

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
PLOT NO. 6776/B1, "SIDDHI SADAN" BUILDING,
NARAYAN UPADHYAY MARG,
BHAVNAGAR - 364 001.

F. No. V/15-26/Dem/HQ/2010-11

Date of order : 30.12.2011

Date of issue : 27.02.2012

Passed by Shri Harcharan Singh, Additional Commissioner.

Order-in-Original No. 21/ADC/BVR/2011-12

This copy is granted free of charge for private use of the person(s) to whom it is sent.

Any person(s) deeming himself aggrieved by this order may appeal against this order to the Commissioner Central Excise (Appeals), Rajkot, Central Excise Bhavan, Race Course Ring Road, Rajkot-360001 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 (Appeals) 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.

Sub.:- Show Cause Notice Number F. No. V/15-26/Dem/HQ/2009 dated 29.11.2010.

Brief facts of the case:

1 M/s. Jawandamal Dhannamal, Plot No. 60, Ship Breaking Yard, Alang (hereinafter referred to as 'Noticee No. 1'), holding valid Central Excise Registration No. AAAHG0277MXM001 under Rule 9 of the Central Excise Rules, 2002 (hereinafter referred to as 'the Rules') are engaged in the manufacturing of the goods i.e. Scrap & Plates of Iron & Steel and other excisable goods viz., Zinc & Aluminium Scrap obtained by breaking up of old ships classified under Chapter Heading No. 72, 73 and 74 of the First Schedule to the Central Excise Tariff Act, 1985.

1.1 The officers of the Anti-Evasion Branch, Central Excise Commissionerate, Hqrs, Bhavnagar searched the business premises of Noticee No. 1 on 22.12.2009 and found number of incriminating documents including 69 chits showing details of removal of excisable goods. On comparison of the entries made in the said documents with the invoices issued, it was found that no invoices were issued in respect of 375.574 MT finished excisable goods. It was also found that the said quantity was not accounted for in their Daily Stock Account. Accordingly, a Panchnama affecting seizure of the said incriminating documents and other relevant records was drawn on 22.12.2009 in the presence of two independent panchas and Shri Rajesh Shaktinandan Agrawal, manager and authorized signatory of the Noticee No. 1 (hereinafter referred to as 'the Noticee No. 2').

1.2 Thereafter, a detailed inquiry was conducted by the Department. Statement of Noticee No. 2 was recorded on 23.12.2009 under Section 14 of the Central Excise Act, 1944 (hereinafter referred to as 'the Act'). Statements of Shri Manish Rasiklal Shah, the broker (hereinafter referred to as 'the Noticee No. 3') and Shri Pradip Sohanlal Gupta, the broker (hereinafter referred to as 'the Noticee No. 4') were also recorded under Section 14 of the Act on 23.12.2009 and 03.02.2010 respectively. After completion of inquiry, it was revealed that the Noticee No. 1

had contravened the provisions of Rule 4 read with Rule 8, Rule 11, Rule 6 and Rule 10 of the Rules whereas the Noticee No. 2, 3 and 4 had committed an offence as described in Rule 26(1) of the Rules. Therefore, subject Show Cause Notice was issued to the Noticee No. 1 asking to show cause as to why Central excise duty of Rs 5,28,865/- (including Edu. Cess and Higher Secondary Education Cess) on 375.574 MT excisable goods valued of Rs 64,18,262/- as mentioned in Annexure-B removed illicitly should not be recovered from them under the proviso to sub section (1) of Section 11A of the Central Excise Act, 1944 and interest should not be charged & penalty should not be imposed upon them under Section 11AB and 11AC respectively of the Act read with Rule 25 of the Central Excise Rules, 2002. In the said Show Cause Notice, it was also proposed as to why the said amount paid with interest subsequently should not be confirmed and appropriated towards the duty amount under Section 11A of the Act. The subject Show Cause Notice was also issued to the Noticee No. 2, 3 and 4 asking all of them to show cause as to why penalty should not be imposed upon them under the provisions of Rule 26 of the Central Excise Rules, 2002.

