OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
PLOT NO. 6776/B-1, "SIDDHI SADAN" BUILDING,
NARAYAN UPADHYAY MARG,
BHAVNAGAR-364001.

F. No. V/15-112/Dem/HQ/2009-10

Date of Order: 08.04.2011
Date of issue : 18.04.2011

Passed by Harcharan Singh, Additional Commissioner

ORDER-IN-ORIGINAL NO. 01/ADC/BVR/2011

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Any person(s) deeming himself aggrieved by this Order may appeal against this order to the Commissioner (Appeals-II), Central Excise, Ahmedabad, 7th floor, New Central Excise Building, Near Polytechnic, Ambawadi, Ahmedabad- 380015 within 60 days from the date of its communication. The appeal should bear a court fee stamp of Rs 2.50/- paise only.

The appeal should be filed in form EA 1 in duplicate, as per the provisions of Section 35(1) of the Central Excise Act, 1944 read with Rule 3 of the Central Excise (Appeals) Rules, 2002. It should be signed by the appellants in accordance with the provisions of sub-rule (2) of Rule 3 of the Central Excise (Appeal) Rules, 2002.

- It should be accompanied with the following:

- Copy of appeal in duplicate

Copies of the order, one of which shall be certified copy **OR** the other must bear a court fee stamp of Rs 2.50/- paise as per Schedule 1 to Article 6 of the Court Fee Stamp Act, 1870.

Brief Facts:

M/s Rawmin Mining And Industries Pvt. Ltd., East Kadia Plot, Porbandar ***(hereinafter referred to as Noticee No. 1)*** is a 100% Export Oriented Unit and is holding Central Excise Registration No.AABCR3228DXM001 for manufacture of Beneficiated Bauxite classifiable under Chapter Heading No. 26060010 of 1st Schedule to the Central Excise Tariff Act, 1985. Noticee No. 1 has also obtained License for Private Bonded Warehouse under Section 59 and In-bond Manufacturing Permission under Section 65 of the Customs Act, 1962 ***(hereinafter referred to as the CA)*** from the Assistant Commissioner, Central Excise Division, Junagadh and in this regard, Noticee No. 1 executed a B-17 Bond with the said Assistant Commissioner undertaking to observe all the procedures of the CA, as well as the Central Excise Act, 1944 ***(hereinafter referred to as the CEA)*** and CER & Regulations made thereunder failing which they have undertaken to pay the Central Excise or Customs duty along with interest on demand being made. Information was received that Noticee No. 1 has been removing Beneficiated Bauxite manufactured by them from their factory/bonded warehouse clandestinely without preparing valid clearance documents.

2. In view of the above, search of office premises of Noticee No. 1 situated at East Kadia Plot, Porbandar was carried out on 20-6-2009 by a team of officers of Anti-evasion Section of Central Excise, H. Q. Office, Bhavnagar in presence of two independent Panchas and Shri Bhavin Hariharbhai Thanki, Director of Noticee No. 1 ***(hereinafter referred to as the Noticee No. 2)*** and incriminating documents viz. 'Annexure-77 – Daily Stock Register', monthly ER-2 Return (Monthly return in respect of excisable goods manufactured and receipt of inputs and capital goods) File etc. were seized under Panchnama dated 20-6-2009. On verification of the records viz. 'Annexure-77 – Daily Stock Register' and ER-2 Returns filed by Noticee No. 1 from time to time with jurisdictional Central Excise Office, it appeared that the stock of the finished goods i.e. 'Beneficiated Bauxite' manufactured by Noticee No. 1 and lying in their

factory/bonded warehouse was mentioned as 37,707.335 MT. in their Annexure-77 – Daily Stock Register' whereas the same was declared as 82,610.980 MT in the monthly ER-2 Return for May-2009 filed by Noticee No. 1. On being asked about such discrepancy, the Noticee No. 2 explained that they used to remove their finished goods to a Plot situated near Porbandar Port allotted to M/s Velji P. & Sons (C.H.A. & Shipping Agent) by Gujarat Maritime Board, in anticipation of the export orders, however, no Central Excise Invoice or A.R.E.1 Application (Application for removal of excisable goods for export) was issued/filed for such removal and no Shipping Bill was filed for the said purpose but they mentioned removal of such goods for export purpose day to day in Col. No.7 'For Export' in the 'Annexure-77 Daily Stock Register' maintained by them. Therefore, the search was extended to the factory premises/bonded warehouse of Noticee No. 1 situated at Survey No. 182, 286, 29 & 299 of Village: Palakhada, Taluka: Porbandar and then to the said plot situated near Porbandar Port where Noticee No. 1 removed their finished goods as mentioned above and at both the places, the Beneficiated Bauxite were found stored in lots of different sizes. On the basis of 'Production Report' generated daily by Noticee No. 1 wherein details like quantity produced, total quantity in stock at the factory/warehouse, dispatch to the said plot near Porbandar Port were mentioned and on the basis of entries made in the 'Annexure-77 Daily Stock Register', it was ascertained that 44,903.645 M.T. of Beneficiated Bauxite valued at Rs.2,96,36,406/- was removed from the factory/warehouse of Noticee No. 1 to the said plot near Porbandar Port without cover of Central Excise Invoice, without filing any shipping bill and without making any application in the prescribed form ARE-1 which was in violation of various provisions of the CEA and the CA. Therefore, the said 44,903.645 M.T. of beneficiated Bauxite lying in the said plot near Porbandar Port was detained under the reasonable belief that the same were liable to confiscation under the provisions of the CEA as well as under the CA and the same was handed over to the Noticee No. 2 for safe custody.

