is clinching evidence of clandestine manufacture and removal of the goods. In the matter of Commissioner of C. Ex., Indore v. Prag Pentachem Pvt. Ltd. Reported in 2018 (360) E.L.T. 1025 (Tri. - Del.) the Tribunal observed as under :

Cenvat credit - Bogus transactions - Invoice only received without goods -Evidence - Third party evidence - Revenue, inter alia, relying on written slops/entries of laptop seized from residence of cashier of dealer issuing invoices, alleging that these contain details of cash transaction in respect of goods not of business - The seized records therefore are third party records settled law in catena of decisions including that of Apex Court in 1998 AIR SC 1406 that third party records alone cannot



be relied upon as admissible piece of evidence - Further, even in these records there is no identification of person to whom said alleged cash transaction belong - Said entries having not been corroborated by any independent evidence, not reliable - On same facts and investigations, credit allowed in respect of another party and no appeal filed against such order - Denial or credit on the basis of these entries not sustainable - Rule 3 of Cenvat Credit Rules, 2004. [paras 21, 22, 23, 24, 26]."

7.4 I find that the appellants were not granted the opportunity to cross examine the individuals whose statements were made the base of allegation. In my considered view, denying the opportunity of cross-examination of the witnesses whose statements were relied upon by the Adjudicating authority, is a serious lapse, which makes the order nullity, inasmuch as it amounted to violation of principles of natural justice. Hon'ble Supreme Court, in the case of Andaman Timber Industries v. CCE, Kolkata-II - 2015-TIOL-255-SC-CX = 2015 (324) E.L.T. 641 (S.C.) set aside the order and allowed the appeal of the assessee. It has been observed that the Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the Appellants themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the Appellant wanted to cross-examine those dealers and what extraction the Appellant from them.

7.5 Further, I find that **Hon'ble CESTAT, Ahmedabad Bench in the case of GUJARAT CYPROMET LTD. -2013 (289) E.L.T. 467 (Tri. - Ahmd.)** has also held that;

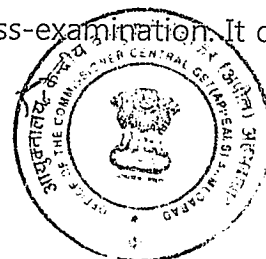
"29. I also find that identical sets of facts were in the case of NICO Extrusions Pvt. Ltd. (supra). In both these cases, the Bench has clearly held that the statements of the transporters, owners, owners of the vehicles, drivers and CHAs who have given inculpatory statements against the assessee, should be made available for cross-examination and it is also held that there were many statements which were inculpatory, in my view, the ratio of the said two cases in identical sets of facts would cover these cases also. I also find strong force in the contentions of the Id. Counsel that the director of the company has recorded in his statement that the statutory records indicate the true and correct entries as regards receipt and consumption of the goods. I find that in the cases of Dhakad Metal Corporation & Others (supra), Self Knitting Works (supra), Harika Resins Pvt. Ltd. (supra) (wherein I was one of the Member), in identical sets of facts, the co-ordinate Bench of the Tribunal, has remanded the matter back to the adjudicating authority at the stay stage itself by directing the lower authorities to allow the cross-examination of the persons as sought for by the assessee.

30. In my view, the charges of avilment of Cenvat credit without receipt of the inputs are serious allegations which cannot be held as correct without adequate/cogent evidences and it is also imperative that the witnesses be cross-examined to bring the truth on record as to how they have stated that the goods were never transported to the appellant.

31. In my view, the Revenue's case in both these sets of appeals is mostly based upon the statements recorded of various persons and not on any corroborative evidences, as has been claimed."

[Emphasis supplied]

7.6 The above decision was affirmed by **Hon'ble High Court of Gujarat - 2017 (345) E.L.T. 520 (Guj.) in Tax Appeal Nos. 269-273 of 2013**, decided on 28-3-2013, wherein it was held that the Adjudicating Authority has heavily relied on the statements of witnesses therefore the assessee has right to seek their cross-examination. It cannot be



rejected merely because the statements, according to the adjudicating officer, were recorded without threat, duress or coercion or that the witnesses at no stage retracted their statements, cannot be a ground for rejecting the request for cross-examination.