Written submission:

2. The Noticee No. 1 and 2 filed their reply to the show cause notice vide letter dated 09.12.2010. The Noticee No. 3 & 4 filed their reply to the show cause notice vide letter dated 14.12.2010 and 13.12.2010 respectively. In the said reply, the Noticee No. 1 have contended that they do not agree with charges levelled against them in the subject Notice on the following grounds:

2.1. An invoice was to be prepared for the clearance of the goods but buyers of the goods were in hurry and left without collecting the invoice and in the mean time the Central Excise Officers visited the factory and took hold of the records.

2.2 They had cleared 10200 Kgs iron steel scrap @ Rs 16,151/- per MT illicitly as admitted by Shri Rajesh Aggrawal and not entire quantity i.e.375.574 MT excisable goods and hence the case booked for clandestine removal of 375.574 MT goods is not correct.

2.3 There is not a case of removal of goods without invoice or with intent to evade duty and hence goods can not be confiscated and penalty can not be imposed.

2.4 Notice issued under Section 11A demanding duty is illegal as the proviso to Section 11A of the Central Excise Act, 1994 for recovery of Central Excise duty and provisions of Section 11AC are applicable only where excise duty has not been paid by reason of fraud, wilful misstatement or suppression of facts or the provisions of the Act. In the instant case, there is no evidence adduced in the Show Cause Notice except 10,200 kgs of iron and steel scrap sold @ Rs 16,151/- per MT to indicate that any element of fraud, wilful misstatement or suppression of facts or intention to evade duty exist. Therefore, there is no case for recovery of duty under section 11A or imposition of mandatory penalty under section 11AC.

2.5 In fact, when they had paid the duty, Show Cause Notice should have not been issued to them. As they have not committed any offence, they are not liable to penalty.

2.6 The allegation is merely on the basis of recovery of chits, which did not provide any tangible evidence regarding the clandestine removal of the dutiable goods. The law is well settled that the charge of clandestine removal of the dutiable goods by an assessee has to be proved by the Department by adducing cogent, convincing and tangible evidence. Such charge can not be based on assumption and presumption. In support of their contention, they relied upon the cases viz.(1) Kalvert Food India Pvt. Ltd. Versus CCE, Mumbai [2003(152)ELT 131 (T)]; (2) Deepak Tondan versus CCE, Bhubaneshwar [2000 (126) ELT 1079] and (3) Oudh Sugar Mills Ltd versus Union of India [1978 (2) ELT 172 (SC)]. In the instant case, the Department has failed to investigate the case. In the absence of any statement or inquiry, it is not understood as to how the officer issuing the Show Cause Notice came to the conclusion that the loose papers recovered from the office premises showed the removal of excisable goods in clandestine manner with intent to evade payment of duty. Thus, entries in private records can not be held to establish clandestine removal without corroborative evidence and demand can not be made on

assumption and presumption. In CCE, Merrut vs Raman Ispat (P) Ltd reported in [2000 (121) ELT 46(T)], the Tribunal did not uphold the charge of clandestine removal even though the rough note books were recovered from the premises of the appellant. The Hon'ble Tribunal in the case of Sharma Chemicals v/s Commissioner reported in [2001 (130) ELT 271 (T)], wherein the Tribunal has held, after referring to a number of decisions, that charge of clandestine removal can not be sustained on suspicion and entries in a private note book. At the most, a doubt can be raised but do not prove the charge of clandestine removal in the absence of other corroborative evidence. In view of the above fact, the impugned show cause notice is not sustainable in law.

2.7 The Noticee No. 1 is not liable to penalty under Section 11AC of the Central Excise Act, 1944 because the duty has been paid by them voluntarily much before the issue of Show Cause Notice. Thus, the impugned Show Cause Notice is not maintainable in the eyes of law for on the sole reason that the duty involved in this case has been paid before issue of the Show Cause Notice. In support of this argument, they placed reliance on the decision of the Hon'ble Tribunal in the case of CCE, Madurai Vs JKON Engineering (P) Ltd; reported at 2003 (151) ELT 453 and Hon'ble Tribunal's ruling rendered in 2002 (140) ELT 437. Both the decisions have held that penalty under Section 11AC and interest under Section 11AB need not be imposed when duty and interest has been paid before the issue of show cause notice.