3. Statement of the Noticee No. 2 was recorded on 21-6-2009 under Section 14 of the CEA wherein he interalia stated that he was Director of Noticee No. 1 which is a 100% Exported Oriented Unit engaged in manufacture and export of Beneficiated Bauxite; **that** as Director of the company, he looked after overall functioning of the company and he was present during the course of search carried out at their office premises on 20-6-2009 by Central Excise Staff and he fully agreed with the facts mentioned in the Panchnama dated 20-6-2009; **that** their company has been granted Letter of Approval (LOA/LOP) by the Development Commissioner, Kandla Special Economic Zone, Gandhidham bearing No.KFTZ/100%EOU/II/92/2001-02 dated 30-7-2001 to set up a unit for manufacture & export of 'Mechanically crushed and screened Beneficiated Bauxite produced from Bauxite Ore' and permitted to avail facilities and privileges admissible as envisaged in Export Import Policy / Handbook of Procedures (Vol.I), 1997-2002 subject to the provisions of the said Policy / HOP and the said permission was extended upto 5-11-2013; **that** they obtained License for Private Bonded Warehouse under Section 59 and In-bond Manufacturing Permission under Section 65 of the CA from the Assistant Commissioner, Central Excise, Junagadh and also obtained Central Excise Registration as per the provisions of the CEA; **that** they were engaged in manufacturing of Beneficiated Bauxite out of Bauxite Ore purchased from other units including their sister concern M/s Saurashtra Minerals Pvt. Ltd., Porbandar and export the same; **that** manufacturing process of Beneficiated Bauxite involves crushing, sizing and sorting which was carried out at their Warehouse / factory premises situated at Survey No. 182, 286, 29 & 299, Village: Palakhada, Taluka: Porbandar; **that** on being asked about the discrepancy in stock of finished goods mentioned in 'Annexure-77 - Daily Stock Register' maintained by them which is 37,707.335 MT and that mentioned in the monthly ER-2 Return filed by them with the Central Excise Authority which is 82610.980 MT, he clarified that as routine practice they used to remove their finished goods manufactured in their warehouse / factory premises to a Plot, allotted to M/s Velji P. & Sons (C.H.A. & Shipping Agent) by Gujarat Maritime Board, situated near Porbandar Port, in anticipation of the export order. In that way they removed 44903.645 MT of Beneficiated Bauxite valued at Rs.2,96,36,406/- manufactured in their Warehouse / factory premises to the above mentioned plot, however, no Central Excise Invoice and A.R.E.1 Application was being issued/filed for such removal and no Shipping Bill was filed for the said purpose; **that** there was no manufacture of the their finished goods since 17-12-2008 therefore stock of finished goods mentioned in the monthly ER-2 Return for May-2009 is also the stock as on that day.

4. Further statement of the Noticee No. 2 was recorded on 7-8-2009 under Section 14 of the CEA wherein he interalia stated that the 44903.645 MT of Beneficiated Bauxite detained by Central Excise were manufactured in their factory / warehouse and were removed to the open plot, near Porbandar Port during the period from 23-5-2008 to 30-9-2008 and produced a copy of the 'Annexure-77 Daily Stock Register' of the relevant period evidencing such removals under his dated signature; **that** since inception of their 100% EOU, they did not clear their finished goods viz. Beneficiated Bauxite in the Domestic Tariff Area except the third party exports made in the year of 2008-09 to M/s Shivam Mines & Minerals Ltd. and M/s Jivraj Enterprise and produced copies of documents related thereto under his dated signature and stated that they received payments against these third party exports in Indian currency.

5. Statement of Shri Dhanjibhai R. Torania, Authorised signatory of M/s Velji P. & Sons, Porbandar ***(hereinafter referred to as the Noticee No. 3)*** was recorded on 26-2-2010 under Section 14 of the CEA by Superintendent (AE), Central Excise, H. Q. Office, Bhavnagar wherein he interalia stated that he was working as Accountant since last 10 years with the Noticee No. 3 which was a firm working as Custom House Agent for the importers and exporters; **that** on being asked about Noticee No. 1, he stated that they were exporters of Bauxite and their firm had been working as their Custom House Agent since last five years approx. for exports of their Bauxite through Porbandar Port and they knew that Noticee No. 1 was a 100% Export Oriented Unit and all their documents of Bauxite export were processed by them; **that** on being shown and perusing statement dated 21-6-2009 of the Noticee No. 2, he, as regards contention of the Noticee No. 2 that the detained 44903.645 MT of Beneficiated Bauxite valued at Rs.2,96,36,406/- were lying in a plot near Porbandar Port which was allotted to M/s Velji P. & Sons by Gujarat Maritime Board, stated that since they were working as Custom House Agent at Porbandar Port, they obtained open space/plots near Porbandar Port from Gujarat Maritime Board on rental basis which were being used for storage of goods/cargo belonging to their clients meant for export by exporters and sometimes for storage for import cargo after they were cleared 'out of Customs charge'; **that** he submitted copies of Bills raised by Gujarat Maritime Board for the plots allotted to their firm on rental basis and stated that they did not separately charge rent to the importers or exporters who stored their cargo in the said plots, however, the same were included in the loading/unloading/local transportation/documentary/sundry expenses/agency commission etc. charged by them and also produced a sample copy of bill raised by their firm on Noticee No. 1; **that** at the time of removal of Beneficiated Bauxite by Noticee No. 1 from their factory to their rented plot near Porbandar Port, Noticee No. 1 informed them orally but they did not provide them any documents/invoice regarding such removal and documentation of the export cargo were made only at the time of exportation thereof i.e. when arrival of the ship by which the cargo was to be exported was declared.

6. It appeared that Government of India, Ministry of Commerce & Industry declared various Export Promotion Schemes under the Foreign Trade Policy. The Development Commissioner, Kandla Special Economic Zone, Gandhidham (Kutch) (working under Government of India, Ministry of Commerce & Industry) vide his letter No.KFTZ/100% EOU/II/92/2001-02 dated 30-7-2001 granted permission to Noticee No. 1 to set up a unit under 100% Export Oriented Scheme for manufacture and export of 'Mechanically crushed and screened beneficiated Bauxite produced from Bauxite Ore' subject to the conditions stipulated in the letter and in the Annexure attached to the letter. The 100% E.O.U. Scheme is governed by the provisions of Chapter 6 of the Foreign Trade Policy in vogue. As per Para 6.8 (a) of the Foreign Trade Policy effective from 1-4-2008, an EOU, other than gems and jewellery units, may sell goods upto 50% of FOB value of exports, subject to fulfillment of positive NFE, on payment of concessional duties. Further, as per Appendix-14-I-H read with Para 6.8 of the Foreign Trade Policy, Noticee No. 1 was required to submit an application for sale of goods in DTA to the Development Commissioner concerned in the Form given at Annexure-A to the Appendix-14-I-H duly certified by an independent Cost/Chartered/Cost and Works Accountant and endorsed by the Bond Officer of Customs/Central Excise having jurisdiction over the unit. Thereafter, the Development Commissioner concerned will determine the extent of the DTA sale admissible and issue Authorization in terms of value. Further, in the said Appendix, it has also been specified that the sale of goods in DTA by an E.O.U. would be subject to the payment of liable duties as notified from time to time by the Department of Revenue, Ministry of Finance, Government of India.