7.7 I find that the adjudicating authority has completely relied on the statements of transporters and he denied the cross-examination of these transporters. Even when the Appellants disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to them. In the impugned order the Adjudicating Authority has specifically mentioned that such an opportunity was sought by the Appellants. However, no such opportunity was granted and the aforesaid plea was rejected on the argument that such request is just to delay the adjudication proceedings and hence, there is no violation of principles of natural justice. I do not find any justification in such findings. I, by relying on the decision of the Apex Court find it sufficient enough to bring to the fore the requirement of permitting the cross-examination of witnesses whose statements are sought to be relied upon by the authorities. Hence, to that extent the impugned order is legally not sustainable.

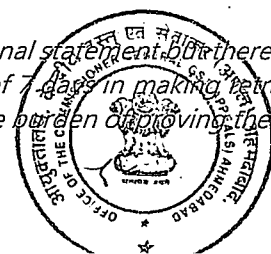
8. I find that Appellant-2 has retracted the statement vide Affidavit dated 21.07.2020 and submitted the same to the Deputy Director, DGGI Vapi Regional Unit and this retraction was not rebutted by the DGGI officer. The adjudication authority on this retraction held that retraction of statement after long spell of time is nothing but an afterthought and also no cogent or substantive reason, for duress is brought on record, or nor any affidavit to declare true and correct fact is made by the appellant. I have gone through the Affidavit dated 16.07.2020, wherein he stated that the in statement dated 19.11.2018, 27.12.2018, 26.06.2020 the replies to the question given therein are not true and correct and are not binding on him. He also stated that the statement was recorded under pressure, coercion, threat and compulsion. However, I find that the appellant failed to bring on record as to how he was pressurized or threatened while recording the earlier statement. Further, the statement was retracted after a gap of two years.

8.1 It is observed that the High Court of Delhi in the case of H.R. SIDDIQUE Versus DIRECTOR, ENFORCEMENT DIRECTORATE- 2015 (318) E.L.T. 182 (Del.) held that

"As noticed above, the retraction of the confessional statement containing admission of wrong-doings by the appellant came after more than ten years, at the stage of personal hearing only, and not before that. Had the appellant been subjected to threat, coercion or pressure as alleged by him rather belatedly, he would have retracted his confessional statement soon after making the same, once the alleged threat, coercion or pressure ceased to influence the action of the appellant. It is not his case that the said factors continued to influence him for 10 long years. Moreover, the appellant failed to disclose as to how he was pressurized, coerced, or tortured, and by whom, when he made the earlier confessional statement...."

8.2 Appellate Tribunal For Foreign Exchange, New Delhi in the case of **P. ALAVIKUTTY Versus Director, Enforcement Directorate - 2013 (294) E.L.T. 172 (ATFE)** held that;

5. ...In the instant case, though the appellant retracted his confessional statement, but there is a bald statement not supported by the documentary evidence. The delay of 7 days in making retraction of the confessional statement is also not explained by the appellant. The burden of proving the fact that



the said confessional statement was obtained under duress and threat was on the appellant himself which he has not been able to discharge. It has been observed by the Supreme Court in K.T.M.S. Mohd v. UOI - AIR 1992 SC 1831 that it is only for the maker of the statement who alleges inducement, coercion, threat, etc., to establish that force was adopted which burden has not been discharged by the appellant for want of evidence. In K.I. Pavunny v. Assistant Collector (HQ.), Central Excise Collectorate, Cochin, (1997) 3 SCC 721 = 1997 (80) E.L.T. 241, it has been observed by the Supreme Court that the retracted confessional statement can become the basis of confession if the Court is satisfied from the evidence that it is voluntary and is proved. The Court would seek assurance getting corroboration from the evidence produced by the prosecution.