2.8 The Noticee No. 1 has argued that the entire case is based on the basis of simple statement of the authorized signatory of the firm, which cannot be given weightage without preparing any documents at the spot regarding through investigation by the officers. In support of their contention, they placed reliance on the decision of the Hon'ble Tribunal in the case of Relaxo Internation vs CCE, Delhi-III, and reported in [2005 (192) ELT 1100(Tri-Delhi)]

2.9 The demand has been issued on presumption as there is no direct or indirect evidence of clandestine removal. It is pertinent to note that the charge of clandestine removal of the excisable goods has to be supported by an evidence with regard to purchase of inputs, production, source of funds etc. The charge of clandestine removal of goods is serious, which should be established by the department by adducing sufficient and tangible evidence. Hon'ble Supreme Court in the case of Oudh Sugar Mills Ltd versus UOI reported in [1978 (2) ELT (J.172) (SC)] has observed that no Show Cause Notice or an order can be based on assumption and presumption without any tangible evidence will be vitiated by an error of law. In the present case also, the duty has been demanded on the basis of private records and a simple statement of the partner. Such a demand can not sustain for want of tangible evidence.

2.10 The Noticee No. 1 has also contended that they are not liable to pay any penalty under Section 11AC of the Central Excise Act, 1944 in this case as they have paid duty and interest much before the issue of subject Show Cause Notice. In support of their contention, they relied upon the decision of the Hon'ble Tribunal passed in the case of CCE Madurai vs JKON Engg (P) Ltd reported at 2003 (151) ELT 453 and Hon'ble Tribunal's ruling rendered in 2002(140)ELT 437. Both the decisions hold that a penalty under section 11AC and interest under section 11AB need not be imposed when duty has been paid prior to the issue of Show Cause Notice. They also relied upon the following decisions. (1) EID PARRY (I) LTD vs CCE, Mumbai reported at 2003 (156) ELT 753 (T); (2) Chanakya Plastics vs CCE Chennai reported at 2003 (156) ELT 912 (T); (3) Ashok Leyland Ltd vs CCE Chennai reported at 2003 (156) ELT 995 (T); (4) EID Parry (India) Ltd vs CCE Jaipur. Noticee No. 2, 3 and 4 have also reiterated this contention and requested to drop the penal proceedings.

2.11 The Noticee No. 1 has contended that penalty under Section 11AC should not be equated to duty not paid and the authority has discretion to impose lesser penalty. In support of their contention, they relied upon the following decisions passed by the various authority. (1) J. K. Processors vs CCE reported in [2000 (122) ELT 633 (Tri.)]; (2) [Bihar Ispat Udyog vs CCE reported at 2001 (130) ELT 231 (Tri.)]; (3) Sarswati Marble v/s CCE reported in 2001 (131) ELT 64 (Tri.) Noticee No. 2, 3 and 4 have also reiterated this contention and requested to drop the penal proceedings.

Personal Hearing:

3. Personal hearing in this case was fixed on 24.01.2011 and communicated to all the Noticees vide this office letter dated 17.01.2011. No one appeared for personal hearing on 24.01.2011. However, all the Noticee filed their reply separately vide letters all dated 22.1.2011 and submitted further submissions in lieu of personal hearing and further informed that they do not any further personal hearing and requested to decide the matter on the basis of their reply dated 09.12.2010, 14.12.2010, 13.12.2010 and further submission vide letter dated 22.1.2011 filed by them.

Discussion and findings:

4. I have gone through the subject Show Cause Notice, defence reply filed by all the Noticee and all the records placed in the file. In the subject case, the Noticee No. 1, 2, 3, & 4 have raised various law points as stated in para supra. In the subject Show Cause Notice, a total demand of Rs 5,28,865/- has been made under Section 11A of the Central Excise Act, 1944 along with interest as provided under Section 11AB of the Central Excise Act, 1944 and it has also been proposed to impose a penalty under Section 11AC of the Central Excise Act, 1944. In the present case following issues are required to be decided.