7. From the above, it appeared that Noticee No. 1 manufactured their finished excisable goods i.e. Beneficiated Bauxite in their factory / bonded warehouse and removed 44903.645 M.T. of Beneficiated Bauxite valued at Rs.2,96,36,406/- during the period from 23-5-2008 to 30-9-2008 to a Plot Near Porbandar Port with an intent to sale the same in the Domestic Tariff Area and evade payment of duty without: (i) cover of Central Excise Invoice, (ii) without preparing or filing any A.R.E.-1 Application or Shipping Bill, (iii) without having any Authorization in terms of value from the Development Commissioner determining the extent of the DTA Sale admissible to them and have not paid any Central Excise duty on such removal.

8. As per Proviso to Section 3(1) of the CEA, the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured by a hundred per cent export-oriented undertaking and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the CA or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India. Further, Notification No. 23/2003-C.E. dated 31-3-2003 as amended from time to time provides exemption /concession to DTA clearances of specified goods produced in EOU, however, the same is admissible to the goods manufactured in an EOU and brought to any other place in India in accordance with the provisions of the Foreign Trade Policy and subject to the relevant conditions specified in the Annexure to the Notification. Since Noticee No. 1 have not obtained any Authorization from the Development Commissioner, Gandhidham for making sale in the Domestic Tariff Area as provided under Appendix-14-I-H read with Para 6.8 of the Foreign Trade Policy, it appears that Noticee No. 1 is not eligible for availing benefit of the Notification No. 23/2003-C.E. dated 31-3-2003 as amended for the goods cleared in the Domestic Tariff Area. Thus, Central Excise Duty leviable as per the proviso to Section 3(1) of the CEA on 44903.645 M.T. of Beneficiated Bauxite valued at Rs.2,96,36,406/- removed by Noticee No. 1 in the Domestic Tariff Area worked out to be Rs.18,20,387/-.

9. Further, as per Rule 17 of the Central Excise Rules, 2002 ***(hereinafter referred to as the CER),*** where any goods are removed from a hundred per cent export-oriented undertaking to domestic tariff area, such removal shall be made under an invoice by following the procedure specified in Rule 11 and the duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in Rule 8. Whereas, Noticee No. 1 removed 44903.645 M.T. valued at Rs.2,96,36,406/- without cover of Central Excise Invoice prepared in the manner as provided under Rule 17 read with Rule 11 of the CER and brought the same to the Plot near Porbandar Port which was neither registered premises nor bonded warehouse of Noticee No. 1 and thereby contravened the provisions of Rule 17 read with Rules 11 and 8 of the CER with intent to evade payment of Central Excise duty.

10. The Noticee No. 2 in his statement dated 21-6-2009 stated that they removed the detained 44903.645 M.T. of Beneficiated Bauxite in anticipation of the export order. However, as per provisions of the Notification No.42/2001-CE (N.T.) dated 26-6-2001 as amended issued under Rule 19(3) of the CER, Noticee No. 1 was: (1) either required to present the goods intended to be removed for export along with the application in Form A.R.E.-1 to the jurisdictional Superintendent or Inspector of Central Excise and remove the goods only after their verification and endorsement on the application or (2) if Noticee No. 1 desired self-sealing and self-certification for removal of the goods for exportation, they were required to prepare the application in Form A.R.E.-1; certify the same in token of examining the goods and send its original and duplicate copies along with the goods at the place of export and to send the triplicate and quadruplicate copies thereof to the jurisdictional Superintendent or Inspector of Central Excise within twenty four hours of removal of the goods. It appeared that Noticee No. 1 removed the detained 44903.645 M.T. of Beneficiated Bauxite without following the procedures prescribed under the above mentioned Notification and thereby contravened the provisions of the said Notification and Rule 19 of the CER with intent to evade payment of duty.

11. From the above it appeared that as per the provision of Rule 17(3) of the CER, Noticee No. 1 was required to submit a monthly return in Form E.R.-2 mentioning therein all the particulars regarding the excisable goods manufactured and cleared from their unit. Accordingly, they were required to show the particulars of the clearances in the Domestic Tariff Area under Col. No.4A of the E.R.-2 Returns, however, it appeared that Noticee No. 1 have suppressed the

facts of removal of the detained 44903.645 M.T. of Beneficiated Bauxite during the period from 23-5-2008 to 30-9-2008 from their factory / bonded warehouse to the said plot near Porbandar Port by not mentioning the same in Col. No.4 of the E.R.-2 Returns filed by them with the jurisdictional Central Excise office from time to time with an intent to evade payment of Central Excise duty leviable thereon.

12. Thus, it appeared that Noticee No. 1 have suppressed the facts of removal of the excisable goods manufactured in their factory / bonded warehouse to the Domestic Tariff Area without payment of Central Excise duty as per proviso to Section 3 (1) of the CEA from the Department. Further, it appeared that the Noticee have contravened various provisions of the CEA and the CER as discussed hereinabove with intend to evade payment of duty. Therefore, extended period as contemplated under proviso to Section 11A of the CEA was invoked for recovery of Central Excise duty not levied and paid by Noticee No. 1

13. From the Para supra it appeared that Noticee No. 1 acting in the manner as discussed above, have committed offences as described in clauses (a) & (d) of Rule 25 (1) of the CER and have rendered the detained goods viz. 44903.645 MT of Beneficiated Bauxite valued at Rs.2,96,36,406/- liable to confiscation under Rule 25(1) of CER.

14. It also appeared that Noticee No. 1 had not discharged duty leviable thereon as per Proviso to Section 3(1) of the CEA in the manner provided under Rule 17 read with Rule 8 of the CER. Thus, Central Excise duty amounting to Rs.18,20,387/- was liable to be recovered from Noticee No. 1 under Section 11A of the Act along with interest under Section 11AB of the Act. Further, it appeared that Noticee No. 1 was liable to penalty under Section 11AC of the Act for suppression of facts and contravention of various provisions of the Act and CER with intend to evade payment of duty and also liable to penalty under Rule 27 of CER for contravention of the provisions of Rules 17 read with 8, 11 & 19 of the CER.

