प्रधान आयुक्त का कार्यालय, केन्द्रीय जी.एस.टी ,अहमदाबाद – दक्षिण
७वी मंजिल, जी.एस.टी भवन ,पोलिटेकनिक के पास ,आंबावाडी ,अहमदाबाद -१५
OFFICE OF THE PRINCIPAL COMMISSIONER OF CENTRAL GST, AHMEDABAD-SOUTH
7th FLOOR, GST BHAVAN, NR. POLYTECHNIC, AMBAVADI, AHMEDABAD-380015

DIN:20220264WS000000D18F

निवन्धित पावती डाक द्वारा / By REGISTERED POST A.D.
फा .सं /.F. No. V. 74/15-276/Mahendra/OA- I/08-09

आदेश की तारीख/Date of Order: 09.02.2022
जारी करने की तारीख/Date of Issue : 09.02.2022

द्वारा पारित/Passed by:- सुनील कुमार सिंह , प्रधान आयुक्त
SUNIL KUMAR SINGH, PRINCIPAL COMMISSIONER

मूल आदेश संख्या / Order-In-Original No. : AHM-EXCUS-001-COM-018-21-22 Dated 09-02-2022

1. जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदावाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, O-20, मेघाणीनगर, न्यु मेन्टल हॉस्पीटल कम्पाउन्ड, अहमदाबाद-380 016 को सम्बोधित होनी चाहिए।
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, O-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.

3. उक्त अपील प्रारुप सं. इ.ए.3 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पद शुल्क (अपील) नियमावली, 2001 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।

The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के विना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35 बी के उपवन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमे विवाद है उसका भुकतान करके अपील की जा शकती है।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8. न्यायालय शुल्क अधिनियम, 1970 की अनुसूची-1, मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00 रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।
The copy of this order attached therein should bear a court fee stamp of Rs. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

9. अपील पर भी रु. 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।
Appeal should also bear a court fee stamp of Rs. 4.00.

विषयः–

Sub : Show Cause Notice No. F.No.Misc/Inquiry/MMI/07 dated 08.02.2008

Brief Facts of the Case:

M/s Mahendra Metal Industries, Plot No. A-1/3, Phase-I, G.I.D.C., Vatva, Ahmedabad (here-in-after referred to as "M/s MMI" or 'noticee') a partnership firm; wherein Shri Mahendra Gehrilal Duggad was one of the partners, were engaged in the manufacture of Copper Rods & Strips, Brass Rods & Strips etc falling under the Chapter 74 of the First Schedule to the Central Excise Tariff Act (CETA), 1985 and were holding a valid Central Excise Registration. M/s MMI was availing the benefits of Cenvat Credit Scheme under Cenvat Credit Rules, 2004. M/s MMI surrendered its registration certificate on 18.09.2006 and obtained Central Excise Registration in the same premises in the name of M/s Manav Metal Industries, w.e.f. 19.09.2006 wherein Smt. Bhavnaben Mahendra Duggad (the wife of Shri Mahendra Gehrilal Duggad) is the proprietor.

2.1 On the basis of information/intelligence gathered that the said M/s. MMI is indulging in evasion of Central Excise duty by suppression of actual production and removal of excisable goods manufactured by them without discharging duty payable thereon, investigation was initiated against said M/s MMI. Shri Mahendra Gehrilal Duggad, Partner of M/s. MMI in his statement dated 26.04.2007 recorded under Section 14 of Central Excise Act, 1944, had stated that he is the partner of M/s. M MI and was looking after all the business activities of the firm i.e. production and sales. He further stated that if the raw materials i.e. Brass Rods is imported, then the yield will be 65% to 70% and if the raw materials are indigenous, then the yield will be 50% to 60%. He further stated that the unit is not having any approved Balance Sheets for the F.Y. 2000-01 to 2006-07 (upto surrendering of Central Excise registration). Shri Mahendra G. Duggad produced the Central Excise records i.e. Sales Invoices, purchase bills, Cenvatable invoices, PLA, RG 23A Pt-I & Pt-II vide letter dated 07.03.2007 to the Superintendent (Preventive), Central Excise, Ahmedabad-I.

2.2 Inquiry conducted revealed that M/s MMI had Account No. 1103 in the M/s Navnirman Co-operative Bank Ltd., Rakhial Branch, Ahmedabad. Hence, Bank account statement of the said Account No.1103 of M/s. MMI for the period 2000-2001 to 2006-2007 was obtained from the said Bank on 26.02.2008 in response to letter dated 26.02.2008. The Bank also, on request, provided detailed list of names of the Banks and its addresses from where the cheques/DDs etc were issued and the amount shown in the said instruments were credited in the said Bank Account No.1103. On the basis of the details of Banks and its branches provided by Navnirman Co-operative Bank Ltd., Rakhial branch, letters were delivered to various Banks to intimate the names and addresses of the person(s), who had issued the said cheques/DDs, which were credited in the account of M/s MMI in Navnirman Co-operative Bank Ltd., Rakhial branch. On receipt of the information supplied by the various Banks, inquiry was extended to the firms who had issued the said cheques/DDs to M/s MMI which were subsequently credited in the Bank account No.1103 of M/s MMI, by issuing summons to the said firms under Section 14 of the Central Excise Act, 944. Statements of responsible persons of the said concerned firms were also recorded under Section 14 of the Central Excise Act, 1944, wherein they stated that they had purchased copper and brass articles etc from M/s MMI. The details of the investigation/inquiry conducted are elaborated at Paragraph 3(a) to 3(u) of the Show Cause Notice which is not repeated again.

vide their various letters did not match, in as much as while both the sets of invoices had the same serial numbers, but the consignees/buyers name, quantity, value, Central Excise duty did not match, as detailed in 'Annexure-B' to the show cause notice. It, thus, appeared that the purported Central Excise invoices of M/s MMI produced by various units were parallel Central Excise invoices on which, though excisable goods were cleared, Central Excise duty was not discharged by M/s MMI.

2.4 On the basis of the above said Bank account statements and the statements showing details of credit entries furnished by the Navnirman Co-operative Bank Ltd., Rakhial branch and the records (i.e. ledger accounts in respect of M/s MMI/Bank statements) produced by the buyers of M/s. MMI while recording of their statements/letters received from the buyers, Annexure-E is prepared showing the details of payments made by the buyers of M/s MMI and which were credited in the Bank Account No. 1103 of M/s MMI in respect of various parallel Central Excise invoices issued by M/s MMI.

3.1 Shri Mahendra Gehrilal Duggad, in his further statement recorded on 12.01.2009, under Section 14 of the Central Excise Act, 1944, *inter alia*, stated that he was the partner of M/s. MMI. The name has been changed from M/s Mahendra Metal Industries (Partnership firm) to M/s Manav Metal Industries (Proprietorship firm) and after changing the name and status, Smt. Bhavna Mahendra Duggad (his wife) is presently Proprietor of M/s Manav Metal Industries. He stated that he was looking after day-to-day affairs of M/s MMI i.e. purchase, sales, marketing, taxation, preparation of Central Excise invoices /records and returns.

3.2 Further, Shri Duggad was shown his statement recorded under Section 14 of Central Excise Act, 1944 on 26.04.2007 and he agreed with the contents of the said statement. Further he was shown the letter dated 05.01.2007 of M/s MMI wherein he has mentioned that during the manufacturing process, melting loss is 8 to 12 percent and in token of having seen it, he put his dated signature on it. He agreed that the percentages of melting loss is between 8 to 12 percent and not as shown in his statement dated 26.04.2007 i.e. ranging from 35 to 50 percent subject to indigenous and imported raw materials being used. Further he stated that balance sheets in respect of M/s. MMI upto the F.Y. 2006-07 will be produced by him within 7 days; that Income-Tax returns have not been filed in respect of M/s. MMI and also not filed income tax returns in his name upto the F.Y. 2006-07 as well. He also stated that M/s MMI has not maintained the records/register of Raw Materials in any manner; that upto 09/2006, M/s MMI had purchased the raw materials i.e. copper/brass scrap & zinc etc in excess as compared to the purchase invoices supplied to the Department, vide their letter dated 07.03.2007 and the payment of the same were made by cash and also by cheques/DDs; that most of the raw materials were purchased by cash and the same were not accounted for in their records and the names of the suppliers of raw materials, to whom they have made payment through cheques/DDs will be produced by him within few days.

3.3 Further, Shri Duggad, *inter alia*, agreed with the contents of a computerized worksheet shown to him. wherein in column 2 to 10 of the said worksheet, details of the goods cleared on parallel invoices on which duty has not been discharged by M/s. MMI, which is compiled on the basis of the statements recorded of the authorized persons of the buyers (the consignee) and also on the basis of the parallel central excise invoices produced by the buyers. Further in column 11 to 19 of

Central Excise duties not discharged on the said goods works out to Rs.69,41,691/- and on agreeing with the contents of the same, he put his dated signature on it. Further, he was shown the statements recorded under Section 14 of the Central Excise Act, 1944 of the authorized persons/ letters of the buyers of M/s. MMI (as mentioned in the above said worksheet) alongwith the relevant documents and in token of having seen and agreed with the contents of the said documents, he put his dated signature on it. In reply as to why he has not deposited into the Government account the Central Excise duty charged in the parallel invoices and collected from the buyers, as per the provisions of prevailing Central Excise Act/Rules, Shri Mahendra Gehrilal Duggad stated that M/s. MMI has retained the amount of Central Excise duty involved in the parallel invoices as shown in above said worksheet by not depositing the same in Government account in prescribed manner. In reply to a further question as to when he will deposit the Central Excise duties of Rs. 69,41,691/- in question, he stated that he will start making the payment from the month of February 2009. Further, in reply to a question as to the transactions pertaining to missing invoice numbers in respect of parallel invoices and how many parallel invoices were issued and to produce the triplicate (for assessee) copies of parallel excise invoices till surrender of Central Excise registration, Shri Mahendra Gehrilal Duggad stated that the parallel invoices were not issued serially numbered but the serial number were issued randomly and he has only prepared and issued original and duplicate copies of parallel Central Excise invoices and not prepared triplicate copy i.e. assessee's copy), hence he was unable to produce the same. Further, he stated that the said transactions i.e. the clearances made by M/s. MMI under the parallel invoices in question were not disclosed by M/s. MMI to the Central Excise department at any point of time and in any manner.

3.2 Further, Shri Duggad was shown the Bank account statements in respect of M/s MMI bearing account No.1103 in M/s Navnirman Co-operative Bank Ltd., Rakhial Branch for the period 01.04.2000 to 31.03.2007 furnished by M/s Navnirman Co-operative bank Ltd, Rakhial Branch on 26.02.2008, and he stated that the said bank account was operated by him and he was aware of each transaction mention in the said bank statement, and in token of having seen and agreed with the contents of the same, he put his dated signature on it. He was also shown the statements for the F.Y 2003-04 to 2006-07 in respect of amounts deposited by the buyers of M/s MMI, including parallel Central Excise invoices, in the account no.1103 of M/s MMI in M/s Navnirman Co-operative Bank Ltd, Rakhial Branch, and in token of having seen and agreed with the contents of the same, he put his dated signature on it. He further stted that apart from Bank account No.1103 in M/s Navnirman Co-operative Bank Ltd, Rakhial Branch, M/s MMI is having two other bank accounts with (1) HDFC Bank, Maninagar branch and (2) Punjab National Bank, Industrial Branch, Vatva in the name of M/s MMI.

4. On the basis of the statement dated 12.01.2009 of Shri Mahendra Gehrilal Duggad, letters dated 13.01.2009 were issued to M/s. HDFC Bank, Maninagar branch and M/s. Punjab National Bank, Industrial Branch, Vatva with a request to submit the Bank account statement in respect of M/s. MMI. M/s Punjab National Bank, Industrial Branch., Vatva vide letter dated 27.01.2009 furnished copy of Bank account statement for the period from 20.08.2001 to

Department and was not revealing the correct picture regarding sales made through parallel invoices.

5. Shri Mahendra Gehrilal Duggad, in his next statement recorded under Section 14 of Central Excise Act, 1944, on 07.02.2009, was shown his statement recorded under Section 14 of Central Excise Act, 1944 on 12.01.2009 and he agreed with the contents of the said statement and in token of having seen and read the same, he put his dated signature on it. He further stated that in his earlier statement dated 12.01.2009 it was deposed that he would produce the names of the suppliers of raw materials to whom they have made payments through cheques/DDs, however he was unable to produce the same on 07.02.2009; that in his .statement dated 12.01.2009 he had stated that M/s. MMI is having two other Bank accounts with (1) HDFC Bank, Maninagar Branch and (2) Punjab National Bank, Industrial Branch, Vatva. He was shown. the letter dated 28.01.2009 of M/s. HDFC Bank, stating that M/s. Mahendra Metal Industries does not have account with their branch and also shown letter dated 27.01.2009 of M/s. Punjab National Bank, Industrial Branch, Vatva wherein it is mentioned that no Debit/credit transactions have taken place, and in token of having seen and read both the letters issued from above said Banks, he put his dated signature on it. Further, Shri Duggad was shown the updated computerized worksheet wherein in column 2 to 10 of the said worksheet, details of the goods cleared on parallel invoices on which duty has not been discharged by M/s MMI, which is compiled on the basis of the statements of the authorized persons of the buyers (the consignee) recorded and also on the basis of the parallel Central Excise invoices produced by the buyers. Further in column 11 to 19 of the said worksheet he was shown the details of the goods cleared under Central Excise invoices on which duty has been discharged by M/s MMI. The total quantity of finished goods cleared under the parallel invoices works out to 264512.540 Kgs and the Central Excise duties not discharged on the said goods works out to Rs. 70,02,020/- and on agreeing with the contents of the same, he put his dated signature on it. On being asked about the genuineness of the names and address of the buyers as shown in Column No. 13 of the above said updated computerized worksheet, he stated that some of the buyers are genuine and he personally knows them but the small buyers who purchased the goods from his firm by cash cannot be identified by him. Further on being asked about the signature appearing on the parallel Central Excise invoices as detailed in column 2 to 0 of the above said worksheet, he stated that he had prepared and signed all the above parallel Central Excise invoices.