- (1) When the Noticee No. 1 have paid an amount of duty along with interest and a penalty equal to 25% of the duty specified in the Notice before the issue of Show Cause Notice, whether penalty equal to duty can be imposed on the Noticee No. 1 under the provisions of Section 11 AC of the Central Excise Act, 1944.
- (2) If a person pays a duty along with interest and a penalty equal to 25% of the duty specified in the Notice before the issue of Show Cause Notice, action against Noticee No. 2, 3 & 4 shall be deemed to be conclusive as provided under first proviso to the sub section (2) of Section 11 A of the Central Excise Act, 1944.

4.1 Issue No.1 as referred above has been decided by the Hon'ble High Court of Punjab & Haryana in the case of CCE Rohtak vs J. R. Fabrics (P) Ltd reported in 2009 (238) ELT 209. Para-4 of the said case is reproduced here showing argument of the revenue regarding penalty under Section 11AC of the Central Excise Act, 1944.

“Para-4: Mr. Sanjeev Kaushik, learned counsel for the revenue has vehemently argued that provisions of Section 11 AC of the Act has now been interpreted by the Hon'ble Supreme Court in the case of Union of India v/s Dharmendra Textile Processors, 2008(231) ELT 3(SC). According to the learned counsel, a plain reading of 2nd proviso to Section 11 AC of the Act would make it clear that equal amount of duty found to be paid to the revenue is to be realised as penalty and therefore the amount of 25% imposed by the Tribunal as penalty is liable to be set aside”

Para-10, 14 & Para-15 of the case of CCE Rohtak v/s J.R.Fabrics (P) Ltd; reported in 2009 (238) ELT 209 decided by the Hon'ble High Court (P&H) is reproduced here:

“Para-10: It is appropriate to notice that the period in question is 28.07.2007 to 28.02.2002 and there is no dispute that the proviso added by Act No. X of 2000 is made applicable w.e.f. 15.02.2003 would apply which provides that an amount equal to 25% of the amount of duty of excise would be liable to be paid as penalty if the amount of duty of excise is paid within 30 days from the date of communication of the order by the Central Excise Officer.”

“Para-14: The view taken by the Delhi High Court in Malbro Appliances Private Ltd's case (supra) was also examined in detail by a Division Bench of the same court in the case of K. P. Pouches (P) Ltd vs UOI-2008(228) ELT-31. After reading Section 11 AC of the Act, the Division Bench came to the conclusion that according to the proviso, only 25% of the duty of excise was payable. The facts of the present case are akin to the facts of the Division Bench Judgement in K.P. Pouches (P) Ltd case. It has been held by the Division Bench that when the statutory authorities are acting illegally and contrary to the 1st proviso of Section 11 AC of the Act and therefore the assessee can not be faulted to

the challenge the order passed by the Assistant Commissioner which fault was also repeated by the Commissioner (appeals). The situation is the same in the present case. We, therefore, respectfully agreeing with the view taken by the Division Bench in K. P. Pouches (P) Ltd case (supra) hold that the conclusion reached by the Tribunal that the dealer-respondent was liable to pay penalty to the extent of 25% of the amount of duty of excise determined by the officer concerned."

"Para-15: The argument of the revenue that the judgement in Dharmendra Textile processors's case (supra) would apply and penalty equal to the amount of duty of excise assessed by the Assessing Authority is to be paid. We are afraid that such an argument would not be available because judgement in the Dharmendra Textile Processor's case (supra) dealt with Section 11 AC of the Act and has concluded the mandatory nature of the penalty contemplated by the proviso. In para 26, reference has been made to the Union Budget of 1996-97, when Section 11AC of the Act was introduced. It is then clarified that there was no scope for any discretion and the levy of penalty is of mandatory character. The Hon'ble Supreme Court further placed reliance on the notes on clauses concluding that similar indication has been given therein. It appears that proviso 1st and 2nd which were added in the year 2000 were not subject matter of consideration before their lordships in Dharmendra Textile Processor's case. Therefore, we find no substance in the contention raised on behalf of the revenue especially in the face of express provision made by the four provisos in the year 2000."