15. From the above, it appeared that the Noticee No. 2 was Director of Noticee No. 1 looking after its overall functioning. Thus, he was the person concerned in removing, transporting, depositing, keeping and dealing with the detained goods viz. 44903.645 MT of Beneficiated Bauxite valued at Rs.2,96,36,406/- which he has reason to believe are liable to confiscation under the CEA or the CER, therefore, it appeared that the Noticee No. 2 is liable to penalty under Rule 26(1) of the CER.

16. It also appeared that the Noticee No. 3 was a firm working as Custom House Agent; they were aware that Noticee No. 1 was a 100% E.O.U. and prepared/processed export documents in respect of export of their Beneficiated Bauxite from Porbandar Port, thus there were all reason to believe that were aware of statutory provisions of CEA & CA as regards a 100% E.O.U., still they allowed Noticee No. 1 to deposit the 44903.645 MT of Beneficiated Bauxite valued at Rs.2,96,36,406/- and kept the same in the plot taken by them from Gujarat Maritime Board on rental basis knowing that they were not removed under valid clearance documents and therefore liable to confiscation under provisions of the CEA or the CER. Therefore, it appeared that the Noticee No. 3 was liable to penalty under Rule 26(1) of the CER.

17. Therefore, a notice was issued proposing:

i. Confiscation of detained goods viz. 44903.645 MT of Beneficiated Bauxite valued at Rs.2,96,36,406/- under Rule 25(1) of the Central Excise Rules, 2002.

ii. Demanding Central Excise duty amounting to Rs.18,20,387/- **(Rupees Eighteen lacs, twenty thousand, three hundred and eighty seven only)** under proviso to Section 11A of Central Excise Act, 1944 along with the interest at the appropriate rate as applicable till the date of payment of the duty as provided under Section 11AB of the said Act;

iii. To impose penalty upon Noticee No. 1 under Section 11AC of the Central Excise Act, 1944.

iv. To impose penalty upon Noticee No. 1 under Rule 27 of Central Excise Rules, 2002.

v. To impose penalty upon the Noticee No. 2 under Rule 26 of Central Excise Rules, 2002.

vi. To impose penalty upon the Noticee No. 3 under Rule 26 of Central Excise Rules, 2002.

Defense

Noticee No. 1 submitted written reply to the notice vide letter dated 1.04.2010 and 24.1.2011 stating that Noticee No. 1 is a 100% EOU and a Star Export House having exported Bauxite to the tune of US $ 2, 31, 86,597.06 i. e. approximately Rs. 9,935.75 Lacs since the last 8 years. Noticee No. 1 has till date not sold any Bauxite in the DTA and had no intention whatsoever to remove the detained goods from the factory with the intention to sell the same in the DTA.

18. The entire basis for issuing the Notice is that Noticee No. 1 intended to sell the detained goods in the DTA. However, there is no evidence on record to even remotely indicate that Noticee No. 1 intended to sell or actually sold the detained goods in the DTA. The Excise Department has clearly failed to adduce any proof to substantiate that the detained goods were intended for sale in the DTA, the reason being that the detained goods were removed from the factory and transported to the warehouse of M/s. Velji only for export purposes.

19. Given that there is no substance, truth or justification in the very basis upon which the Notice has been issued, the Notice is unsustainable and liable to be quashed. Further, the burden clearly lies on the Excise Department to prove that the goods were intended for sale in the DTA. However, the Department has failed to prove so and on this ground also, the Notice is liable to be quashed.

20. The following facts establish that the detained goods were in fact removed by Noticee No. 1 from the Factory for export purposes:

(a) The detained goods were removed to the warehouse of M/s. Velji, who have been acting as the Customs Agents of Noticee No. 1 since the last 25 years. All the exports of Bauxite manufactured by Noticee No. 1 and shipped from the Porbandar are handled by M/s. Velji.

(b) No rent was charged by M/s. Velji to Noticee No. 1 for storage of the detained goods in as much as the said rent would have been recovered by way of agency commission on export of the said goods.

(c) Noticee No. 1 had orally informed M/s. Velji that the detained goods were removed from the Factory and stored in the warehouse of M/s. Velji in anticipation of export orders. The same has been confirmed by the authorized representative of M/s. Velji, whose statement has not been denied by the Excise Department.

(d) There is not a single document on record or otherwise including purchase orders or receipt of advances, which indicate that the detained goods were removed to be sold in the DTA.

(e) The statement of Shri Bhavin Thanki also states that the detained goods were removed from the Factory for export purposes. It is pertinent to note that the said statement of Shri Thanki has not been denied by the Excise Department.

21. Thus, it is submitted that the detained goods were removed from the Factory only in anticipation of export orders and not for sale in the DTA. In the event the said goods would not have been confiscated by the Excise Department on or about 20 June, 2009, Noticee No. 1 had every intention of exporting the same. In this regard, it may be noted that it is settled law that no excise duty can be collected by the excise authorities even in cases of technical infringement if the goods are ultimately exported. American Dry Fruits Stores v/s Collector of Central Excise, 1992 (61) ELT 709 and Alpha Garments v/s Collector of Central Excise, 1995 (86) ELT 600.

22. It is further submitted that Noticee No. 1 has shown complete transparency in the entire investigation conducted by the Excise Department. The removal of detained goods has been recorded in a Daily Stock Register as well as monthly ER-2 return by Noticee No. 1 and the same was expressly brought to the notice of the Excise Department during the search on 20th June, 2009. In fact, Shri Bhavin Thanki has also recorded in his statement that the detained goods were removed to the warehouse of M/s. Velji near Porbandar Port in anticipation of the export orders. There is thus no suppression of facts whatsoever, either willful or otherwise by Noticee No. 1 as regards the removal of detained goods to the warehouse of M/s. Velji. The Hon'ble Supreme Court in the case of *Cosmic Dye Chemical v/s Collector of Central Excise, Bombay (1995) 6 SCC 117* has held that "*Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word 'wilful' preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be willful*". Hence, given that there has been no willful suppression or otherwise by Noticee No. 1, the same cannot constitute a violation under Section 11(A) of the Act.