6. Further, the total raw materials (i. e. copper/brass scrap and zinc) purchased and received during 2000-01 to 2006-07 is 2,89,705.100 Kgs. as recorded by M/s MMI in their RG 23A Part-I registers, which were produced by M/s MMI vide their letter dated 07.03.2007.

6.1 The clearances accounted for during 2000-01 to 2006-07 is 193459.190 Kgs as per the RT12s/ER-ls (i.e.Central Excise monthly returns) produced by M/s MMI vide their letter dated 07.03.2007, and adding the illicit clearance of 264512.540 Kgs the total clearances worked out to 457971.730 Kgs. Thus it is evident that M/s MMI had accounted for raw materials weighing 289705.100 Kgs against which total clearance to the tune of 457971.730 Kgs of finished goods had taken place. And it thus appeared that total clearances during the period 2000-01 to 2006-07 (upto Septemberr-2006) to the tune of 457971.730 Kgs, cannot be produced from mere 289705.100 Kgs of raw materials (as worked out in Annexure C) and

7. Further investigation conducted at the buyers end as mentioned in paragraph 3 above, revealed that the buyers had received the finished goods manufactured without accounting for in any records and illicitly cleared under the cover of parallel Central Excise invoices by the said M/s MMI. The payment has been made by the buyers of M/s MMI through cheques/Demand Drafts. Investigation further revealed that the payment from the buyers have been received and deposited in the Bank account No.1103 of the said assessee in the Navnirman Co-operative Bank Ltd., Rakhial branch, including the Central Excise duty and other taxes. The Central Excise duty so collected, have not been deposited with the Government account. In his statement dated 12.01.2009, Shri Mahendra Gehrilal Duggad has also admitted that he was looking after the day-to-day affairs of M/s MMI i.e. purchase, sales, marketing, taxation, including preparation of Central Excise invoices/records and returns; that he agreed that the duty of Rs. 69,41,691/- on the goods cleared under parallel invoices was recovered from the buyers as per the computerized worksheet and he has not deposited the same to the Government account; that he has purchased copper/ brass scrap and zinc; in excess compared to the purchase invoices supplied to the Department; that the raw materials purchased in cash were not accounted for in their records; that he was shown the statements recorded under Section 14 of the Central Excise Act, 1944 of their buyers/letters of their buyers alongwith the relevant documents produced by their buyers and he agreed with the contents of the same and in token of having seen the same, he has signed on the said statements/letters; that the Bank Account No.1103 in the Navnirman Co-operative Bank Ltd., Rakhial branch, Ahmedabad was operated by him and he was aware of each transaction mentioned in the said Bank account statement for the period from 2000-2001 to 2006-07 and in token of having seen and agreeing with the contents of the same he has signed on it; that he agreed with the Bank account statement, submitted by M/s. Navnirman Co-operative Bank Ltd., Rakhial branch, Ahmedabad for the period from 2003-04 To 2006-07, showing therein the details of credit entries in respect of the amount deposited by the buyers in the Bank Account No.1103 of M/s MMI, including the amount realized against the parallel clearance made by M/s MMI and on agreeing with the contents of the same he has signed on it. Investigation further revealed that the said assessee has neither accounted for the production and clearance, as appearing in the computerized worksheet, in the records of M/s MMI, nor have they discharged their liability of Rs. 69,41,691/- involved on the goods removed under the parallel Central Excise invoices issued by M/s MMI. Further, Shri Mahendra Gehrilal Duggad, in his next statement recorded under Section 14 of Central Excise Act, 1944 on 07.02.2009, stated that in his earlier statement dated 12.01.2009 he promised to produce the names of the suppliers of raw materials to whom they have made payments through cheques/DDs, however he was unable to produce the same on 07.02.2009; that in his statement dated 12.01.2009, he had stated that M/s. MMI is having two other Bank accounts with (1) HDFC Bank, Maninagar Branch and (2) Punjab National Bank, Industrial Branch, Vatva. He was shown the letter dated 28.01.2009 of M/s HDFC Bank, stating that M/s Mahendra Metal Industries does not have account with their branch and also shown letter dated 27.01.2009 of M/s. Punjab National Bank, Industrial Branch, Vatva wherein it is mentioned that no Debit/Credit transactions have taken place, and in token of having seen and read both the letters issued from above said Banks, he put his dated signature on it; that he agreed that the Central Excise duties of Rs.70,00,000/- was

8. Shri Mahendra Gehrilal Duggad was arrested by the Central Excise officers under Section13 of Central Excise Act, 1944 on 07.02.2009 at Ahmedabad as he had committed an offence punishable under the provisions of Section 14 of the Central Excise Act, 1944. He was produced before the In-charge Additional Chief Metropolitan Magistrate, Ahmedabad on 07.02.2009, who vide his order dated 07.02.2009 sent Shri Mahendra Gehrilal Duggad to judicial custody till 16th February, 2009.

9. In addition to the details shown to Shri Mahendra G. Duggad during his Statement dated 12.01.2009, there were 8 more parallel invoices, involving duty amounting to Rs.60,329/-. In view of this, by adding the amount of Rs.60,329/, the final amount of duty involved works out to Rs. 70,02,020/-. Further the updated computerised work-sheet showing the above duty amount of Rs.70,02,020/-, was subsequently shown to Shri Mahendra G. Duggad, during the recording of Statement dated 07.02.2009.

9.1 On going through the aforesaid facts and discussion, it appeared that M/s MMI have illicitly manufactured 'Copper and Brass Articles' and removed the same illicitly, weighing 2,64,512.540 kgs. valued at Rs. 4,28, 78,883/- involving Central Excise duties of Rs.70,02,020/- (Central Excise duty Rs. 69,26,769/- + Education Cess Rs.75,251/-) to their various buyers under the cover of parallel Central Excise invoices (as detailed in Annexure-B to the SCN), without payment of Central Excise duty and without following Central Excise procedures.

10. From the above discussions, it further appeared that M/s. MMI have contravened the provisions of Rule 4, 6, 8, 10, 11 & 12 of Central Excise Rules, 2002 inasmuch as they have manufactured and cleared excisable. goods without discharging the duty payable thereon; failed to determine the duty liability on said goods; failed to maintain Daily Stock Account in the correct manner; failed to issue valid invoice while removing excisable goods; failed to submit periodical returns indicating therein correct quantity and value of goods manufactured and cleared by them.

10.1 In the instant case, excisable goods were manufactured and cleared under parallel invoices and collected excise duty from the buyer of the goods but not deposited the duty so collected to the Government account as required. Therefore, in terms of Section 11AB of CEA 1944, the said M/s. MMI are required to pay interest at the applicable rate on the amount of duty not paid by them. Also, in the instant case, M/s. MMI have manufactured and cleared excisable goods without accounting for the same in any records and without discharging duty liability thereon in contravention of Central Excise Rules, 2002. Therefore, it appeared that the said goods are liable for confiscation under Rule 25 (a), (b) and (d) of the Central Excise Rules, 2002.

11. Investigation conducted has brought on record that M/s MMI have procured inputs illicitly on cash payment; manufactured excisable goods and removed the same without accounting or the same in any records maintained by them, under parallel invoices charging excise duty on such invoices and collected the same from the buyer, but not deposited the same in the Government account as statutorily required. It also appeared that the said MMI had made a conscious attempt to illicitly purchase the inputs required for clandestine manufacture on cash payment and also

and remove the same without accounting for in any records and without discharging duty payable thereon in utter disregard to the requirements of law. The facts and evidences on record appeared to suggest that the suppression of actual production and removal of the same under parallel invoices was deliberate with intent to evade payment of excise duty on the same. It appeared that by resorting to the modus-operandi referred to hereinbefore, the said MMI appeared to have committed the offences of the nature covered under various clauses of Section 9 read with Section 9AA of the Central Excise Act, 1944. Such outright action, in defiance of law, appeared to have rendered them liable for penalty under Section 11AC of the Central Excise Act, 1944.

12. Shri Mahendra Gehrilal Duggad, Partner of the said assessee, appeared to have masterminded the evasion of Central Excise duty by way of illicit manufacture and clandestine removal of the subject goods, viz.'copper and brass articles' under parallel invoices to their various buyers. He was aware of the excisable goods being supplied under parallel invoices to various buyers, as in his statement dated 12.01.2009, he has admitted that the Bank account No.1103 in Navnirman Co-operative Bank Ltd.,Rakhial was operated by him and he was also aware of each Bank transaction as shown in the Bank account statement and also in the statement of amount deposited as furnished by the said Bank, and agreeing with the contents of both the statements furnished by the Bank, he had put his dated signature on it. He has also admitted that he was looking after the day-to-day affairs i.e. purchase, sales, marketing, taxation, including preparation of Central Excise invoices/records and returns of M/s. MMI. He has also admitted that the raw materials were also purchased in cash and it was not accounted for in their records. He has also admitted that duties of Rs.69,41,691/- was not discharged on the parallel Central Excise invoices issued. He has also agreed with the contents of the statements given by their buyers and the documents produced by them indicating evasion of Central Excise duties. He has also admitted that the Central Excise duties so collected from their buyers in respect of parallel Central Excise invoices has been retained by M/s. MMI and were not deposited in the Government account. His active connivance in the committed offence appeared to have been further established from the statements recorded under Section 14 of the Central Excise Act, 1944 of the authorized persons of their buyers/letters of the buyers, alongwith the relevant documents produced by them. Thus, he had concerned himself in manufacturing, storing, depositing, concealing, removing, selling and in all such manners dealt with excisable goods viz., 'Copper and Brass Articles', on which no Central Excise duties has been aid as required under the provisions contained in the Central Excise Act, 1944 and the Rules made and thus had reason to believe that such goods so removed were liable for confiscation. Yet he dealt with such goods and in such manner which was in contravention of the Central Excise Act, 1944 and the Rules made there under, and thereby rendering himself liable for penalty under the provisions of Rule 26 of Central Excise Rules, 2002.

13. In view of the above, M/s. Mahendra Metal Industries, Plot No. A - 1/3, Phase-I, G.I.D.C., Vatva, Ahmedabad-382445 were issued a Show Cause Notice vide F.No.Misc/Inquiry/MMI/07 dated 08.02.2009, calling upon them to show cause to the Commissioner of Central Excise, Ahmedabad-I, as to why:

i) The amount of Central Excise duties of Rs. 70,02,020/- (Rupees

duties by issuing parallel Central Excise invoices on which relevant Central Excise duties were not discharged.

ii) Interest as applicable under the provisions of Section 11AB of Central Excise Act, 1944, should not be charged and recovered from them.

iii) Penalty should not be imposed and recovered from them under the provisions of Section 11AC of Central Excise Act, 1944.

iv) The finished goods manufactured and clandestinely cleared weighing 264512.540 Kgs valued at Rs.4,28,78,883/-,as discussed in the foregoing paragraphs, should not be confiscated under the provisions of Rule 25 of the Central Excise Rules, 2002.

13.1 Penalty under Rule 26 of the Central Excise Rules 2002 was also proposed on Shri Mahendra Gehrilal Duggad, partner of M/s Mahendra Metal Industries, Vatva, Ahmedaad.

Defence Reply:

14. The noticees have submitted reply to the Show Cause Notice vide their letter dated 15.04.2009, wherein they have, *inter alia*, submitted that:

14.1 Defence reply to show cause notice which may be treated as (interim) reply, the final reply shall be filed on cross examination of witnesses whose version has been relied upon in the show cause notice.

14.2 It is an admitted fact that everything was within the knowledge of the department and when unit was Audited, the details were available with the department, thus, the date for knowledge to the department would be 5.1.2007 and since the case was based on Audit, the show cause notice was required to be issued within one year thereafter; that reliance is placed on the decision of Tribunal in the case of Mul Dentpro Pvt.Ltd reported in 2007 (218) ELT 0435 (T), holding that when all the explanation was submitted to audit, invoking extended time limit is not permissible. In the case of Rallis India limited reported in 2006(201) ELT 0429(T). In the case of Asia Automotive Limited reported in 1999(113)ELT 841(T). The ratio of these decisions is applicable to their case and accordingly the demand is time barred in our case.