6. This is a follow up case where the statement of the appellant is fully corroborated by the statement of M.T. Abdul Rahiman who was found involved in making hawala payments on large scale and the circumstantial evidence of the case. It appears that retraction was given in this case by him under legal advice which was an afterthought. The sequence of events described, the statement of appellant, recovery of incriminating documents coupled with the circumstantial evidence of the case provide a corroboration to the admission statement which otherwise cannot be termed as having been made under threat and coercion. The bald assertion of threat and coercion is difficult to believe. The said assertion cannot be taken too seriously unless a little evidence is produced leading to probability of threat and coercion whereafter the burden of proving other way round can be shifted to Directorate of Enforcement. Thus, the confessional statement can become the basis of conviction if the Court is satisfied from the evidence that it is voluntary and is true. In the instant case, the retracted confessional statement of the appellant is fully corroborated by the documentary as well as attended circumstantial evidence of the case. Thus the statement of the appellant is found to be voluntary and true which reflects correct facts."

8.3 In view of the above decisions, I find that the retraction of confessional statements, which came through replies to the show-cause notice after more than two years from the date of recording of the said statements, is liable to be rejected. However, the Apex Court in the case of **K.I. Pavunny v. ACCE, Cochin, 1997 (90) E.L.T. 241** have clearly laid down that admissions should be corroborative for the purpose of linking the same to uphold the offence.

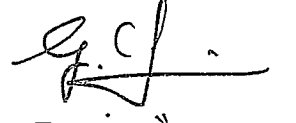
9. Further, it is observed that the penalties have been imposed on Appellant-1, Appellant-3 is in consequence to their alleged role of issuing blank LRs and transporting the goods to buyers other than consignee and facilitating M/s. Arham Petrochem for illegal availment of credit. Penalty has been imposed on the Appellant-2 for his alleged role in issuing invoices without supply of goods to M/s. Arham Petrochem. The entire demand has been confirmed on the admissions made by the Transporters that they did not transport such goods as per the 'Trip Register' and the admissions made by the Suppliers. Appellant-3 has submitted voluminous documents like invoice, procurement documents, C-Forms., E-1 Forms RG-23 D register, Ledgers of M/s. Arham Petrochem, Bank Statement, Excise & Service tax Returns as evidence that the goods were delivered to M/s. Arham Petrochem. As no findings is given on the documentary or electronical evidences drawn which prove non-receipt of goods in the factory of M/s. Arham Petrochem. Further, I find that denial of cross-examination of witnesses was in violation of principles of natural justice since no corroborative evidence were brought on record to establish the non-receipt of goods in the factory of recipient. Hence, in the interest of justice, I find that the matter needs to be remanded back to the adjudicating authority.

10. Thus, I am of the view that the impugned order is liable to be set aside on my above observations and findings and the matters are required to be remanded for fresh decision after allowing cross-examination of the witnesses whose statements are relied upon; and considering the documentary evidences produced by the appellants.



11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the Appellant-1, Appellant-2 & Appellant-3 stands disposed of in above terms.




गानचंद जैन

आयुक्त (अपील्स)

Dated: 25th April, 2024



सत्यापित/Attested :



रेखा नायर

अधीक्षक (अपील्स),

सी जी एस टी, अहमदाबाद

By REGD/SPEED POST A/D

To,

M/s. Laxmi Bulk Carrier - **Appellant-1**

Shop No. G-30/31,

Himalaya Complex, Samshan Road,

Balitha Vapi- 396195

Shri Jigar Kothari - **Appellant-2**

Proprietor of M/s. Aristo Chemicals

Director of M/s. Aristo Oil Chem Pvt. Ltd.

204, Quantum Tower, Ram Baug Lane,

Malad (West), Mumbai-400063

M/s. Hari Om Bulk Carrier, - **Appellant-3**

Office No.03, Brahmadev Complex,

Opposite Brahmadev Temple,

NH-8, Balitha, Vapi,

The Assistant Commissioner, - **Respondent**

CGST & CEX, **Kalol Division**

Gandhinagar Commissionerate

Copy to:

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Gandhinagar
3. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.

4. Guard file.