23. The only lapse, if any, is a procedural lapse committed by Noticee No. 1 by not filing an application in ARE-1 Form at the time of removal of the detained goods from the Factory to the warehouse of M/s. Velji. In this regard, it may be noted that Bauxite being a bulk commodity is required to be transported through trucks which are usually allowed to carry 10 MT of goods on an average. The export of Bauxite is carried out in bulk shipment each of 40,000 – 50,000 MT. Hence as an usual practice, Noticee No. 1 has been filing shipping bills along with ARE-1 Form after preparing consolidated excise invoice covering the quantity under export. For a bulk shipment of about 40,000 – 50,000 MT, approximately 4,000-5,000 trucks trips would be required and an equivalent number of excise invoices would be required to be issued by Noticee No. 1. While preparing ARE-1 Form, reference to such individual invoices would be required to be mentioned in the same. Hence, considering the practicality involved, Noticee No. 1 has been filing ARE-1 Form with a single consolidated excise invoice only for administrative ease and not with any intention of selling the goods in the DTA. Thus, there has been no malafide intention on behalf of Noticee No. 1 in not filing the ARE-1 Form on every single occasion and lapse, if any, is only a procedural lapse and ought to be condoned in the aforesaid circumstances.

24. There is no question of any clandestine removal of goods by Noticee No. 1 in as much as the entire quantity of detained goods removed by Noticee No. 1 from the factory was duly recorded as produced and removed in its Daily Stock Register and ER-2 Form. Further, no evidence whatsoever has been adduced by the Excise Department to prove such alleged clandestine manufacture and removal of excisable goods. It is trite law that clandestine removal and clearance is a serious charge against manufacturer and unless there is clinching evidence to substantiate the same, demands cannot be confirmed on the basis of sole documents. Following case laws were relied upon by Noticee No. 1 (TGL Poshak v/s Commissioner of Central Excise, Hyderabad, 2002 (140) ELT 187; M.T.K. Guruswamy v/s Commissioner of Central Excise, Madurai, 2001 (130) ELT 344; Punjab Oil & Silicate Mills v/s Collector of Central Excise, 1993 (65) ELT 268; Suvarna Polymers Pvt. Ltd. v/s Commissioner of Central Excise, Hyderabad, 2000 (120) ELT 148; Ebenzer Rubbers Ltd/ V/s Collector of Central Excise, Ahmedabad, 1986 (26) ELT 997; Shakti Chemical Industries v/s Collector of Central Excise, Baroda, 1995 (76) ELT 410; Kashmir Vanaspati (P) Ltd. v/s. Collector of Central Excise, 1989 (39) ELT 655; Ashwin Vanaspati Industries Pvt. Ltd. v/s Collector of Central Excise, 1992 (59) ELT 175;)

25. As stated hereinabove, there has been no suppression of facts whatsoever by Noticee No. 1 and all the records pertaining to the removal of the detained goods have been produced before the Excise Department. There is, therefore, no question of extending the period of limitation under Proviso to Section 11(A) of Central Excise Act, 1944. The goods were admitted removed from the Factory from 23rd May to 30th September, 2008. Hence, the Notice having been issued on 12th March, 2010 is clearly beyond the period of limitation of 1 year as prescribed under Section 11(A) of the Act.

The Hon'ble Supreme Court in the case of *Continental Foundation JV, HP v/s Commissioner of Central Excise, Chandigarh, (2007) 10 SCC 337*, has inter alia held "*As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word "wilful", preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty". Therefore, there cannot be suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11-A. Misstatement of fact, must be wilful.* Hon'ble Supreme Court in Commissioner of Central Excise, Chandigarh v/s Punjab Laminates (P) Ltd., (2006) 7 SCC 431; Padmini Products v/s Collector of Central Excise, Bangalore, (1989) 4 SCC 275; Collector of Central Excise, Hyderabad v/s Chasmphar Drugs & Liniments, (1989) 2 SCC 127; Jayprakash Industries Ltd. v/s. Commissioner of Central Excise, Chandigarh, (2003) 1 SCC 67 and Larsen & Toubro Ltd. v/s Commissioner of Central Excise, Pune, (2007) 9 SCC 617 .upheld this view.

Thus, extending period of limitation by invoking Proviso to Section 11(A) would be justified only when the assessee knew about the duty/tax liability and suppressed the facts to deliberately avoid the same. In the facts of the present case, the detained goods were being removed for export purposes and the excise duty on the same was NIL. Hence, there was no question of suppression of facts to avoid payment of such excise duty. It is, therefore submitted that the Notice is barred by limitation.

26. The specific allegations in the Notice:

(a) Given that goods were not intended to be sold in the DTA, there was no requirement of any authorization from the Development Commissioner or filing Column 4A in the ER-2 return for removal of such goods;

(b) The requirement of issuing Central Excise Invoice is also not applicable in as much as the goods were not intended for sale in DTA;

(c) The shipping bill was not prepared because the goods were not actually exported, but were removed from the Factory to the warehouse of M/s. Velji in anticipation of export orders.

(d) The lapse, if any, was a procedural lapse in not filing ARE-1 Form for removal of the detained goods from the Factory to the warehouse of M/s. Velji.

Hence, the allegation that the goods were clandestinely removed from the Factory to evade excise duty only on the basis that ARE-1 Forms were not filed by Noticee No. 1, is completely unjustified and unsustainable in law.

27. Rule 25(1) of the Central Excise Rules, 2002 is applicable to an assessee who is liable to pay excise duty. However, a 100% EOU is not an assessee liable for payment of excise duty with respect to goods which are removed for export purposes. Hence, Rule 25(1) is not applicable in the present case.

28. Section 11(AC) of Central Excise Act, 1944 is attracted only in the case of short levy, short payment, non-levy, non-payment or erroneous refund of excise duty by reason of willful mis-statement or suppression of facts or collusion or contravention of the provisions of the Act with the intention to evade payment of duty. In the present instance, there is no such case in as much as the detained goods were removed only for export purposes. Rule 27 is also not applicable in as much as there has been no breach of the CER for which no penalty is prescribed.

29. Noticee No. 1 has not violated any of the provisions of the Act or CER and lapse, if any, is a technical lapse, and ought to be condoned. The Hon'ble Supreme Court in this regard has held in the case of *Hindustan Steel v/s State o Orissa, (1962 (2) SCC 627)* that "*.....Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be*

exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute..." It is therefore respectfully submitted that the Notice be quashed and lapse, if any, on the part of Noticee No. 1 be condoned.