14.3 The show cause notice states that the department had gathered intelligence that they were indulged in clandestine removal of the finished excisable goods and thereby evading central excise duty; that this is totally fallacious claim of the department, if there was intelligence gathered that we were indulged in evasion of central excise duty, the department should have commenced investigation by searching the factory premises, taking physical stock and other parts of investigation; that merely by recording statement of partner, it cannot be said that statement is made during physical verification or to corroborate the evidences collected during the process of investigation.

14.4 Statement of Shri Mahendra Duggad was recorded on 20/26.4.2007 which is subsequent to surrendering of Central Excise registration on 18.9.2006; that when the registration is surrendered, till that date, there was no evasion of central excise duty, that thereafter the audit is conducted and on the basis of assumptions and presumptions from the figures of purchase of raw materials and figures of sales, as if there was 100% input output ratio, the mathematical calculation is made and demand is proposed to be [illegible]

parallel invoices recovered from the premises of the buyers, quantity has been totaled and it is alleged this quantity has been manufactured in our factory, however, there is no evidence to show that apart from the raw materials which were shown as received from 2000-01 to 2006-07 in the Audit Report, where from did they purchase or procure the extra quantities of raw materials.

14.6 Reliance is placed on decision of the Tribunal in the case of Parmeshwar Enterprises reported in 2007(214) ELT 384 (T) wherein it was held in similar circumstances when the registration was surrendered and subsequently shortage was found, the Tribunal held that shortage is admitted and therefore whatever credit was availed on the raw materials found short was reversible, however; there was no case of clandestine removal warranting provisions of section 11A(1). In our case also, we do not admit there was any shortage, however, for the sake of argument if it is accepted, then also we are required to only reverse the modvat/cenvat credit earned on the inputs found short, there is no evidence on record that there was shortage of finished goods, the department has arrived at the figures of shortage in finished goods by plus minus of figures of raw materials and finished goods, hence, the provisions of Section 11A are not invokable, we are ready to pay the amount equivalent to cenvat credit availed on these inputs during the years; that they have already paid an amount of Rs.5.00 lakhs which may be adjusted against the cenvat credit and the present show cause notice may be dropped.

14.7 There was a need to give abatement towards burning loss, in the statement of Shri Duggad recorded on 20.4.2007/26.4.2007; that it was clearly deposed that yield was 65% to 70% when the raw material is imported and it would be less for the locally purchased raw material; the revised burning loss and statement dt.20.4.2007 was stated to be not true while recording his statement dt.12.1.2009; that this statement dt.12.1.2009 has been retracted and hence whatever is stated in this regard in statement dt.20.4.2007 is true and correct.

14.8 Reliance is placed on the judgment of the Honourable Supreme Court in the case of Nizam Sugar Factory reported in 2006 (197) ELT 0465 (SC) wherein it is held by the Honorable Apex Court that when suppression of facts have been alleged in the earlier show cause notice, for the subsequent period, the suppression cannot be alleged and extended period cannot be invoked; that in the present case, the investigation so called has been commenced with the Audit conducted on 5.1.2007 after the registration was surrendered, thereafter, show cause notice has been issued on 8.2.2009, which is time barred.

14.9 Though the registration was surrendered in the month of September, 2006, the Audit started soon thereafter and from the Audit department, the issue appeared to have been transferred to Preventive department for investigation. Therefore, it cannot be said that there was intelligence with the department about our being involved in evasion of central excise duty.

14.10 After the registration is surrendered, the unit becomes non est, there is no existence of the unit legally, no legal action can be taken against the unit after the registration has been surrendered; that the entire proceedings on the unit which is non est is void ab initio and needs to

14.12 On the main merits of the case, it is submitted that there is no panchnama drawn in this case, so the allegation in the show cause notice about shortage of goods is based on mathematical calculations.

14.13 The evidences collected by the department prove the delivery of the goods to the buyers. However, there is no evidence to prove the excess manufacture in factory, excess consumption of raw material in factory, details of payment made to such suppliers who had supplied raw materials, leave apart the details, there is not even an allegation that there was any consumption of excess raw material than the one which is shown in RG-23-A-Pt.I.; that there is no evidence of excess consumption of electricity; that details of the consumption have been provided by them to the officers as could be seen from letter dt.7.3.2007, even then there is no mention about what sort of power consumption is made in the factory, if it is not electricity, whether any other source was made use of for generation of steam or electricity; that there is no evidence about manufacture of excess production in the factory; that there is no evidence about removal of goods from the factory. The Central Excise duty liability under Section 3 of the Central Excise Act, 1944, is on the production. If there is production, there is bound to be duty payment on that production. However since the production of excess finished goods has not been shown in the show cause notice, there can be no demand of duty.

14.14 There is no evidence of transportation of goods from the factory; that it is a well settled legal position that the allegations of clandestine removal cannot be proved in absence of clinching evidence about the clandestine manufacture in the factory; that there is no evidence about manufacture of goods in our factory and the entire case is based on presumptions and assumptions which have been developed by the department after receiving the information about Bank accounts from the Bank.

14.15 In the present case, there is no material to show the movement of raw materials as such; that reliance is placed on the decisions in the case of Ganga Rubber Industries 1989 (039) ELT 0650 (T) and M/s. Ebenezer Rubbers Ltd. 1986 (026) ELT 0997 (T) = 1987 (010) ECR 407. The Tribunal in the case of GSICL reported in 2007 (209) ELT 289 (T) held that " It is well settled legal principle that to show clandestine removal, the Department must be able to show the delivery of the said goods,transport and discharge thereof, storage bills, entries with other Statutory Authorities like Octroi Nakas, names of buyers of the said goods and the receipt of the sale proceeds by the Appellants."

14.16 The aspect pertaining to clandestine removal has been laid down in the judgment rendered by the Tribunal in the case of Kashmit Vanaspati (P) Ltd. v. C. C.Ex. reported in 1989(039) ELT 0655 (Tribunal), wherein, it has been held that the Revenue cannot proceed even on the basis of private note book maintained by labourers containing unauthenticated entries and over writings has been held to be not dependable record to establish clandestine removals unless the same is supported by other evidence such as raw materials consumed, goods actually manufactured and packed; that it is not feasible to multiply the decisions, but is sufficient to observe that the ratio of these decisions is that for confirming demand against the manufacturer based upon the allegations of clandestine removal and clearance, the Revenue is under an onus to prove the same beyond doubt.

14.17 The evidences have been gathered from the premises of customers, there is no evidence regarding clandestine manufacture of such goods in our

14.18 The entire version of buyers about having received brass rods from our factory under the parallel invoices is true. However, they have not manufactured these goods in our factory, they have purchased the goods from open market and sold it to the customers by keeping their margin of profit; that the fact that the brass rods were purchased from the open market was not to be disclosed to the buyers, in apprehension that they could directly have contacted the suppliers, they issued central excise invoices to cover up the supply; that there is no evidence on record produced by the department that the subject goods were in fact manufactured in the factory premises.

14.19 The goods in dispute were purchased from the open market for delivery to the buyers; that they admit that they have contravened the provisions of Central Excise law to the extent of issuing parallel invoices without physical delivery of the goods with the invoices, but the fact remains that they have not manufactured any goods in the factory. It is a trite law that the central excise duty is leviable only on the production of goods, though payment of duty is deferred on the clearance stage. However, since there is no production in the factory of the alleged goods, there is no liability towards duty.

14.20 They have done trading activity, they were not liable to pay central excise duty, so they have not charged central excise duty, the invoices issued were fake invoices, no reliance can be placed on such fake invoices.

14.21 The legal position which stands final is that there is no production in the factory; that the entire case is based on presumptions and assumptions; that if at all there was any shortage, the shortage was of the inputs and they are required to only reverse the cenvat credit involved in those inputs.

14.22 Since the demand itself is not sustainable, interest is not recoverable; that even if any demand is not confirmed since there is no suppression of facts etc, first proviso to Section 11A (1) is to applicable for recovery of duty; that since the provisions of Rule 25 of CER, 2002 have been invoked, penalty in any case is not imposable.

14.23 Even if assuming, without admitting, that they have cleared a large quantity of finished goods, since the goods have not been seized and the goods are not available for confiscation, the proposal for confiscation is not maintainable and may be dropped; that confiscation can be made of the goods which are liable for confiscation; that reliance is placed on various judgments.

15. M/s MMI filed reply to the Show Cause Notice vide letter dated 15.04.2009, wherein amongst other submissions, as detailed in para No. 14.1 to 14.23 above, they asked for cross-examination of three officers, namely, S/Shri D.V. Vaishnav, F.A. Gomes and K.G. Datta, all Superintendents and requested to make them available for the said cross examination on the date of hearing i.e. 07.05.2009. Since the noticee had not given any reasons for cross-examination of the above three officers, they were asked vide letter dated 22.04.2009 to give reasons for cross-examination of the above named officers, and also as to what they want to prove by the said cross-examination.

16. In response to the above letter, the noticee vide their letter dated 04.05.2009, inter alia, submitted that, it is not necessary for the accused to give reasons for cross examination before hand to the authorities as

purpose; that the entire show cause notice has crept up on the basis of observation of Audit; that the allegation of the department in the show cause notice that intelligence was gathered about the duty evasion is fallacious and mis representation of facts and also there are many connected questions.

17.1 In respect of Shri D.V. Vaishnav, it was submitted that Shri D.V. Vaishnav, Superintendent was posted in Preventive Wing of the Commissionerate when first statement was recorded; that from records, the statement was recorded on 20/26.4.2007 and would like to ask him the reason for changing the date in the statement; that the department thereafter recorded statement on 12.01.2009 where they said that the facts stated in statement dated 20/26.4.2007 were not correct; that they want to ask him why he had recorded incorrect statement.

17.2 Regarding Shri F.A. Gomes, it was submitted by the noticee that Shri F.A. Gomes, Superintendent, is posted in Preventive Wing of the Commissionerate; that they want to ask him how he got the enquiry whether through some intelligence or through Audit; that they want to prove that the department has mis-represented facts in the show cause notice by saying that there was some intelligence; that what approval and authority he had when the entire investigation was complete, statement of all the buyers were recorded by the earlier officers, why he had again called the parties and recorded their statements; that they were threatened to sign on the statement and was taken on judicial custody to prove that even though it was not required, the officers can do anything by utilizing their power; that they wanted to ask Shri Gomes whether he had any specific permission of the department for serving the show cause notice in jail on 08.02.2009, which was a Sunday.

17.3 In view of the above, request for cross-examination of the officers, was allowed.

18. Shri N.K. Oza, Advocate alongwith Shri K.V.Rawal, Authorised Person appeared on behalf of the noticees for personal hearing and cross-examination on 23.06.2009. The cross-examination of Shri D.V. Vaishnav, Superintendent, was conducted y the Advocate. The record of Cross-examination proceedings, in respect of Shri D.V. Vaishnav, Superintendent, is reproduced below:

Quote:

"Question 1: I am showing you the statement of Shri Mahendrabhai G. Duggad, Partner of M/s. Mahendra Metal Inds. (MMI), said to be recorded on 26.4.2007. My question to you is when this statement was recorded?

Ans. It was recorded on 26.4.07.

Que.2. In the first para of this statement, the date is mentioned as 20.04.2007 . Please explain the discrepancy?

Ans: The said statement was recorded on 26.04.2007 and this is a typographical error. This is further proved from the fact that the person whose statement is recorded has also placed the date 26.04.07 below his signature.

No further questions were asked by the Advocate and the Cross examination was over."

Unquote:

19. As promised at the time of personal hearing held on 26.06.2009, the noticee have filed their final written submissions vide their letter dated 02.07.2009, wherein they have, inter-alia, submitted that:

19.1 In spite of the fact that they had asked for cross- examination of various officers and witnesses whose evidences were relied upon by the department in the show cause notice, nobody was called for cross-examination; that one of the officer Shri D.V. Vaishnav, Superintendent who was incidentally present in the premisesof 'Central Excise Bhavan' was allowed to be cross- examined.

19.2 The department says that as on date of surrendering registration they should have 201059.5 Kgs. of finished goods in stock and on that basis demand has been raised; that when the worksheet attached to the show cause notice showing clearance of 294870.270 Kgs. cleared under parallel invoice and regular invoice together is compared with the quantity shown in the Audit Report, the duty could be only to the extent of 111565.830 Kgs. and not on 264512.540 Kgs as has been made by the Department.

19.3 The department itself believes that there could be 100% production; that if the actual purchase of raw material shown is 201059.500 Kgs. and if demand is confirmed on 264512.540 Kgs., then the department has to show the source of procurement of raw materials for the balance quantity of 63453.04 Kgs.; that the very inception of the case is wrong.

19.4 The value of the non-accounted quantity was calculated by the Audit on the basis of Rs.248/- per Kg. being the price of the last bill, even though the price was Rs.90/- in the SCN dated 03.40.2000 and Rs. 78/- in SCN dated 13.08.2004.

19.5 As per para 2 of the Audit Report, they were asked to pay duty with interest for short payment of duty during the month of January, 2006, which they have paid; that this clearance is automatically required to be deducted from the total demand raised; that similarly in Para-3 shows non-payment of duty in January,2006 on two invoice No. 107 and 110 issued to M/s. K.E. Alloys, which they have paid; that while demanding duty in the present SCN, the demand has been raised in respect of the above two invoices; that this proves the department was aware about their activities and as such extended period cannot be invoked in view of the judgment of the Hon'ble Supreme Court in the case of Nizam Sugar Factory reported in 2006 (197) ELT 0465 (SC).