4.2 On going through the findings of the case decided by the Hon'ble High Court of Punjab and Haryana in the case of CCE, Rohtak vs J. R. Fabrics (P) Ltd reported at 2009(238) E.L.T. 209, it can be seen that the Hon,ble High Court have held that if duty along with interest is paid within 30 days from the date of receipt of order, then only 25% penalty of duty is required to be paid within 30 days. The most important thing to be noted here is that the above decision has been delivered by the Hon'ble High Court of Punjab and Haryana after taking into consideration the decision of the Hon'ble Supreme Court passed in the case of Dharmendra Textile Processor's case.

4.3 In light of above referred case and before arriving at the conclusion, I would like to discuss a legal provisions Section 11 A and section 11 AC of the Central Excise Act, 1944. Sub-section (1A) of Section 11A of the Central Excise Act, 1944 provides that when any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or the Rules made there under with intent to evade payment of duty by such person or his agent, to whom a Notice is served under the proviso to sub-section (1) by the Central Excise Officer, may pay duty in full or in part as may be accepted by him, and the interest payable thereon under Section 11AB and penalty equal to twenty-five per cent of the duty specified in the Notice or the duty so accepted by such person within thirty days of the receipt of the Notice. In the subject case, it is undisputed fact that the Noticee No. 1 have made a payment of Central Excise duty along with interest as provided under Section 11 AB of the Central Excise Act, 1944 and 25% penalty of the duty specified in the Notice even before the issue of the subject Show Cause Notice and hence I hold that the Noticee No. 1 has complied the provisions sub section (1A) of Section 11 A of the Central Excise Act, 1944. Hence, I hold it proper to pay a penalty of 25% of the duty specified in the Notice.

4.4 Further, the first proviso of sub section (2) of Section 11 A of the Central Excise Act, 1944 provides that if such person has paid the duty in full together with interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom Notice are served under sub-section (1) shall, without prejudice to the provisions of Section 9, 9 A and 9 AA be deemed to be conclusive as to the matters stated therein :

4.5 In view of the first proviso of sub section (2) of Section 11 A of the Central Excise Act, 1944, I hold that the proceedings in respect of other persons i.e. Noticee No. 2, 3 & 4 to whom Notice are served under sub section (1) are to be concluded without imposing any penalty as proposed in the Show Cause Notice under Rule 26 of the Central Excise Rules, 2002.

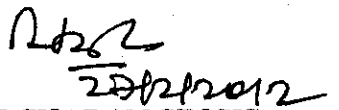
4.6 In the subject case, the Noticee No. 1 has paid a duty along with interest and 25% penalty equal to the duty specified in the Notice before issue of Show Cause Notice, I have decided the case in the above terms. But, as the Noticee No. 1 has argued that the show cause notice is served without inquiry, without any cogent evidences and on the basis of the assumption and presumption. In this regards, I would like to discuss the points raised by the Noticee No. 1 and to give my findings.