30. The Noticee No. 2 in his written reply submitted that

a) The stock of finished goods of 44,903.645 MT of Bauxite (the "detained goods") was removed from the Factory between 23rd May 2008 to 30th September 2008 and transported to the warehouse of M/s Velji P. & Sons ("M/s Velji"), the Noticee No. 3 in anticipation of export orders. The detained goods were always intended to be exported and Rawmin had no intention whatsoever to sell the same in the Domestic Tariff Area ("DTA"). Rawmin had also orally informed M/s Velji that the detained goods were transported to the warehouse of M/s Velji for export purposes. Hence, in his respectful submission, there is no truth in the allegation that the detained goods were removed from the Factory for sale in the DTA.

b) Rule 26 of the CER is not applicable in the present case. Rule 26 provides for penalty on any person who is in any way concerned with any excisable goods which he has knowledge or reason to believe were liable to confiscation. As stated hereinabove, the detained goods were meant for export purposes only. No evidence whatsoever has been adduced by the Excise Department to prove otherwise. Given that the detained goods were intended to be exported, no excise duty was liable to be paid on the same. Hence, there was no reason to believe that the detained goods were liable to be confiscated and that he had knowledge of the same. The decision of the CEGAT in the case *of M/s. Standard Pencil* reported in *1996 (86) ELT 245* may be noted in this regard. The Learned Tribunal held therein that Rule 209A which was pari materia now existing Rule 26 was attracted only in specific cases where the Revenue had established that any person was concerned with such excisable goods with knowledge or reason to believe that they were liable to confiscation. Given that there is no evidence on record to even remotely suggest that the detained goods were removed from the Factory with the intent to evade excise duty and consequently were liable for confiscation, Rule 26 cannot be said to be applicable in the present instance.

c) It is further submitted that no evidence has been adduced by the Excise Department as to how he was concerned with transporting, removing, depositing, keeping, concealing, selling or purchasing or dealing with any goods which were liable for confiscation. It appears that all the expressions occurring under Rule 26 of the CER are reproduced in the Notice without any application of mind or justification. Mere bald allegations without adducing any evidence whatsoever in the Notice do not in any manner prove that he was engaged in or concerned with activities enumerated in Rule 26. There is thus no justification of the allegations made against him.

31. The Noticee No. 3 submitted its written reply to the notice under letter dated 02.02.2011 stating that they were not aware any point of time about any irregularity committed by Noticee No. 1 and they are not guilty of any action or omission for which any penalty could be imposed upon them under Rule 26 of CER; that they customs and shipping agents and all exports of Noticee No. 1 are processed by them; that no rent is charged for the goods stored by Noticee No. 1 in their premises; Noticee No. 1 had informed only orally that the detained goods were transeferred from their factory to their warehouse in anticipation of export orders; that no evidence adduce by the excise department which indicates that the detained goods were removed to be sold in DTA and they had no knowledge about the removal of detained goods with intention to to evade excise duty; they had no reason to believe that that the detained goods were liable to be confiscated.They relied upon the decision of the Tribunal in case of M/s Standard Pencil reported at 1996 (86) ELT 245.

32. A personal hearing in the matter was fixed on 19.01.2011 and Shri Manvendra Kane appeared on behalf of all three noticees. He submitted the compilation of case laws and annual

progress report for the years 2005-06,2006-07, 2007-08.He also submitted written submissions on behalf of all the three noticees.

Discussion and Findings:

I have carefully gone through the records of the case, written submissions and submissions made during the personal hearing.

32. The impugned notice has been issued demanding duty on the goods alleged to have been removed in contraventions of the provisions of Central Excise by an EOU unit in DTA. The notice also proposes to impose penalty on EOU, its director and the owner of the place where the goods were kept after the removal and confiscate the goods. All the three noticees have contested the proposed actions in the notice, raising various contentions and have cited case laws in support of their contentions.

33. Noticee No. 1 is an EOU and the removal of goods is subjected to the procedures and formalities under various provisions of Central Excise and Customs. On contravention of any of these provisions, the consequential penal action follows. The officers of the department on visit to Noticee No. 1's premises found that the quantity of 44903.645 MT of Beneficiated Bauxite was removed from their factory to a place near Porbander Port in contravention of certain provisions of Central Excise and the same was therefore detained. I find that a manufacturer of excisable goods including 100% Export Oriented Unit can remove such goods without payment of duty for export and on payment of duty for home consumption. The provisions of Rule 19 of Central Excise Rules, 2002, govern the removal of goods for export without payment of duty. The conditions and procedure for export are prescribed under Notification No. 42/2001-CE (N.T.) dated 26.06.2001 issued Rule 19 ibid. One of the conditions stipulated in the said notification states "*that the goods shall be exported within six months from the date on which these were cleared for export from the factory of the production or the manufacture or warehouse or other approved premises within such extended period as the Assistant Commissioner of Central excise or Deputy Commissioner of Central excise or Maritime Commissioner may in any particular case allow*;". Further, the said notification also prescribes the procedures that are to be followed in case of sealing of goods and examination of goods at the place of dispatch and in case of self-sealing and examination at the place of export. In both the cases, the presentation of application in Form A.R.E.-I is mandatory for clearing goods for export. Then there are modalities for the cancellation of application in case the goods are not exported.

34. Moreover, Rule 17, which governs the removal of goods by a Hundred per cent Export-oriented Undertaking for Tariff Area, reads

> *"Where any goods are removed from a hundred per cent. export-oriented 1) undertaking to domestic tariff area, such removal shall be made under an invoice by following the procedure specified in rule 11, and the duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in rule 8.*
>
> *(2) The unit shall maintain in the form specified by notification by the Board appropriate account relating to production, description of goods, quantity removed, and the duty paid.*
>
> *[(3) The unit shall submit a monthly return, in the form specified, by notification, by the Board, to the Superintendent of Central Excise, within ten days from the close of the month to which the return relates, in respect of excisable goods manufactured in, and receipt of inputs and capital goods in, the unit.]*
>
> *(4) The proper officer may on the basis of information contained in the return filed by the unit under sub-rule (3), and after such further enquiry as he may consider necessary, scrutinise the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board.*

(5) Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer."

"

I find that in the instant case it is undisputed that the goods under detention were removed during the period 23.05.2008 to 30.09.2008 and neither the prescribed Form A.R.E.-I nor invoice in respect of these goods were prepared. Therefore, removal of the goods was in contravention of the provisions of Central Excise Rules, 2002. Moreover, even if the goods were removed for export as claimed, the actual export did not take place until 20.06.2009 the date on which the officers of the department visited the premises of Noticee No. 1. In these circumstances, the provisions of the extant Rules require that Noticee No. 1 should have either sought extension from the appropriate excise authority to allow the export or for diversion of goods for home consumption on payment of duty. However, in this case, the goods were neither exported within the stipulated period of six months nor Noticee No. 1 sought any permission from the department, making serious dents on their claim that the goods were meant for export only.