19.6 They have received all the copies of relied upon documents on 31.03.2009 and as such the show cause notice can be said to have been delivered only on 31.03.2009 and the demand is totally time barred; that assuming without admitting that the larger period is available with the department, the demand for the period from 30.04.2004 amounting to Rs.15,35,226/- would be time barred; that besides the amount paid in respect of Para No.2 & 3 of the Audit report, is also required to be deducted from the demand.

19.7 There are various invoices issued for alleged evasion of duty and most of these invoices are for smaller amount in thousands and more than lakh there are very few; that any person with intention to evade duty would not issue the invoices for smaller amounts and instead one would prefer to go for invoices showing bigger amounts; that this supports their contention that they have done genuine business and that the

purchased the goods from the open market and sold it to the customers by keeping the margin of profit; that as the fact that the brass rods were purchased from the open market was not to be disclosed to the buyers, in apprehension that they could directly have contacted the suppliers, they issued the central excise invoices to cover up the supply; that there is no evidence on record produced by the department that the goods were in fact manufactured in the factory premises.

19.9 If the department wants to drag its case on the line that we have collected the Central Excise duty from our customers under the central excise invoices, the department was required to invoke Section 11D of the said Act.

19.10 In addition to the above, they have reiterated submissions which were made vide their reply dated 15.04.2009.

20. Thereafter OIO No.28/COMMISSIONER/RKS/AHD-I/2009 dated 21.07.2009 was issued under which demand of Rs.70,02,020/- was confirmed under Section 11A of the Central Excise Act 1944 along with interest under Section 11AB ibid. 264512.540 Kgs of copper and brass articles valued at Rs.4,28,78,883/- manufactured and clandestinely cleared were held liable for confiscation under Rule 25 of the Central Excise Rules 2002, but as the goods were not available for confiscation, the goods were not confiscated. A penalty of Rs.70,02,020/- was imposed under Section 11AC of the Central Excise Act 1944 read with rule 25 of the Central Excise Rules 2002. Besides, a penalty of Rs.15,00,000/- was imposed on Shri Mahendra Gehrilal Duggad, partner of M/s Mahendra Metal Industries under rule 26 of the Central Excise Rules 2002.

21. M/s Mahendra Metal Industries and Shri Mahendra G. Duggad had filed appeal against the said Order-in-Original before CESTAT and Hon.Tribunal by its order No.A/10067-10068/2019 dated 16.01.2019 had remanded back the appeal filed by M/s Mahendra Metal Industries to the adjudicating authority and allowed the appeal filed by Shri Mahendra G. Duggad by setting aside the penalty imposed on him.

22. In view of the direction contained in the above mentioned order of Hon'ble Tribunal, M/s Mahendra Metal Industries was asked to provide the name and contact details of witnesses and other persons whom cross examination is required. In response, vide letter dated 07.01.2021, M/s MMI had referred to their letter dated 07.09.2020 in which they have specifically asked for cross examination of witnesses and Central Excise officers. On perusal of letter dated 07.09.2020 it is observed that they have referred to their letter dated 04.05.2009 requesting for cross examination of Central Excise officers. In their letter dated 04.05.2009 they have given reasons for cross examination of following Central Excise officers:

1. Shri K.G. Datta, Superintendent who audited the unit.
2. Shri D.V. Vaishnav, Superintendent who was posted in Preventive wing when first statement was recorded.
3. Shri F.A. Gomes, Superintendent who was posted in Preventive wing.

23. Thereafter, opportunity for cross examination and personal hearing was afforded to M/s MMI. Due to unfortunate and sad demise of Shri F.A. Gomes his cross examination was not possible and the cross examination of Shri D.V. Vaishnav was completed on 23.06.2009. Therefore, M/s MMI was given opportunity to cross examine Shri K.G. Datta, AC (Retd) on 30.11.2021. Shri N.K. Oza, Advocate has cross examined him and the record of the proceedings is reproduced below:

Answer: My name of K.G. Datta, retired as Assistant Commissioner and was working as Superintendent (Audit) at the time.

Question-2: Did you audit all the records prescribed under the law in respect of M/s Mahendra Metal Industries?

Answer: Yes, I have conducted audit of Mahendra Metal Industries. The audit was conducted in January 2007.

Question-3: Did you find any physical stock of raw materials and finished goods?

Answer: The assessee got its Central Excise registration surrendered on 18.09.2006. Hence, there arises no such question.

Question-4: How can you find quantity mentioned in audit report at Revenue Para-1 of audit report?

Answer: The quantity of raw material is taken from the raw material stock register and the quantity is finished goods is taken from the Daily Stock Register maintained by assessee.

Question-5: Whether the party has reversed the credit on raw material as well as raw material contained in finished goods lying in stock at the time of surrender of registration?

Answer: As the matter is 15 years old, I do not remember such details.

Question-6: Did you find any invoices other than Central Excise invoices?

Answer: The Central Excise audit is conducted on the basis of Central Excise records/invoices maintained by the assessee and I do not remember noticing any other invoices as the matter is more than 15 years old.

Question-7: Whether department has issued any demand pertaining to audit report?

Answer: After completion of audit, I am not in privy of any information regarding show cause notice issued.

No further questions were asked by the Advocate and the cross examination is over.

Unquote:

24. Final hearing was held on 16.12.2021 when Shri Nimesh K. Oza, Advocate and Shri K.V. Raval, Consultant appeared before me and put forth a written submission. In respect of Shri D.V. Vaishnav, it was found that his cross examination has already been done on 23.06.2009 though he has requested for cross-examine him. Further he reiterated the points taken in his submission put forth.

25.1 In the written submission M/s MMI submitted that there is no corroborative evidence that the noticee has cleared goods on parallel invoices except statement dated 07.02.2009 and it was Sunday. The notice was served on 08.02.2009 in Jail (prison) and no chance has been given for retraction of the said statement. The notice is served on Sunday and the department is closed. Therefore, M/s MMI submitted that, the department has forcefully with bias mind handed over the SCN which is against the law and the SCN is not

20.04.2007 wherein he had clearly deposed that there was yield of 65% to 70% and there was no admission about clandestine removal. The department got his statement recorded on 12.01.2009 and the noticee had filed affidavit of rebuttal for statement recorded on 12.01.2009 wherein he stated that whatever stated in his earlier statement dated 20.04.2007 was acceptable to him and refused to accept whatever was statement by him in his statement dated 12.01.2009.

25.3 M/s MMI has further Submitted that the department has audited records of the noticee for the period 2000-2001 to 2006-2007 (upto surrender of registration) and in the said audit report there were remarks to initiate action. Despite clear cut direction, the department has taken such long time to issue SCN for the above issue i.e. notice was issued on 08.02.2009 after 4 years and more and, therefore, the notice is time barred. They relied upon the case of *A N. Kappr (Janitors) Pvt. Ltd-2021 (52) GSTL.153, Binjrajka Steel Tubes Ltd-2016 (342) ELT.302, Pragathi Concrete Products-2015 (08) LCX 9(SC), Studioline Interior Systems Pvt. Ltd-2006 (201) ELT.250, Abhijit Trading Company-2017 (47) str.258 and Rivaa Textiles Ind Ltd-2006 (197) ELT.555.*

25.4 M/s MMI has further submitted that as per Para 2 & 3 of Audit report the noticee has debited/reversed excise duty of certain invoice which is also reflected in Annexure-B to the SCN and therefore the grounds taken by the department that the noticee has cleared the goods on parallel invoices is far from truth (Sr. No.4, 5 of Annexure-B). They submitted that Sr. No.204 to 213 is shown in both sides of Annexure-B and in some of the entry the invoice date is well before 5 years and the demand of that invoice cannot be stood.

25.5 They have also referred to decision of Tribunal in the case of *Sivalaya Ispat & Power Ltd-2015 (316) ELT.162* wherein it is held that on the basis of assumption and presumption clandestine removal cannot be upheld.

25.6 M/s MMI has submitted that in same audit period two SCNs dated 13.08.2004 and 3/4/2000 were issued which were dropped by Tribunal vide Order No.A/697/WZB/Ahmedabad/2007 and A/12034-12036/2016 dated 28.09.2018. They submitted that the period of present SCN is covered by the above SCN and therefore the SCN is not sustainable as per judgment of *Nizam Sugar -2008 (9) STR.314 (SC).*

25.7 They submitted that they had given certain documents vide letter dated 07.03.2007 against inquiry and the department has issued notice after 23 months and therefore the notice is not sustainable. They placed reliance in the case reported in 2020 (41) GSTL.339 which is upheld by Supreme Court as reported in 2021 (53) GSTL.J78.

25.8 They submitted that they had requested for cross examination of officers and the request was made vide letter dated 02.07.2009 where they explained why cross examination is necessary. In the cross examination of Shri K.G. Datta, in question No.6 he replied that he had conducted audit on the basis of Central Excise invoices. As regards reply to question No.4, he has not found any excess stock except found in central excise records. Therefore the stand taken in the notice that the noticee had procured inputs on cash basis is contrary against the auditor's reply.

DISCUSSION AND FINDINGS.

26. I have carefully gone through the facts of the case on record and various submissions made by the noticee, including the cross examination of officers. This case has been remanded back by the CESTAT in the appeal filed by M/s Mahendra Metal Industries and Shri Mahendra G.Duggad against earlier Order-in-Original No. 28/COMMISSIONER/RKS/AHD-I/2009 dated

for confiscation under Rule 25 of the Central Excise Rules 2002, but as the goods were not available for confiscation, the goods were not confiscated. A penalty of Rs.70,02,020/- was imposed under Section 11AC of the Central Excise Act 1944 read with rule 25 of the Central Excise Rules 2002. Besides, a penalty of Rs.15,00,000/- was imposed on Shri Mahendra Gehrilal Duggad, partner of M/s Mahendra Metal Industries under rule 26 of the Central Excise Rules 2002. Hon'ble Tribunal by its order No. A/10067-10068/2019 dated 16.01.2019 had remanded back the appeal filed by M/s Mahendra Metal Industries to the adjudicating authority and allowed the appeal filed by Shri Mahendra G. Duggad by setting aside the penalty imposed on him. The order was remanded back with the following observations:

7. We have carefully considered the submissions submission made by both the sides and perused the records, we find that Ld. Commissioner has raised various issues such as, the adjudicating authority has not granted cross examination of the witnesses and other persons whose statements were recorded, the cum duty benefit was not considered. The some amount of duty already paid was not considered. In the present case it is observed that the statements recorded of various persons are very vital evidence and once the same is retracted, the statement can be used only after cross examining the witnesses as provided under Section 9D of Central Excise Act, 1944. Passing an adjudication order without allowing cross examination is gross violation of principles of natural justice. The principle of natural justice is the foundation in any adjudication, if the principle of natural justice is not followed, the adjudication would become meaningless. Moreover, various other issues raised by the Ld. Counsel were not properly considered by the adjudicating authority, therefore, in our considered view, the matter as a whole needs a re-look by the adjudicating authority. It is also observed that the appellant have heavily contended that the alleged clandestine removal is trading activity of alleged clandestinely removed goods. It appears that no proper documents were produced in the earlier adjudication, however, an opportunity is given to the appellant to produce all the documents in support of their claim of trading activity.

8. As regard, the appeal of Sh. Mahendra G Duggad, we find that in the impugned order a penalty was imposed on him under Rule 26, it is observed that Sh. Mahendra G Duggad is a partner of partnership firm. The partnership firm was already proposed the demand of duty and imposition of penalty under Section 11AC, therefore, separate penalty on the partner cannot be imposed. This issue has been settled in various following judgments:

- *Mohd Amin A S Lakha 2012 (275) ELT 465 (Tri.Ahmd.)*
- *Prakash Metal works 2007 (216) ELT 660 (SC)*
- *Rajnikant Ratilal Kadiwala 2009 (245) ELT 379 (Tri.Ahmd.)*
- *N Chittaranjan 2017-TIOL-229-HC-MAD-CX*
- *Amritlakshmi Machine Works 2016 (335) ELT 225 (Bom)*

9. The jurisdictional High Court of Gujarat also decided this issue in the case of M/s CCE, Vs. Jai Prakash Motwani 2010 (258) ELT 204 (Guj.), wherein it was held that when the penalty was imposed on the partnership firm, a separate penalty on the partner of said partnership firm need not to be imposed. Considering the said legal position, we set aside the penalty imposed upon sh. Mahendra G Duggad.

10. Accordingly, the appeal of Sh. Mahendra G Duggad bearing Appeal No. E/1551/2009-DB is allowed. The appeal of M/s Mahendra Metal Industries bearing Appeal No. E/1550/2009-DB is disposed of by way of remand to the adjudicating authority for passing afresh order after observing the principle of natural justice and considering our above observation.

28. As regarding the request for cross examination, I find that M/s MMI has requested for cross examination of three officers viz.

1. Shri K.G. Datta, Superintendent who audited the unit.
2. Shri D.V. Vaishnav, Superintendent who was posted in Preventive wing when first statement was recorded.
3. Shri F.A. Gomes, Superintendent who was posted in Preventive wing.