4.7 I do not agree with the contentions raised by the Noticee No. 1 that they have not removed the goods without invoice on that particular date i.e. 22.12.2009. In fact the Noticee have removed total 375.574 MT of finished goods under 69 chits as listed in Annexure-A of the Panchnama dated 22.12.2010 on different dates and that fact has been admitted by Shri Rajesh Shaktinandan Aggrawal, Manager and authorized signatory of the Noticee No. 1 in his statement dated 23.12.2009 recorded under Section 14 of the Central Excise Act, 1944. In the said statement, Shri Rajesh Aggrawal has also admitted that they have removed the excisable goods obtained by breaking of ship without invoice, without payment of Central Excise duty and without accounting into Daily Stock Account. As Shri Rajesh Aggrawal, a Manager of Noticee No. 1 has accepted that they have removed the excisable goods without payment of duty, without invoice and without accounting for in the Daily Stock Account. In the said statement Shri Rajesh Aggrawal has admitted that most of the items as mentioned in 69 chits have been sold from the factory; that most of the items sold as mentioned in those chits were of excisable goods except items mentioned in chit No. 2 -choke , chit No. 3- Tube Light, and chit No. 8-Fanus; that all other entries in the chits of excisable goods; that as regards chit No. 64 & 65, he stated that both were same weghment slip No. 19314 under which 21190 Kgs of iron and steel scrap was sold by them @ Rs 15,701/- per MT without cover of Central Excise invoice and without payment of Central Excise duty. I have no hesitation to hold that a contention of Noticee No. 1 that an invoice was to be prepared for the clearance of the goods but buyers of the goods were in hurry and left without collecting the invoice and in the mean time the Central Excise officers visited the factory and took hold of the records is absolutely false and far from the facts. I also do not agree with the contention of the Noticee No. 1 that the Department has not made detailed inquiry and issued the Show Cause Notice on assumption and presumption without corroborative evidence. I hold that the Department has thoroughly inquired the case inasmuch as the Department has recorded the statement of the person to whom the Noticee No. 1 has sold their entire goods listed in Annexure-A attached to the panchnama dated 22.12.2009 and during the course of inquiry, the Noticee No. 3 in his statement dated 23.12.2009 recorded under Section 14 of the Central Excise Act, 1944 has accepted that he (Noticee No. 3) asked Noticee No. 1 for purchase of excisable goods without invoice and without payment of duty. A statement of Noticee No. 4 was also recorded on 03.02.2010 under the provisions of Section 14 of the Central Excise Act, 1944 wherein he has also admitted that the goods listed in Annexure-A to the Panchnama dated 22.12.2009 **where in name is written were purchased by the buyer through him without any invoice.** These statements of Noticee No. 3 & 4 are nothing but a corroborative evidence showing clandestine removal of the excisable goods by the Noticee No. 1. It has also been argued by the Noticee No. 3 & 4 that purchase of goods from open market is deemed to be the duty paid goods. In this regards, I hold that the Noticee No. 3 & 4 have purchased the goods directly from the factory of Noticee No. 1, and hence their contention of purchase of goods from the open market is far from the fact. So, I hold that this is a clear case of clandestine removal of excisable goods without payment of Central Excise duty and hence the provisions of Section 11 A & 11 AC of the Central Excise Act, 1944 are attracted. However, in the subject case, it is undisputed fact that the Noticee No. 1 have made a payment of Central Excise duty along with interest as provided under Section 11 AB of the Central Excise Act, 1944 and 25% a penalty of the duty specified in the Notice even before the issue of the subject Show Cause Notice and hence, I hold that the Noticee No. 1 has complied the provisions of sub section (1A) of Section 11 A of the Central Excise Act, 1944, I hold it proper to pay a penalty of 25% of the duty specified in the Notice and not the equal amount of duty.

4.8 In view of the above discussion and findings, I pass the following order.

ORDER

- (1) I confirm the total amount of Rs 5,28,865/- being duty + education cess + higher education cess under the provisions of sub section (2) of Section 11 A of the Central Excise Act, 1944. As the amount of duty has already been paid by the Noticee No. 1 with interest, I appropriate the said amount towards above referred confirmed amount of Rs 5,28,865/-.
- (2) I impose a penalty of Rs 5,28,865/- upon Noticee No. 1 under the provisions of Section 11 AC of the Central Excise Act, 1944. However, as the Noticee No. 1 has already paid penalty equal to 25% of the duty specified in the Notice before issue of the subject Show Cause Notice, I appropriate the said amount towards the above referred penalty. As the Noticee No. 1 has already paid a penalty equal to 25% of the duty specified in the Notice before the issue of this Show Cause Notice, the Noticee No. 1 is not required to pay any more amount of penalty thenceforth.
- (3) As the Noticee No. 1 has already paid duty, interest and a penalty equal to 25% of the duty specified in the Notice before the issue of this Show Cause Notice, I drop the proceedings proposed against Noticee No. 2, 3 and 4 in light of first proviso to sub section (2) of Section 11 A of the Central Excise Act, 1944.