35. Further, the provisions of Central Excise and Customs either permit removal of goods for home consumption on payment of appropriate duty or for export or for deposit in warehouse without payment duty, therefore once the goods are removed from the factory and not exported within the allowed time -period, the liability to pay duty ensues. This liability is to be discharged immediately once the goods removed in contravention of the provisions of CER are not exported and cannot be deferred for an indefinite period. In addition, the consequential penal actions would follow.

36. Now, I shall discuss, the contentions raised by the noticees in their replies.

Noticee No. 1 submits that the entire basis for issuing the Notice is that Noticee No. 1 intended to sell the detained goods in the DTA. However, there is no evidence on record to even remotely indicate that Noticee No. 1 intended to sell or actually sold the detained goods in the DTA. The Excise Department has clearly failed to adduce any proof to substantiate that the detained goods were intended for sale in the DTA, the reason being that the detained goods were removed from the factory and transported to the warehouse of M/s. Velji only for export purposes. As discussed above, the goods can be removed without payment of duty either for export or for deposit in warehouse. In this case even if it is accepted that the goods were cleared from the factory for export and lying in the so called warehouse, Noticee No. 1 cannot exempt themselves from payment of duty as not only they removed the goods without proper documents but even failed to export the goods long after the expiry of stipulated period of six months from the date of removal of goods from their factory. Plea that there was no intention to sell goods in DTA would not be of any help as they did not inform the concerned authorities of the facts and sought any extension as required under the law.

37. Noticee No. 1 has challenged the demand of duty on the goods contending that it is settled law that no excise duty can be collected by the excise authorities even in cases of technical infringement if the goods are ultimately exported and have cited the decisions in case of American Dry Fruits Stores v/s Collector of Central Excise, 1992 (61) ELT 709 and Alpha Garments v/s Collector of Central Excise, 1995 (86) ELT 600. I find that in above cited cases the duty was demanded on the goods which were already exported, whereas in this case the goods were not exported even after long time from the date of removal, hence these decision would not be of any help to Noticee No. 1.

38. Noticee No. 1 further contends that the removal of detained goods has been recorded in a Daily Stock Register as well as monthly ER-2 return by Noticee No. 1 and the same was expressly brought to the notice of the Excise Department during the search on 20th June, 2009; that the detained goods were removed to the warehouse of M/s. Velji near Porbandar Port in anticipation of the export orders; that there is thus no suppression of facts whatsoever, either willful or otherwise by Noticee No. 1 as regards the removal of detained goods to the warehouse of M/s. Velji. They have relied upon the judgement of the Hon'ble Supreme Court in the case of *Cosmic Dye Chemical v/s Collector of Central Excise, Bombay (1995) 6 SCC 117.* I find that the contention is incorrect in as much as the notice and the proceedings on 20.06.2009 clearly indicates that the removal of detained goods were never reflected in ER-2 returns. Noticee No. 1

though an EOU operates under Self Removal Procedure (SRP) Scheme, thereby waiving the requirement of the presence of the departmental officer at the time of removal of goods. Therefore, the instruments through which any removal for export or otherwise is disclosed to the department are ARE-1 and ER-2 returns. The timely disclosure of correct data is the most vital ingredient of the SRP scheme. Therefore showing correct quantity in the returns and filing ARE-1 are mandatory and failure to do so for a long period of time do not qualify as transparent as claimed. Moreover, suppression of the information, the disclosure of which has been made mandatory under the specific return- ER-2 and application in form ARE-1 is to be considered as willful. Also, the argument that there is no clandestine removal in as much as the quantity of detained goods was duly recorded in their Daily Stock Register and ER-2 returns is not acceptable being factually incorrect as discussed above. In view of this the following case laws relied upon by Noticee No. 1 are not applicable in their case.

TGL Poshak v/s Commissioner of Central Excise, Hyderabad, 2002 (140) ELT 187; *M.T.K. Guruswamy v/s Commissioner of Central Excise, Madurai*, 2001 (130) ELT 344; *Punjab Oil & Silicate Mills v/s Collector of Central Excise*, 1993 (65) ELT 268; Suvarna *Polymers Pvt. Ltd. v/s Commissioner of Central Excise, Hyderabad*, 2000 (120) ELT 148; *Ebenzer Rubbers Ltd/ V/s Collector of Central Excise, Ahmedabad*, 1986 (26) ELT 997; *Shakti Chemical Industries v/s Collector of Central Excise, Baroda*, 1995 (76) ELT 410; *Kashmir Vanaspati (P) Ltd. v/s. Collector of Central Excise*, 1989 (39) ELT 655; *Ashwin Vanaspati Industries Pvt. Ltd. v/s Collector of Central Excise*, 1992 (59) ELT 175; *Gurpreet Rubber Industries v/s Collector of Central Excise, Chandigarh*, 1996 (82) ELT 347 and *T. M. Industries V/s Collector of Central Excise*, 1993 (68) ELT 807

39. Further, in view of the above discussion and considering the fact that the Noticee No. 1 did not disclose to the department about the removal of goods through prescribed mandatory documents and non-export of the goods for period of more than 8 months, suppression of this vital information is to be considered as willful. Hence the judgements in cases of *Continental Foundation JV, HP v/s Commissioner of Central Excise, Chandigarh, (2007) 10 SCC 337*, Commissioner of Central Excise, Chandigarh v/s Punjab Laminates (P) Ltd., (2006) 7 SCC 431; Padmini Products v/s Collector of Central Excise, Bangalore, (1989) 4 SCC 275; Collector of Central Excise, Hyderabad v/s Chasmphar Drugs & Liniments, (1989) 2 SCC 127; Jayprakash Industries Ltd. v/s. Commissioner of Central Excise, Chandigarh, (2003) 1 SCC 67 and Larsen & Toubro Ltd. v/s Commissioner of Central Excise, Pune, (2007) 9 SCC 617 are not relevant being distinguishable on facts.

40. Noticee No. 1 has challenged the confiscation and penalty under Rule 25(1) submitting that Rule 25(1) of the Central Excise Rules, 2002 is applicable to an assessee who is liable to pay excise duty; that a 100% EOU is not an assessee liable for payment of excise duty with respect to goods which are removed for export purposes. Hence, Rule 25(1) is not applicable in the present case. Since Noticee No. 1 claims that Rule 25(1) is applicable to an asessee only, it would be worthwhile to reproduce the relevant portion of Rule 25(1) of Central Excise Rules, 2002 hereunder

"(1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse or a registered dealer, -

(a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or

(b) does not account for any excisable goods produced or manufactured or stored by him; or

(c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or

(d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty, then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the

warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or [rupees two thousand], whichever is greater....."