They have not made any request for cross examination of any other witnesses earlier. Out of the above mentioned three officers, cross examination of Shri D.V. Vaishav, Superintendent was conducted on 23.06.2009 by Shri N.K. Oza, Advocate himself. Therefore, the cross examination of Shri D.V. Vaishnav is deemed to be concluded and no further cross examination is necessary. At the time of personal hearing held on 23.06.2009 Shri N.K. Oza stated that he did not want cross examination of Shri K.G. Datta and Shri F.A. Gomes. However, in the appeal before CESTAT they have raised the issue of cross examination and Hon'ble Tribunal had considered the same and remanded back for affording the cross examination. It is informed that Shri F.A. Gomes, who was retired long back, has expired due to the outbreak of Covid-19 pandemic and therefore only Shri K.G. Datta, who was also retired, is available for cross examination. Shri N.K. Oza, Advocate of M/s MMI has cross examined him on 30.11.2021 and the record of cross examination has been reproduced at paragraph 23 of this order. Thus, the directions contained in the order of Hon'ble Tribunal are followed. Therefore, I proceed to discuss the merits of the case in the following paragraphs.

29.1 On recapitulating, I find that an inquiry was conducted against M/s MMI, who is a manufacturer of excisable goods, and it was found that they had removed excisable goods surreptitiously from their factory without accounting for in any records maintained by them, under parallel invoices. Inquiry revealed that M/s. Mahendra Metal Industries had Account No.1103 in M/s Navnirman Co-operative Bank Ltd., Rakhial Branch, Ahmedabad. Bank account statement of the said Account No. 1103 of M/s. Mahendra Metal Industries for the period 2000-2001 to 2006-2007 was obtained from the said Bank. The Bank also provided the detailed list of names of the Banks and its addresses from where the cheques/DDs etc. were issued and the amount shown in the said instruments were credited in the said Bank Account No. 1103. On the basis of the details of Banks and its branches provided by the Navnirman Co-operative Bank Ltd., Rakhial branch, letters were delivered to the various Banks to intimate the names and addresses of the person(s), who had issued the said cheques/DDs, which were credited in the account of M/s Mahendra Metal Industries in the Navnirman Co-operative Bank Ltd., Rakhial branch. On receipt of the information supplied by the various Banks; inquiry was extended to the firms, who had issued the said cheques/DDs to M/s MMI, which were subsequently credited in the Bank account No. 1103 of M/s Mahendra Metal Industries. Statements of responsible persons of the said concerned firms were also recorded under Section 14 of the Central Excise Act 1944, wherein they stated that they had purchased copper and brass articles etc from M/s Mahendra Metal Industries and also produced copies of the invoices under which the goods were received.

29.2 On comparing the invoices produced by the various units, with whom the investigation conducted, with the triplicate copy for the assessee (Green copy) available with M/s MMI, produced by their letter dated 07.03.2007, it was observed that both the set of invoices i.e, the invoices of M/s. MMI, produced by various units, and the Central Excise invoices (assessee's copy) produced by M/s MMI did not match, in as much as, though both

Excise duty was paid and the goods were not accounted for in their books of account.

29.3 Further investigation conducted at the buyers end revealed that payment has been made by the buyers to M/s Mahendra Metal Industries through cheques/Demand Drafts and same were deposited in the Bank account No. 1103 of M/s MMI in Navnirman Co-operative Bank Ltd., Rakhial branch.

30.1 From the statements of various buyers, who have procured the goods from M/s Mahendra Metal Industries and the invoices produced by them under which they had received the goods from M/s Mahendra Metal Industries, I find that that the buyers had received the finished goods manufactured under the cover of parallel Central Excise invoices issued by the M/s Mahendra Metal Industries. The payment has been made by the buyers through cheques/Demand Drafts. I further find that the payment from the buyers have been received and deposited by the M/s MMI in their bank account No.1103 in Navnirman Co-operative Bank Ltd., Rakhial branch. On comparing the invoices produced by the buyers and the invoices available with M/s MMI (assessee's copy of Central Excise invoices) and with the records maintained by M/s Mahendra Metal Industries regarding inputs and finished goods and other documents pertaining to the above transaction, it was found that they have not accounted for the invoices in their statutory records prescribed under Central Excise Rules 1944. Thus the clandestine removal of goods by M/s MMI under parallel invoices is proved beyond doubt.

30.2 I find that the above facts are corroborated by the statement Shri Mahendra Gehrilal Duggad, Partner of M/s Mahendra Metal Industries, wherein he has categorically admitted that he was looking after the day-to-day affairs i.e. purchase, sales, marketing, taxation, including preparation of Central Excise invoices/records and returns in respect of M/s Mahendra Metal Industries. He has also conceded that the duty on the goods cleared under parallel invoices was recovered from the buyers and he has not deposited the same to the Government account. Further, he has admitted that he has purchased copper/brass scrap and zinc in excess compared to the purchase invoices supplied to the Department and also that the raw materials purchased in cash were not accounted for in their records. He has further agreed with the contents of the statements given by the buyers and has never disputed the same. The bank account No.1103 in the Navnirman Co-operative Bank Ltd, Rakhial branch, Ahmedabad was operated by him and he was aware of each transaction mentioned in the said bank account statement for the period from 2000-2001 to 2006-07. He has also agreed with the bank account statement, submitted by M/s. Navnirman Co-operative Bank Ltd., Rakhial branch, Ahmedabad for the period from 2003-04 to 2006-07, showing the details of credit entries in respect of the amount deposited by the buyers in the bank Account No.1103 of M/s Mahendra Metal Industries, including the amount realized against the parallel clearance made by M/s Mahendra Metal Industries.

30.3 I also find that M/s MMI in their replies dated 15.04.2009 and 02.07.2009 has categorically admitted that the entire version of buyers about having received brass rods from their factory under the parallel invoices is true and as such they have contravened the provisions of Central Excise law. However, they contended that they have not manufactured these goods in their factory, but have purchased the goods from the open market and sold it to the customers by keeping the margin of profit and as the fact that the brass rods were purchased from the open

prove their said claim by producing evidences at the time of investigation and during the course of adjudication proceedings. I find that these contentions were raised even before Hon'ble Tribunal as evident from the following observation.

> *"7.....It is also observed that the appellant have heavily contended that the alleged clandestine removal is trading activity of alleged clandestinely removed goods. It appears that no proper documents were produced in the earlier adjudication, however, an opportunity is given to the appellant to produce all the documents in support of their claim of trading activity."*

Hon'ble Tribunal has given them another opportunity to produce all the documents in support of their claim of trading activity. But, M/s MMI has failed miserably in providing even a single copy of purchase invoice to substantiate their claim of indulging in trading activity by purchasing goods from open market. Thus, it is amply clear that their claim of trading activity is nothing but their desperate effort to escape from the tax liability and penal provisions provided in the statute. Therefore I have little hesitation in holding that M/s MMI has clandestinely removed excisable goods manufactured in their factory without payment of Central Excise duty and without accounting for in their goods under cover of parallel invoices.

30.4 The evidences that corroborate my above findings are available in the records in the form of parallel invoices produced by the buyers, the invoices available with M/s MMI retained by them as Triplicate copy for assessee and duly accounted for in their books of account. Annexure 'B' to the Show Cause Notice shows the details of these invoices, vis-a-vis to their parallel invoices. I find that except the serial number of the invoice, all other details like the name of consignee, quantity and value of the goods are different in both set of invoices. For better appreciation of facts, two sets of genuine invoices vis-a-vis the parallel invoices are reproduced below:

(Kept blank)

Invoice No. 13 dated 26.04.04 on which duty has been paid:

Removal of Excisable goods from a Factory :
Under Rule 11 of the Central Excise Rules, 2002

INVOICE

Original For Buyer - White
Duplicate for Transporter - Pink
(To be used for taking Cenvat Credit)
Triplicate for Assessee - Green

Name & Address of Factory

MAHENDRA METAL INDUSTRIES

A-1/3, G.I.D.C., Phase-1,
Vatwa, Ahmedabad-382445.

SELF AUTHENTICATION

MAHENDRA METAL INDUSTRIES Ahmedabad VATWA

Invoice Serial No. : 13
Date of Issue : 26/4/04
Time of Issue : 12 00 hrs
Date of Removal of goods : 28/4/04
Time of Removal of goods : 12.30 hrs
C. Ex. Reg. No. : 2307045237
P. L.A. No. : 6019/94
ECC NO. : AAFFM 4496 FXM 001

Name & Address of Consignee :
Kirti Traders
Narol
Ahmd
ECC No. :

Description of Excisable Commodity : Brass Road, Copper Road
Tariff heading/sub-Heading No. : 7407-11 7407-12
No. & date of notification under which concessional rate of duty if any, is claimed :

Your order No. Delivery Challan No.
Date Date

No. & Description of packages	Description & Specification of goods	Pkd. Qty.	Total Quantity	Assessable Value Per Un Rs.	Total value of Goods Rs.	P.
	Brass Rod	Loose	40/700	85/-	3400	00

Payment within ..... Days

Consignee's C.S.T. No. :	Sub Total	3400.00
Date :	Less : Discount %	
Document through	Total Assessable value	
Goods despatched from Vatwa to Narol	Add : Ex. Duty 16 %	554.00
Manner of transport :	Total	4010.00
If by motor vehicle, its Registration No. Cycle.	Add : GST/CST 6 %	241.00
If by rail/air T.R./L.R./R.R./A.W. Bill No. :	(Against Form No.)	
Total Amount (in words) Four thousand two hundred fifty five only	GRAND TOTAL	4255.00

Amount of Duty paid Rs. 554/- (in words) Five hundred fifty four only
Vide Debit Entry No. in P.L.A. /R.G.23-A 1A (Part II) payable Dt. 26/4/04.
Range : IV
Division : II
Full Postal Address :
New Central Excise Building
Panjara Pole, Ambawadi, Ahmedabad-15.
G.S.T. No. : 0756017050 Dt. 01-07-2002
C.S.T. No. : Guj.-11 A 6893 Dt. 15-11-99

Certified that the particulars given above are true and correct and the amount indicated represents the price actually charged and the there is no flow of additional consideration directly or indirectly from the buyers OR Certified that the particulars given above are true and correct and the amount indicated is provisional as additional consideration will be received from the buyer on account of....

For, Mahendra Metal Industires
Mahendra G Patel
Partner
Signature of the Registered Person or his authorised agent

Checked by :

Subject to Ahmedabad Jurisdiction

Parallel invoice No.13 dated 24.04.2004 on which duty has not been paid.

Removal of Excisable goods from a Factory : Under Rule 11 of the Central Excise Rules, 2002

INVOICE

SELF AUTHENTICATION

(8)

Original For Buyer - White
Duplicate for Transporter - Pink
(To be used for taking Cenvat Credit)
Triplicate for Assessee - Green

Name & Address of Factory

MAHENDRA METAL INDUSTRIES

A-1/3, G.I.D.C., Phase-1,
Vatwa, Ahmedabad-382445.

Invoice Serial No. : 13
Date of Issue : 24/4/04
Time of Issue : 11:00 hrs
Date of Removal of goods : 24/4/04
Time of Removal of goods : 11:30 hrs
C. Ex. Reg. No. : 2307045237
P. L.A. No. : 6019/94
ECC NO. : AAFFM 4496 FXM 001

Name & Address of Consignee :
Indian Galvanic Cyaum Poils Ltd. Vill- Dhelkuva Mansa Dist. Gandhinagar
ECC No. : AAACI 8268 DXM-001

Description of Excisable Commodity : Brass Road, Copper Road
Tariff heading/sub-Heading No. : 7407-11 7407-12
No. & date of notification under which concessional rate of duty if any, is claimed :

Your order No. Date
Delivery Challan No. Date

No. & Description of packages	Description & Specification of goods	Pkg & Qty	Total Quantity	Assessable Value Per unit Rs.	Total Value of Goods Rs.	Ps.
	Copper Rod	Loose	2633/00	158/-	416014	00

BILL
Passed by ... for Rs. 482576/-
B.R. No. 70 Dated 26/4/04
A/c Head ... A/c No.
Checked by ...

PAID
Cheque / DD / Cash
No. 354771 Dated 16/6/04
Rs. 200000/-

PAID
Cheque / DD / Cash
No. 368857 Dated 25/6/04
Rs. 282576/-

Payment within .... Days

Consignee's C.S.T. No. :
Sale :
Document through
Goods despatched from Vatwa to Mansa.
Manner of transport :
If by motor vehicle, its Registration No. GJ-1TT 8626.
If by rail/air T.R./L.R./R.R./A.W. BILL No. :
Total Amount (in words) four lac eighty two thousand five hundred seventy six only.

Sub Total		416014/00
Less : Discount	%	
Total Assessable value		
Add : Ex. Duty	16 %	66562/00
Total		-
Add : GST/CST. (Against Form No. 19)	%	—
GRAND TOTAL		482576/00

Amount of Duty paid Rs. 66562/- (in words) Sixty Six thousand five hundred Sixty two
Vide Debit Entry No. in P.L.A. ...... R.G. 23-A ... A ... (Part II) Payble Dt. 24/4/04

Range : IV
Division : II
Full Postal Address :
New Central Excise Building
Panjara Pole, Ambawadi, Ahmedabad-15.
G.S.T. No. : 0756017050 Dt. 01-07-2002
C.S.T. No. : Guj.-11 A 6863 Dt. 15-11-99

Certified that the particulars given above are true and correct and the amount indicated represents the price actually charged and the there is no flow of additional consideration directly or indirectly from the buyers OR Certified that the particulars given above are true are true and correct and the amount indicated is provisional as additional consideration will be received from the buyer on acount of....