 (HARCHARAN SINGH)
 ADDL. COMMISSIONER

To,

1. M/s. Jawandamal Dhannamal,
2211-B/13, 'Sahej' Kalindi Cottage,
Opposite PNB, Sanskar Mandal,
Bhavnagar - 364 002.
- ✓ 2. Shri Rajesh Shaktinandan Agrawal,
'Sahej', 2211-B/13, Kalindi Cottages,
Opposite PNB, Sanskar Mandal,
Bhavnagar-364 001.
3. Shri Manish Rasiklal Shah,
CM-74, K.P.E.S Road, Kaliyabid,
Bhavnagar-364 001
4. Shri Pradeep Sohanlal Gupta,
Plot No. 1034/C, Kaliyabid,
Bhavnagar-364001.

Copy to:

- (i) ~~Commissioner, Central Excise, Bhavnagar.~~
- (ii) ~~Assistant Commissioner, Central Excise, Rural Division, Bhavnagar.~~
- (iii) ~~Assistant Commissioner (A.E.), Central Excise, Bhavnagar.~~
- (iv) ~~Superintendent, Central Excise, AR-I, Alang.~~
- (v) ~~Superintendent (Recovery Cell), Central Excise Hqrs, Bhavnagar~~
- (vi) ~~Guard File~~

~~ADDL. COMMISSIONER~~

4.8 In view of the above discussion and findings, I pass the following order.

ORDER

- (1) I confirm the total amount of Rs 5,28,865/- being duty + education cess + higher education cess under the provisions of sub section (2) of Section 11 A of the Central Excise Act, 1944. As the amount of duty has already been paid by the Noticee No. 1 with interest, I appropriate the said amount towards above referred confirmed amount of Rs 5,28,865/-.
- (2) I impose a penalty of Rs 5,28,865/- upon Noticee No. 1 under the provisions of Section 11 AC of the Central Excise Act, 1944. However, as the Noticee No. 1 has already paid penalty equal to 25% of the duty specified in the Notice before issue of the subject Show Cause Notice, I appropriate the said amount towards the above referred penalty. As the Noticee No. 1 has already paid a penalty equal to 25% of the duty specified in the Notice before the issue of this Show Cause Notice, the Noticee No. 1 is not required to pay any more amount of penalty thenceforth.
- (3) As the Noticee No. 1 has already paid duty, interest and a penalty equal to 25% of the duty specified in the Notice before the issue of this Show Cause Notice, I drop the proceedings proposed against Noticee No. 2, 3 and 4 in light of first proviso to sub section (2) of Section 11 A of the Central Excise Act, 1944.

Sd/-

(HARCHARAN SINGH)
ADDL. COMMISSIONER

To,

1. M/s. Jawandamal Dhannamal,
2211-B/13, 'Sahej' Kalindi Cottage,
Opposite PNB, Sanskar Mandal,
Bhavnagar - 364 002.
2. Shri Rajesh Shaktinandan Agrawal,
'Sahej', 2211-B/13, Kalindi Cottages,
Opposite PNB, Sanskar Mandal,
Bhavnagar-364 001.
3. Shri Manish Rasiklal Shah,
CM-74, K.P.E.S Road, Kaliyabid,
Bhavnagar-364 001
4. Shri Pradeep Sohanlal Gupta,
Plot No. 1034/C, Kaliyabid,
Bhavnagar-364001.

Copy to:

- (i) Commissioner, Central Excise, Bhavnagar.
- (ii) Assistant Commissioner, Central Excise, Rural Division, Bhavnagar.
- (iii) Assistant Commissioner(A.E.), Central Excise, Bhavnagar.
- (iv) Superintendent, Central Excise, AR-I, Alang.
- (v) Superintendent (Recovery Cell), Central Excise Hqrs, Bhavnagar
- (vi) Guard File

[Signature]
27/02/2012
ADDL. COMMISSIONER