41. A perusal of the said Rule 25(1) of Central Excise Rules, 2002 makes it abundantly clear that it is not true that this rule is applicable only to an assessee. In fact, in the entire text of Rule 25 word 'assessee' is not used and the legislation has chose to use words producer, *manufacturer, registered person of a warehouse or a registered dealer* instead. The contention of Noticee No. 1 is erroneous in as much as any person mentioned in the rule commits any of the omissions/commissions of the act as described thereunder, the provisions of Rule 25(1) are attracted. Hence, once the goods are removed in contravention of any provisions of these rules or the notification issued thereunder, the goods become offending goods, liable to confiscation and person removing such goods liable for penalty. In this case, Noticee No. 1 removed the goods in contravention of Rule 19 of Central Excise Rules, 2002 read with notification No. 42/2001-CE (N.T.) dated 26.06.2001 issued thereunder, as discussed herein above. The Clause(a) of Rule 25(1) does not specify the requirement of any intent to evade payment of duty as is specified in the residuary clause (d) of Rule 25(1) of these rules. Relying upon the following decisions of Tribunal.- CCE vs. Arihant Foam Pvt. Ltd., 2005 (188) ELT 46 and PNP Castings (P0 Ltd vs. CCE, Lucknow 2006 (194) ELT 250, I hold that the detained goods are liable to confiscation.

42 Noticee No. 1 is also liable for penalty under Section 11AC of Central Excise Act, 1944 as there was clearly a suppression of the vital fact of removal of goods and especially in light of the fact that the department was kept in dark about the non-export of the goods for a period more than eight months as discussed in para supra.

43. Also, Noticee No. 1 by not preparing prescribed documents for removal of goods, have rendered themselves liable for penalty under Rule 27 of the Central Excise Rules, 2002.

44. The Noticee No. 2 has challenged the proposed penalty under Rule 26 of Central Excise Rules, 2002 stating that Rule 26 is not applicable in the present case and no evidence has been adduced by the department to prove that the goods were not for exports. He also submits that he had no reason to believe that detained goods were liable to confiscation and in no way concerned in transporting depositing, keeping, concealing, selling or purchasing etc with any goods, which were liable to confiscation. He relied upon the decision of the Tribunal in case of M/s Standard Pencil reported at 1996 (86) ELT 245. I find that the Noticee No. 2 being the person overall in charge of Noticee No. 1 as stated in statement recorded under section 14 of the Act, it is not open for him to now state that he was not in way concerned with the goods which were liable to confiscation. Moreover, the Noticee No. 2 being person looking after the work of Noticee No. 1 since long is expected to be well aware of the provisions related to export of goods and is accountable for any omission that takes place.

45. The Noticee No. 3 have also contested the penalty proposed on it. I find that he being CHAs and shipping agents for many years are well acquainted with the procedures and formalities especially those relating to export of goods. In this case, the subject goods were admittedly removed to their plot without any prescribed documents viz. ARE-1/invoice that are required under the statute. Moreover, the Noticee No. 3 in their capacity as CHA/shipping agents of Noticee No. 1 are the persons who present ARE-1 to the customs authorities at the port, therefore when excisable goods deposited in their premises removed without ARE-1 and kept as such beyond the stipulated period, they cannot plead that such contraventions were beyond their knowledge. In view of this, it is forthcoming that the Noticee No. 3 were aware of offending nature of detained goods and hence they are liable for penalty under Rule 26 of Central Excise Rules, 2002.

In view of the above, I pass the following order:

ORDER

1. I confiscate the detained goods viz. 44903.645 MT of Beneficiated Bauxite valued at Rs 2,96,36,406/- under Rule 25(1)(a) of the CER. However, I redeem the goods to Noticee

No. 1 on payment of fine of Rs 5,00,000/- (Rs five lacs only) which shall be paid within one month of the receipt of this order.

2. I confirm Central Excise duty amounting to Rs.18,20,387/- (Rupees Eighteen lacs, twenty thousand, three hundred and eighty seven only) which shall be recovered under proviso to Section 11A of the Act along with the interest at the appropriate rate as applicable till the date of payment of the duty as provided under Section 11AB of the CEA.

3. I impose penalty of Rs.18,20,387/- (Rupees Eighteen lacs, twenty thousand, three hundred and eighty seven only) upon Noticee No. 1 under Section 11AC of the Central Excise Act, 1944

4. I impose penalty of Rs 5,000/- (Rs five thousand only) upon Noticee No. 1 under Rule 27 of the Central Excise Rules, 2002.

5. I impose penalty of Rs 18,20,387/- (Rupees Eighteen lacs, twenty thousand, three hundred and eighty seven only) upon the Noticee No. 2 under Rule 26 of the Central Excise Rules, 2002.

6. I impose penalty of Rs 18,20,387/- (Rupees Eighteen lacs, twenty thousand, three hundred and eighty seven only) upon the Noticee No. 3 under Rule 26 of the Central Excise Rules, 2002.

All the noticees shall pay aforementioned amount forthwith.

(HARCHARAN SINGH)
ADDL. COMMISSIONER

F. No. V/15-112/Dem /HQ/2009 Date:-18.4.2011

By Regd. Post A. D.

To,

1. M/s Rawmin Mining And Industries Pvt. Ltd.,
   East Kadia Plot,
   Porbandar.

2. Shri Bhavin Hariharbhai Thanki,
   M/s Rawmin Mining And Industries Pvt. Ltd
   East Kadia Plot,
   Porbandar.

3. M/s Velji P. & Sons,
   'Hari Bhuvan' 1st Floor,
   S. T. Road,
   Porbandar – 360 575.

Copy to:-

1. Commissioner, Central Excise, Bhavnagar.
2. Assistant Commissioner(AE), Central Excise, HQ, Bhavnagar.
3. Assistant Commissioner, Central Excise Division, Junagadh.
4. Superintendent of Central Excise, AR- Porbandar.
5. Assistant Commissioner, Central Excise, RRA Section, Bhavnagar.
6. Guard file.

18/4/2011
ADDL. COMMISSIONER