For, Mahendra Metal Industires
Mahendra G Ayyar
Partner
Signature of the Registered Person or his authorised agent

Checked by :

Subject to Ahmedabad Jurisdiction

Invoice No.74 dated 06.12.2005 on which duty has been paid:

Removal of Excisable goods from a Factory :
Under Rule 11 of the Central Excise Rules, 2002

INVOICE

Original For Buyer • White
Duplicate for Transporter • Pink
(To be used for taking Convat Credit)
Triplicate for Assessee • Green

Name & Address of Factory

MAHENDRA METAL INDUSTRIES

A-1/3, G.I.D.C., Phase-1,
Vatwa, Ahmedabad-382445.

SELF AUTHENTICATION

MAHENDRA METAL INDUSTRIES Ahmedabad VATWA

Invoice Serial No. : 74
Date of Issue : 6/12/05
Time of Issue : 11 a.m.
Date of Removal of goods : 6/12/05
Time of Removal of goods : 11 a.m.
C. Ex. Reg. No. : 2307045237
P. L.A. No. : 6019/94
ECC NO. : AAFFM 4496 FXM 001

Name & Address of Consignee :
Ahmedabad
Gujarat
Ahmedabad
ECC No. :

Description of Excisable Commodity : Brass Road, Copper Road
Tariff heading/sub-Heading No. : 7407-11 7407-12
No. & date of notification under which concessional rate of duty if any, is claimed :

Your order No. Delivery Challan No.
Date Date

S. & Description of packages	Description & Specification of goods	Rate & Qty	Total Quantity	Assess-able Value/Permit Rs.	Total value of Goods Rs.	Ps.
	Payment within ..... Days					
	Sub Total				22215	00
	Packing Chg. & F. Charge					
	Total Assessable value					
	Add : Basic Ex. Duty 14.5 %				3334	00
	Education Cess 2 %				71	00
	Total				25620	00
	Add : GST/CST (Against Form No. C) 6 %				1540	00
	GRAND TOTAL				27160	00

Consignee's C.S.T. No. :
Date :
Documen through
Goods despatched from Vatwa to Ahmedabad
Manner of transport :
If by motor vehicle, its Registration No. By Hand Cart
If by railway T.R./L.R./R.R./A.W. BILL No. :
Total Amount (in words) Twenty Seven Thousand One Hundred Sixty Only

Amount of Duty paid Rs. 3071 (In words) Three Thousand Seventy-one Rupees Only
Vide Debit Entry No. in P.L.A. /R.G. 23-A A (Part II) 2616 Dt.
Range : IV
Division : II
Full Postal Address :
New Central Excise Building
Panjara Pole, Ambawadi, Ahmedabad-15.
G.S.T. No : 0756017050 Dt. 01-07-2002
C.S.T. No. : Guj.-11 A 6893 Dt. 15-11-99

Certified that the particulars given above are true and correct and the amount indicated represents the price actually charged and that there is no flow of additional consideration directly or indirectly from the buyers OR Certified that the particulars given above are true, are true and correct and the amount indicated is provisional as additional consideration will be received from the buyer on account of....

For, Mahendra Metal Industires
Mahendra G Dhan
Partner
Signature of the Registered Person or his authorised agent

Checked by :

Subject to Ahmedabad Jurisdiction

Parallel Invoice No.74 dated 06.12.2005 on which duty has not been paid.

(19)

Removal of Excisable goods from a Factory : Under Rule 11 of the Central Excise Rules, 2002

INVOICE

SELF AUTHENTICATION

Original For Buyer - White
Duplicate for Transporter - Pink
(To be used for taking Cenvat Credit)
Triplicate for Assessee - Green

Name & Address of Factory

MAHENDRA METAL INDUSTRIES

A-1/3, G.I.D.C., Phase-1,
Vatwa, Ahmedabad-382445.

MAHENDRA METAL INDUSTRIES Ahmedabad VATWA

Invoice Serial No.: 74
Date of Issue : 6/12/05
Time of Issue : 11:00 hrs
Date of Removal of goods : 6/12/05
Time of Removal of goods : 11:30 hrs
C. Ex. Reg. No. : 2307045237
P. L.A. No. : 6019/94
ECC NO. AAFFM 4496 FXM 001

Name & Address of Consignee :
Fairdeal Brass Automation Ltd.
Plot No. 12 Moraiya Village
Sanand, Ahmedabad.
ECC No. : AADCF 7383 GXM 001

Description of Excisable Commodity : Brass Road, Copper Road
Tariff heading/sub-Heading No. : 7407-11 7407-12
No. & date of notification under which concessional rate of duty if any, is claimed :

Your order No. Date

Delivery Challan No. Date

No. & Description of packages	Description & Specification of goods	Pkg & Qty.	Total Quantity	Assess-able Value Per unit Rs.	Total value of Goods Rs.	Ps.
	Copper Rod	Loose	1481.000	232/-	343592	00
		100000/-	Syndicate 290683			
			31.1.06			
		150000/-	Syndicate Bank 291132			
			08/2/06			
		100000/-	Syndicate	291148	18/2/06	
	Payment within .... Days	50000/-	Syndicate	291150	18/2/06	

Consignee's C.S.T. No. :	Sub Total	343592.00
Date :	Packing Chg. & F. Charge	
Document through	Total Assessable value	
Goods despatched from Vatwa to Sanand	Add : Basic Ex. Duty 16%	54975.00
Manner of transport :	Education Cess 2%	1099.00
If by motor vehicle, its Registration No. GJ-27 8088	Total	399666.00
If by rail/air T.R./L.R./R.R./A.W. BILL No. :	Add : GST/CST (Against Form No.) 6%	23980.00
Total Amount (in words) Four lac twenty three thousand six hundred forty six only.	GRAND TOTAL	423646.00

Amount of Duty paid Rs. 56074/- (in words) Fifty six thousand seventy four only.
Vide Debit Entry No. in P.L.A. .... /R.G. 23-A .... (Part II) .... Dt.

Range : IV
Division : II
Full Postal Address :
New Central Excise Building
Panjara Pole, Ambawadi, Ahmedabad-15.
G S.T. No. : 0756017050 Dt. 01-07-2002
C.S.T. No. : Guj.-11 A 6893 Dt. 15-11-99

Certified that the particulars given above are true and correct and the amount indicated represents the price actually charged and the there is no flow of additional consideration directly or indirectly from the buyers OR Certified that the particulars given above are true and correct and the amount indicated is provisional as additional consideration will be received from the buyer on acount of....

For, Mahendra Metal Industires

Partner
Signature of the Registered Person or his authorised agent

Checked by :

Subject to Ahmedabad Jurisdiction

30.5 Perusal of the above invoices clearly shows that M/s Mahendra Metal Industries have shown the amount of central excise duty payable on these goods in both of their invoices, but they have accounted for and paid the central excise duty only on the invoices retained by them; while in case of parallel invoices, they have not accounted for the same in their

had removed excisable goods manufactured in their factory surreptitiously without accounting for in their books of accounts and without payment of appropriate Central Excise duty and the contention raised by them that these goods were trading goods i.e. goods purchased from open market and sold, is nothing but an argument for the sake of argument, which is not supported by any tangible and corroborative evidence.

30.6 I also find that M/s MMI has issued these parallel invoices in the same format of Central Excise invoices mentioning rule 11 of Central Excise Rules 2002 for removal of Excisable Goods as could be seen from the sample copies of such invoices reproduced at paragraph 30.4 of this order. They have charged Central Excise duty the buyers have taken Cenvat credit of the same. Had the clearances been of trading goods, they were required get themselves registered under Central Excise Rules as dealer and should have maintained RG23D register as provided under the rules. The format of the invoices to be issued by a registered dealer is different from that of the invoices issued by a manufacturer. Since M/s MMI has issued invoices in the format that prescribed for a manufacturer, their claim that these invoices issued were of trading goods is fallacious and without support of any tangible evidences and hence required to be discarded.

31.1 M/s MMI had contended that there is no evidence of manufacture of goods in their factory by way of procurement of inputs and consumption of electricity etc. They have also contended that there is no evidence of clandestine removal in the form of evidence of transportation and referred to various case laws in support of their contention. They have also referred to decision of Tribunal in the case of *Sivalaya Ispat & Power Ltd-2015 (316) ELT.162* wherein it is held that on the basis of assumption and presumption clandestine removal cannot be upheld.

31.2 In this regard, I find that M/s MMI has confirmed the statement of the buyers about receipt of goods from their factory under parallel invoices and they have also conceded that those invoices were issued by them. The relevant portion of their letter dated 15.04.2009 is as under:

> *"We would further like to submit that the entire version of buyers about having received brass rods from our factory under the parallel invoices is true, however, we have not manufactured these goods in our factory, we have purchased the goods from the open market and sold it to the customers by keeping our margin of profit. As the fact that the brass rods were purchased from the open market was not to be disclosed to the buyers, in apprehension that they could directly have contacted the suppliers, we issued our central excise invoices to cover up the supply. .....(emphasis supplied)*

This admission on their part itself is conclusive proof of surreptitious removal of excisable goods by them and no further evidences of purchase of raw materials and transportation is not required. It is admitted by Shri Mahendra G. Duggad that they had procured raw materials in cash from open market. Still, sufficient evidences are adduced in the show cause notice in the form of parallel invoices, statements of buyers and bank statement showing receipt of money which are not refuted by M/s MMI.

31.3 It has been held by various judicial forums that in quasi judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. In the

that there was no violation of the rules of natural justice, it could not be said that the department was throwing the burden of proving on the accused, what the department has to establish. The court observed that the department was simply giving an opportunity to the accused to rebut the first and the foremost presumption that arises out of the tell-tale circumstances in which the goods are found. In the present case also, M/s MMI was given the chance to adduce evidence to prove that the goods sold under the parallel invoices were trading goods when department has adduced evidences of their removing goods under parallel invoices which were not accounted for in their records. But M/s MMI, despite having ample time to produce the evidences at the time of investigation and at the time earlier adjudication, had failed to bring even a single piece of evidence in support of their claim of trading activity. Further opportunity was given by Hon'ble Tribunal while remanding back the case for cross examination and re-adjudication before me to produce the evidence of trading activity as claimed by them. But, M/s MMI has failed in producing the evidences of their trading activity during the personal hearing or at any time since the case was remanded back by the Tribunal. Therefore, it is evident that they do not have any such evidence of trading, and in absence of any such evidence, it is proved that the department is right in demanding duty from them. In the case of *K.I. International Ltd*-2012 (282) E.L.T. 67 (Tri. - Chennai) Hon'ble Tribuanal has held as under:

> *14.1 Enactments like Customs Act, 1962, and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un-discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means.*

31.4 M/s MMI, in the present case, has also failed to lead their evidence to rule out their role in the offence committed by them and failed to disprove the evidences collected by the department. In the case of COMMISSIONER OF CENTRAL EXCISE, SALEM Versus CESTAT, CHENNAI-2019 (366) E.L.T. 647 (Mad.) Hon'ble Madras High Court has held that;

> *7. The allegation against the assessee is one of clandestine removal by way of removing dutiable product namely cheese/cone yarn in the guise of exempted product-hank yarn to their buyers. The Tribunal faulted the Commissioner for confirming the duty liability on the ground that there was no acceptable evidence available with him and the assessee cannot be charged with the offence of clandestine removal of goods without payment of duty based upon confession statement, which were retracted. Further, the Tribunal opined that the registers were not properly maintained and they were unreliable and there cannot be any demand for duty, based on those documents. The burden of proof in a case of clandestine removal is undoubtedly on the department. It cannot be denied that clandestine removal is often done in a surreptitious and secret manner and will never be an open transaction. At times, in such cases of clandestine removal, clinching documents will be available. Thus, if the department is able to prima facie establish a case of clandestine removal, violation of excise procedure, the burden shifts on the assessee to prove that he is innocent. Thus, the standard and degree of proof which is required in other cases may not be the same as that of the case, where the allegation is one of clandestine removal. Similar view was taken in the case of M/s. Lawn Textile Mills Pvt.*

31.5 In the present case also, the department has produced evidences of clandestine removal in the form of parallel invoices issued by M/s MMI, statements of the buyers who confirmed receipt of goods under such parallel invoices and the receipt of money against the said goods in their bank account. These evidences were not rebutted by M/s MMI and they even gone to concede that they had supplied goods to those buyers. Thus, when the department has established a case of clandestine removal, the burden shifted to the assessee to prove that the goods were not manufactured in their factory as claimed by them before the Tribunal. However, despite giving opportunity to produce evidences in support of their claim by the Tribunal, they failed in discharging their burden of proving their innocence. In the case of *International Cylinders Pvt Ltd*-2010 (255) E.L.T. 68 (H.P.), Hon'ble High Court of Himachal Pradesh has held that;

> *10. In our opinion, there can be no manner of doubt that there was some clandestine manufacture of cylinders going on in the factory. What was the extent thereof, and what was the excise and penalty payable thereon are matters which cannot be decided in this petition. However, we are clearly of the view that the approach of the learned Tribunal was wrong and against the law. Once the department proves that something illegal had been done by the manufacturer which prima facie shows that illegal activities were being carried, the burden would shift to the manufacturer. It was impossible for the department to prove how many cylinders were being carried in the trucks. However, if the department proves that the trucks crossed the barriers carrying some cylinders for which no record was maintained in the factory nor any excise duty was paid then the presumption can be drawn that the trucks were carrying cylinders as per the capacity of the trucks. The approach of the Tribunal that it was for the department to prove what was the quantity of goods carried in each truck which crossed the barrier and of which there is no entry in the records of the Company is totally illegal. Once the illegal activity was proved, the burden shifted upon the assessee.*

31.6 What is conspicuous in the order Hon'ble High Court is that when the department proves that something illegal had been done by the manufacturer which *prima facie* show that illegal activities were being carried, the burden would shift to the manufacturer. Hon'ble Madras High also in the case law reported at 2019 (366) E.L.T. 647 (Mad.) given the same view. The department has adduced evidences of clandestine removal of goods by M/s MMI and they have failed to prove the same wrong by producing evidences, despite claiming that the goods were procured from open market and traded. Therefore, demand of duty on the goods cleared under parallel invoices as detailed in Annexure-B to the show cause notice is to be confirmed.

32. Regarding the contention of M/s MMI that the department was required to invoke Section 11D of the Central Excise Act, 1944, I find that, M/s MMI has neither issued the genuine central excise invoices nor revealed the fact to the department regarding clearances made thereunder. This is a case of illicit removal under fraudulent central excise invoices, without payment of duty. In such a case, the department is bound to recover the duty involved on the goods so removed without payment of duty, and as such has correctly demanded the same under the provisions of Section 11A of the Central Excise Act, 1944 and the provisions of Section 11D is not attracted.

33. The main contention harped by M/s MMI all the time, in the earlier adjudication proceedings and also in the present proceedings, was that the duty demanded is hit by limitation, as the department had conducted the audit of their unit on 05.01.2007 and the SCN is based on the said audit

any intelligence but has been issued on the basis of Audit Report issued in respect of the Audit conducted at the factory of the noticee.

33.1 In this regard, I find that, the Central Excise Internal Audit department has conducted an Audit of the M/s MMI unit under EA 2000 Scheme and had released Audit Report No.286/2006 dated 22.02.2007. The said audit covered the period December, 2001 to December, 2006. The Audit point, which the noticee is mentioning as discussed above, is covered vide Para-1 of the above said report. The relevant portion of this Para is reproduced below to come to the conclusion whether the Show Cause Notice is based on the Audit Para:

> *" The assessee got its Central Excise Registration surrendered on18.9.2006. On the date of surrender the assessee is required to pay duty on the stock lying in balance of raw materials, work in progress and finished goods. However, on scrutiny of records it is found that on the date of surrender of registration, the assessee did not account for the inputs and finished goods correctly and as such there was non-payment of duty. To correctly work out the stock lying in balance on the day of surrender of registration, Balance Sheets for the period were examined. On the scrutiny of the Balance Sheets produced by the assessee, it is found that in the Balance Sheet of 2000-01, the assessee has a minimum opening stock of Rs.4,96,798/-.*
>
> *Therefore, all the receipt of Brass scrap and zinc (Both items used in the manufacture of brass rods) and sale of brass rods from 2000-2001 to 2006-07 (upto surrender of Registration on 18. 9.2006) are taken into consideration to work out the stock lying in balance on the date of surrender of registration.*
>
> .....
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> .....
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> .....
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> *As against the total receipt of 2,01,059.5 Kgs (184227.5 Kgs) Brass scrap and 16,832 Kgs Zinc) there is sale of 89493.67 Kgs. Therefore, there is non accountant of brass rods to the tubne of 111565.83 Kgs on 14.9.2006, the assessee sold brass rods @ Rs.248/- per Kg. Taking that price of Rs.248/- per Kg, total non payment of duty on 111565.83 Kgs works out to Rs.45,15,471/- on the value of Rs.2,76,68,325/- (111565.83 Kgs) * Rs.248 per kgs) which is required to be recovered alongwith interest."*

33.2 Before issuance of the Audit Report, the audit report above was placed before the Monitoring Cell in the Monitoring Cell Meeting of the Commissionerate held on 02.02.2007, in terms of the procedures prescribed under EA-2000 Audit, which was chaired by the Commissioner. The directions of the Monitoring Cell Meeting of the Commissionerate held on 02.02.2007 are reproduced below:

> *" It was directed by the Commissioner that a detailed profile of the assessee be prepared which should include the observations noticed, objections raised and forwarded to Preventive Cell by the Addl. Commissioner immediately so as to initiate appropriate action "*

33.3 From the above, it is evident that the audit report is only a pointer towards the alleged duty evasion by the assessee. The matter was taken up by the department and further investigations were made by the Preventive Section of the Commissionerate and gathered evidences of clandestine removal.

clearance of the finished products under parallel invoices by the noticee without payment of duty, based on solid documentary evidence. There is no doubt that the audit report was a pointer to the needle of suspicion regarding the wrong activities of the noticee, because of which the issue was transferred to the Preventive Cell. Further, the audit is conducted of the records maintained and shown by the assessee. Whereas, the present show cause notice is after detailed investigation by the Preventive Section. I have gone through Annexure "B" to the Show Cause Notice, wherein the quantification of the duty has been shown and find that the demand has been raised for the amount of duty shown by M/s MMI in their parallel invoices. There is no mention of audit in the entire Show Cause Notice and the noticee has repeatedly tried to harp the issue of the audit conducted by the department. In fact, the audit is being done by the officers for the records maintained and shown by the assessee to the auditors. The parallel invoices were unearthed during the course of investigation by the Preventive Section only. M/s MMI has also contended that the total evasion worked out on the basis of mathematical calculations. I find that the quantity and value of the goods taken for the purpose of calculating the evasion was the same as mentioned by M/s MMI in their parallel invoices. Moreover, the same has been corroborated with the amount received by them from their buyers and deposited in their Bank account. In fact, these parallel invoices were submitted by their buyers during the course of investigation, which is not disputed by them. I have already discussed that how M/s MMI has issued the parallel invoices to these buyers. In view of the above discussions, there is no substance in the contentions raised by them. The contention that the demand is not based on any intelligence and if the department had any intelligence, they should have commenced investigation by searching the factory premises etc, is already addressed in the earlier order and hence there is no need for further elaborate discussion of the same in the present order.

34.1 Regarding the contention that the show cause notice is based on the grounds that they should have 201059.5 Kgs of finished goods in their stock, I find that, the demand of duty was not based on the basis of estimated stock. On the contrary, the Show Cause Notice is issued on the basis of parallel invoices issued by M/s MMI which were collected by the Department after further investigations. They have also contended that the audit officers have calculated the value on the basis of Rs. 248/- per Kg being the price for the last bill. In this regard, I find that, the subject Show Cause Notice has not been issued on the basis of Audit but issued after investigations regarding their illicit clearances, for the amount of duty involved in the value of goods as shown by M/s MMI in their parallel invoice as is evident from the Annexure-B to the show cause notice also. The fact of issuing these parallel invoices and recovery of amount mentioned in those invoices are never disputed by M/s MMI.

34.2 In regarding to the deduction of amount of duty paid vide para 2 & 3 raised during the audit, from the present amount of duty demanded under the subject Show Cause Notice, I find that M/s MMI has paid Rs. 22,610/- on account of short payment of duty during the month of January 2006 as per para-2 of the said audit report. During the month of January 2006, the noticee had raised the invoices for an amount of Rs.12,65,742/-, whereas, they paid the Central Excise Duty only on the amount of Rs.11,27,198/-. Thus, there was a short payment of duty and the same was paid subsequent to the audit objection during the audit. This amount has not been covered under the present Show Cause Notice, as the subject demand has been raised for the

the noticee has already paid the amount of duty for Rs. 1,12,119/- (Basic Rs.1,09,920/- & Cess Rs. 2,199/-), deduction of the same from the demand is already allowed in the earlier order.

34.3 M/s MMI has also submitted that Sr. No.204 to 213 is shown in both sides of Annexure-B and in some of the entry the invoice date is well before 5 years and the demand of that invoice cannot be stood. In this regard, I find that Sr. No.204 to 211 of Annexure-B to the SCN showed same invoice number, quantity, value and duty and same buyer viz. Swiss Impex, Dariyapur, Ahmedabad as below:

Sr.#	Parallel Invoices					Original Central Excise invoices				
	Inv#	Date	Qty	Value	Duty	Inv#	Date	Qty	Value	Duty
204	54	01.03.04	61.700	9255	1481	54	01.03.04	61.700	9255	1481
205	56	02.03.04	402.800	60420	9667	56	02.03.04	402.800	60420	9667
206	57	02.03.04	221.400	33210	5314	57	02.03.04	221.400	33210	5314
207	59	12.03.04	416.500	62475	9996	59	12.03.04	416.500	62475	9996
208	61	13.03.04	415.400	62310	9970	61	13.03.04	415.400	62310	9970
209	62	20.03.04	71.650	10748	1720	62	20.03.04	71.650	10748	1720
210	42	10.07.04	563.500	95795	15327	42	10.07.04	563.500	95795	15327
211	87	05.10.04	289.500	57900	9449	87	05.10.04	289.500	57900	9449
Total			2442.450	392113	62924	Total		2442.450	392113	62924

Therefore, an amount of Rs.62,924/- (Cenvat Rs.62739 + E.Cess Rs.185) also needs to be dropped from the total demand. However, in respect of entries at serial number 212 and 213, the name of buyer, invoice number and date, quantity, value and duty are different and hence the deduction thereof cannot be allowed. At Sr. No.212, parallel invoice No.110 dated 13.12.04 is issued to M/s Power Engineers whereas the original Central Excise invoice No.110 is issued on 18.01.05 and the name of buyer is M/s Mardia Electrical Industries. Similarly, at Sr. No.213, parallel invoice No.93 dated 29.09.04 is issued to M/s Electrotherm (India) Ltd whereas the original Central Excise invoice No.93 is issued on 30.10.04 and the name of buyer is M/s Balakram Brindaban, Jalandhar.

35. M/s MMI has also argued on the issue of date of statement i.e. whether it was 20.04.07 or 26.04.07. In this regard, I find that the statement was recorded by the officer as per the version of Shri Mahendra Duggad and he has signed with date mentioned as 26.04.07 in the above statement. I find that, at one instance the date was mentioned as 20.04.07 which appeared to be a typographical error, as also confirmed by the officer, during the cross examination held on 23.06.2009, before whom, the said statement was recorded. Moreover, it doesn't make any difference to the gravity of the case, whether the statement was recorded on 20.04.07 or 26.04.07. It is also observed that Shri Mahendra Duggad was shown his statement dated 26.04.2007 during recording of his statement dated 12.01.09 and he never disputed the date as mentioned above. However, in his statement dated 12.01.09 he stated that their melting loss is 8 to12 percent and not 35 to 50 percent as shown in his earlier statement dated 26.04.07. In view of that, the statement dated 26.04.2007 stands wrong statement and for the said reason it was not relied in the Show Cause Notice. Hence, I do not find any merit in the above contention as the show cause notice is not issued on the basis of quantification of finished goods considering the melting loss, but the

36. The noticee has also argued that, how the Show Cause Notice can be issued on 08.02.09 i.e. on Sunday, that too when his statement was recorded on very previous day i.e. on 07.02.09. They also alleged that the said statement was ready and he was threatened to sign on that statement. In this regard, it is observed that the noticee has never rebutted his statement dated 07.02.09 and now alleging that it was recorded under threatening, appear to be an after-thought, with an intention to camouflage the whole issue of evasion of the Central Excise duty evaded by them. Since the investigations were completed till 07.02.2009 and the final computation was done, the same was shown to the noticee vide above statement dated 07.02.2006 to confirm the correctness of the details. Shri Mahendra G.Duggad, in his statement dated 07.02.2009, had confirmed the contents of the updated computerized worksheets and the genuineness of the names and address of the buyers in his statement and put his dated signature. I find that when all the details and worksheets were ready till 07.02.09, the Show Cause Notice can be summed up and served to the noticee on the next date i.e. 08.02.09.

37.1 I find that M/s MMI has challenged invocation of larger period in this case, on the ground that the demand is based on Audit Report and not based on Intelligence, I find that the same has already been discussed by me in the foregoing paras, that demand is not based on audit objection, but based on evidences of clandestine removal. M/s MMI has willfully evaded the payment of Central Excise duty by issuing parallel invoices without accounting for in the books of accounts and without payment of duty. Therefore, the extended period of limitation is rightly invoked in the present case. In the case of *Vardhman India Products - 2009 (236) ELT 637 (P & H)*, Hon'ble Punjab & Haryana High Court has held that:

> *"15. It is a matter of common knowledge that those who resort to foul acts, ordinarily do so with a thick cover and camouflage. To locate the black spots and unravel the ugly aspects is not all that easy. It is only for this reason that extended period of 5 years limitation has been provided to bring such wilful defaulters to book. The discovery or detection of an unseeml (sic) act slyly carried out by these unscrupulous evaders would necessarily entail some time."*

In the present case the fact of issuing parallel invoices came to the knowledge of the department only after conducting inquiry. These parallel invoices were not within the knowledge of the department even at the time of audit as the audit is being conducted on the statutory records. Therefore, the extended period of limitation is rightly invoked in the show cause notice.

37.2 M/s MMI has also submitted that in same audit period two SCNs dated 13.08.2004 and 3/4/2000 were issued which were dropped by Tribunal vide Order No.A/697/WZB/Ahmedabad/2007 and A/12034-12036/2016 dated 28.09.2018 and that the period of present SCN is covered by the above SCNs and therefore the present SCN is not sustainable as per judgment of *Nizam Sugar -2008 (9) STR.314 (SC).* In this regard, I find that the earlier SCNs referred to by them were also of clandestine removal and the period is also not over lapped. In one case the unit of M/s MMI was visited by the departmental officers on 28.10.1999 and in the other case, the unit was visited by the officers on 08.02.2000 and cases of clandestine manufacture and removal were booked. Therefore the claim made by them, that period of present SCN is covered by the above SCNs, is incongruous.

38. As for the reliance placed by M/s MMI on various decisions/judgment in

2018 and hence it was held that for the reason that the extended period of limitation could not have been invoked in the third show cause notice dated November 13, 2019. In the present case, the show cause notice has been issued on the basis of parallel invoices which were not accounted for in the statutory records and no duty was paid. Therefore the said case law is not applicable in the present facts and circumstances of the case.

38.2 In the case of *Binjrajka Steel Tubes Ltd-2016 (342) ELT.302* the show cause notice was issued on the basis of audit objection, which not in the present case. In the instant case show cause notice is issued after conducting inquiry and obtaining material evidence of clandestine removal. Therefore the said case law is distinguishable.

38.3 In the case of *Pragathi Concrete Products-2015 (08) LCX 9(SC)* -2015 (322) E.L.T. 819 (S.C.) the issue was of undervaluation and the assessee has submitted Chartered Accountant's certificate. Therefore the ratio of the said decision is not applicable in the present case.

38.4 The case of STUDIOLINE INTERIOR SYSTEMS PVT. LTD-2006 (201) E.L.T. 250 (Tri.-Bang.) the issue was clubbing of clearances of three units and hence clearly distinguishable from the present facts of the case.

38.5 In the case of ABHIJIT TRADING COMPANY- 2017 (47) S.T.R. 258 (Tri. - Mumbai) show cause notice was issued on 25-3-2011 while the demands have been confirmed from 2005 onwards. Therefore the facts are entirely different and hence not applicable in the instant case. While in the case of *Rivaa Textile Industries ltd*-2006 (197) E.L.T. 555 (Tri. – Mumbai) and certain goods were detained on 21-9-1996 and show cause notice issued on 27-3-2001 which was required to be issued within six months. Therefore the facts of the case are different from the present issue and hence clearly distinguishable.

38.6 In the case law reported at 2020 (41) GSTL.339 which is upheld by Supreme Court as reported in 2021 (53) GSTL.J78 it was held that case booked on the basis of record submitted by assessee, therefore, extended period not invocable. But in the present case, the case was not booked on the basis of records submitted by the assessee, but the case was booked on the basis of intelligence and evidences gathered in the form of parallel invoices from the buyers, issuance of which are confirmed by the assessee himself.

39.1 On the other hand, I find that the applicability of extended period of limitation in case of clandestine removal is settled by the decision of Hon'ble Gujarat High Court in the case of *Neminath Fabrics Pvt. Ltd-2010 (256) E.L.T. 369 (Guj.)*. Hon'ble High Court has held that;

> *15. To put it differently, the proviso merely provides for a situation whereunder the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of "one year" or "five years" as the case may be.*
>
> *16. The termini from which the period of "one year" or "five years" has to be computed is the relevant date which has been defined in sub-section (3)(ii) of Section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of Section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise*

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term "relevant date" nugatory and such an interpretation is not permissible.

19. The language employed in the proviso to sub-section (1) of Section 11A, is, clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder, the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.

20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of Section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of Section 11A would be applicable. However such reasoning appears to be fallacious inasmuch as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

39.2 The above case law falls squarely in the present facts and circumstances of the case. In the present case, I find that, M/s MMI has removed goods surreptitiously under cover of parallel invoices without discharging the Central Excise duty. The issue of these parallel invoices has already been admitted by them in their defense reply also albeit their claim of trading goods. However, when they failed to establish, by adducing evidences, that the goods cleared under parallel invoices were trading goods purchased from market, it has to be concluded that the goods are manufactured in their factory. Therefore, the fact of suppression of production and clearance is proved and the extended period of limitation is correctly invoked. Even though M/s MMI has contended that certain invoices mentioned in Annexure-B are beyond 5 years, they have not pointed out those invoices in their reply. However, I have gone through Annexure-B of the show cause notice and found that the earliest date of parallel invoice is 07.01.2004. As per explanation given under Section 11A of the Central Excise Act 1944 the relevant date is the due date on which return is to be filed. For the month of January 2004, as per Rule 12 of Central Excise Rules 2002, the due date of filing of return was 10th of the following month i.e.

20. In the instant case, it has been established that there has been suppression, there has been clandestine removal of excisable goods without payment of excise duty, the assessee having collected Excise duty from the customers did not remit it to the department and the assessee did not obtain registration from the department nor maintained any records and obtained registration under the provisions of the Act only on 16-5-2003. Thus, these facts would clearly establish that the extended period of limitation was invocable in the assessee's case.

39.3 Similarly, in the case of *Rukmini Industries*-2014 (308) E.L.T. 649 (A.P.) the High Court of Andhra Pradesh also held that;

15. In the light of the findings recorded by the authorities below that there was suppression of manufacture and removal of dutiable product applying the extended period of limitation cannot be faulted and in that view of the matter, question No. 2 is also required to be answered in the negative and against the appellant.

39.4 From the discussions in the foregoing paragraphs, it is clear that M/s Mahendra Metal Industries have manufactured and cleared excisable goods under parallel invoices without accounting for the same in any records maintained by them and without payment of Central Excise duty. M/s Mahendra Metal Industries had made a conscious attempt to purchase the inputs required for clandestine manufacture on cash payment illicitly and also deposited the sales proceeds of the goods clandestinely removed in a separate account. I also find that there was a deliberate attempt on their part to conceal the actual production and remove the same without accounting for in any records and without discharging duty payable thereon in defiance to the requirements of law. The facts and evidences on record suggest that the suppression of actual production and removal of the same under parallel invoices were deliberate with intent to evade payment of Central Excise duty on the same. Therefore, Central Excise duty of Rs.69,39,096/- (Cenvat Rs.68,64,030/- and Education Cess of Rs.75,066/-), after deducting Central Excise duty Rs.62,924/- as discussed at paragraph 34.3 of this order is required to be demanded and recovered from M/s MMI under the provisions of first proviso to Sub-section (1) of Section 11A of the Central Excise Act, 1944 along with applicable interest under 11AB of the Central Excise Act 1944. The amount of Rs.1,12,119/- as discussed at paragraph 34.2 of the order needs to be appropriated against the demand.

40. According to Rule 25(a), (b) and (d) of Central Excise Rules, 2002, if a manufacturer removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; nor accounts for any excisable goods manufactured and 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 for confiscation. In the instant case, M/s MMI has manufactured and cleared excisable goods without accounting for the same in their statutory records without discharging duty liability thereon and thus contravened provisions of Central Excise Rules, 2002. Therefore, I hold that the said goods i.e. 262070.100 Kgs of copper/brass articles valued at Rs.4,24,86,770/- (after deducting the quantity and value of goods as discussed at paragraph 34.3 of this order) are liable for confiscation under Rule 25 (a), (b) and (d) of Central Excise Rules 2002. However actual confiscation of the goods is not possible because the goods were not available for confiscation and they were neither seized nor released under bond, as held by Larger Bench of Tribunal in the case of *Shiv Kripa Ispat Pvt Ltd-2009 (235) E.L.T. 623 (Tri. - LB)* which is affirmed by Hon'ble Bombay High Court also.

parallel invoices charging excise duty on such invoices and collected the same from the buyer, but not discharged the duty liability on such goods. I further find that the said M/s Mahendra Metal Industries had made a conscious attempt to purchase the inputs required for clandestine manufacture on cash payment illicitly, and also deposited the sales proceeds of the goods clandestinely removed in a separate bank account, which was not disclosed to the department so as to ensure that the evasion is not tracked by the department. Thus, there was a deliberate attempt on their part to conceal the actual production and to remove the same without accounting for in any statutory records and without discharging duty payable thereon contumaciously. The facts and evidences on record suggest that the suppression of actual production and removal of the same under parallel invoices were deliberate with intent to evade payment of Central Excise duty on the same. Thus, by resorting to the modus-operandi referred to hereinbefore, the said M/s Mahendra Metal Industries have committed the offences of the nature covered under various clauses of Section 9 read with Section 9AA of Central Excise Act, 1944. Such commissions and omissions on their part have rendered them liable for penalty under Section 11AC of Central Excise Act, 1944.

42. Since the penalty imposed on Shri Mahendra G. Duggad has been set aside by the Tribunal, there is no need to discuss the role played by him and the proposition to impose penalty made in the show cause notice.

43. Consequent to the issue of the Notification No.12/2017 Central Excise (NT), No.13/2017 Central Excise (NT) and 14/2017 Central Excise (NT) all dated 09.06.2017, appointing the officers of various ranks as Central Excise officers reallocating the jurisdiction of the Central Excise Officers, and Trade Notice No. 001/2017 dated 16.06.2017 issued by the Chief Commissioner, Central Excise & Service Tax, Ahmedabad Zone, the assessee is now covered under the Jurisdiction of the Ahmedabad South Commissionerate, Central Goods and Service Tax.

44. The provisions of omitted Chapter V of the Finance Act, 1994 and the rules made thereunder as well as the repealed Central Excise Act, 1944 and the rules made thereunder have been kept in force in the by virtue of the saving clause under Sections 142 & 174 of the Central Goods and Service Tax Act, 2017.

45. In view of above discussions and findings, I pass the following order.

ORDER

45.1 I confirm demand of Central Excise duty of Rs.69,39,096/- (Rupees sixty nine lakh thirty nine thousand ninety six only) (Cenvat Rs.68,64,030/- and Education Cess of Rs.75,066/-), after deducting Central Excise duty Rs.62,924/- as discussed at paragraph 34.3 of this order, against M/s Mahendra Metal Industries, Plot No. A-1/3, Phase-I, G.I.D.C., Vatva, Ahmedabad, leviable on 'Copper and Brass Articles' manufactured and cleared clandestinely by them under the cover of parallel invoices (as detailed in Annexure 'B' to the Show Cause Notice dated 08.02.2009), under the first proviso to sub-section (1) of Section 11A of the Central Excise Act 1944, and order recovery thereof. The amount of Rs.1,12,119/- as discussed at paragraph 34.2 of the order is appropriated against the demand

Industries, Plot No. A-1/3, Phase-I, G.I.D.C., Vatva, Ahmedabad at the appropriate rate prescribed under Section 11AB of the Central Excise Act, 1944.

45.4 I hold that the finished goods, viz., Copper and Brass Articles, weighing 262070.100 Kgs valued at Rs.4,24,86,770/- manufactured and clandestinely cleared, as discussed in the foregoing paragraphs, are liable for confiscation under the provisions of Rule 25 of the Central Excise Rules, 2002. However, since the goods were neither seized nor released on bond, I refrain from actual confiscation and imposing redemption fine.

45.5 I impose penalty of Rs.69,39,096/- (Rupees sixty nine lakh thirty nine thousand ninety six only) on M/s Mahendra Metal Industries, Plot No. A-1/3, Phase-I, G.I.D.C., Vatva, Ahmedabad under the provisions of Section 11AC of Central Excise Act 1944 read with Rule 25 of the Central Excise Rules 2002. In terms of the provisions of Section 11AC of the Central Excise Act 1944, where the duty determined under the provisions of Section 11A(2) ibid is paid, along with the interest payable under Section 11AB ibid, within 30 days from the communication of the said order, the amount of penalty imposed under this Section, shall be 25% (twenty five percent) of the duty so determined. The benefit of reduced penalty shall be available if the amount of penalty so determined has also been paid within the period of thirty days referred above.

(SUNIL KUMAR SINGH)
Principal Commissioner
Central GST, Ahmedabad South.

F. No.V.74/15-276/Mahendra/OA- I/08-09 Dated: 09.02.2022

By Registered Post A.D:

To
M/s Mahendra Metal Industries,
Plot No. A-1/3, Phase-I, G.I. D.C., Vatva,
Ahmedabad -382445.

A/301, Arihant Tower,
Opp. Shubh Complex,
Shahibaug, Ahmedabad.

Copy to:-
1. The Chief Commissioner, Central Tax, Ahmedabad Zone.
2. The Asstt. Commissioner, Central Tax, Division-II, Ahmedabad South.
3. The Asstt. Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South
4. The Dy. Commissioner (Prev.), CGST, Ahmedabad South.
5. The Asstt./Dy. Commissioner (Prosecution), CGST, Ahmedabad South.
6. The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website
7. Guard file.