


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, अहमदाबाद उत्तर, कस्टम हाँउस (तल प्रथम) नवरंगपुरा- अहमदाबाद, 380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House (1st Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं./V.87/15-107/OA/2014/Denovo/Pt-1 / DIN,20210264WT000000CB7F

आदेश की तारीख / Date of Order : 18.02.2021

जारी करने की तारीख / Date of Issue : 19.02.2021

द्वारा पारित/Passed by -

अमरजीत सिंह / AMARJEET SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-30-31/2020-21

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, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

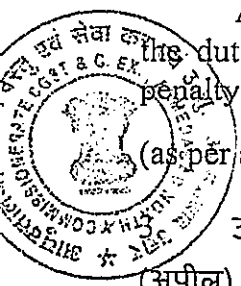
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल 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.

(as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील प्रारूप सं. इ.ए. 3 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद 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 संबंधित सभी दस्तावेज भी चार प्रतियाँ में अंग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It 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 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, उसकी भी उतनी ही, की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम एक प्रतियाँ संलग्न की जाएंगी 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 बिना 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 35बी के उपबन्धों 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. न्यायालय शुल्क अधिनियम 1970, की अनुसूची, 1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

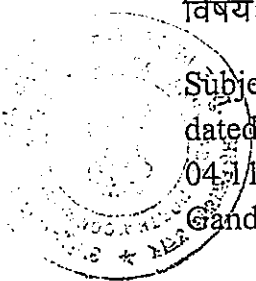
The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. 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.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice no. DGCEI/AZU/36-04/2010-11, dated 02.04.2010 and Show Cause Notice No.DGCEI/AZU/36-109/2010-11, dated 04.11.2010 issued to M/s Atithi Gokul Automobile Works, Survey No. 477, Sarkhej Gandhinagar Highway, Gota Chokdi, Chandlodia, Ahmedabad.



○ **M/S. ATITHI GOKUL AUTOMOBILE WORKS:**

BRIEF FACTS OF THE CASE:

M/s Atithi Gokul Automobile Works, Survey No. 477, Sarkhej Gandhinagar Highway, Gota Chokdi, Chandlodia, Ahmedabad [hereinafter referred to as the assessee], are engaged in the manufacture of 3 wheeled motor vehicle [hereinafter referred to as the Chhakdo Rickshaw or vehicle] used for transportation of goods falling sub-heading No.8704 2120 of the First Schedule to the Central Excise Tariff Act, 1985, and was registered with Central Excise vide Registration No.AAJFA7223QXM001. The assessee has surrendered its Central Excise Registration on 02.05.2008.

2.1 Intelligence was gathered by the Directorate General of Central Excise Intelligence [for short, DGCEI] that the manufacturers of Chhakdo Rickshaw were evading payment of Central Excise duties by suppressing their production and making clandestine clearances; and that the said chhakdo rickshaw is not covered under Notification No. 08/2003-CE dated 01.03.2003, as amended, for the purpose of SSI benefit. Consequently, the manufacturers have to pay duties of Central Excise from the very first clearance.

2.2 Based on the above intelligence, DGCEI conducted detailed investigation against the manufacturers of chhakada rickshaws, including M/s. Atithi Gokul. The officers of DGCEI, Ahmedabad Zonal Unit (AZU), Ahmedabad as well as officers of Central Excise Commissionerates conducted searches on at various premises of chhakado rickshaw manufacturers, including M/s. Atithi Gokul.

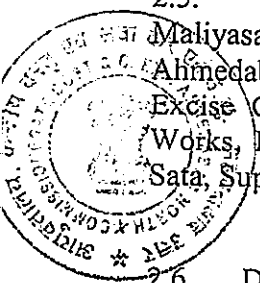
2.3 Simultaneous search was also conducted at the factory premises of M/s. Shree Rajshakti Automobiles, Surevy No. 477, Sarkhej Gandhinagar Highway, Gota Chokdi, Chandolia, Ahmedabad on 06.10.2009 in the presence of independent panchas and Shri Kalpesh Shah, Authorized Signatory of M/s. Shree Rajshakti Automobiles. During the course of panchnama, following rickshaws were placed under detention.

Sr. No.	Chasis No.	Engine No.	Brand
01	Not legible	R9E.522303	Gokul Shakti
02	BA051/2003	A3D 080735	Aditya
03	BA047/2003	A3A 069644	Aditya
04	DA043/2003	A2L 058770	Aditya

2.4. Out of the above four rickshaws, three rickshaws at Sr. No. 02, 03 and 04 were released on 08.03.2010. M/s. Shree Rajshakti Automobiles, Ahmedabad were asked to produce the duty paying documents of rickshaw bearing brand name "Gokul Shakti" having registration No. GJ 1 XX 3303, fitted with Engine No. R9E 522303. During the course of panchnama, Shri Kalpesh Shah, Authorised Signatry of M/s. Shree Rajshakti Automobiles, Ahmedabad informed that the said rickshaw bears brand name "Gokul Shakti" which was manufactured by M/s. Atithi Gokul and hence the said documents would be available with them. Therefore, M/s. Atithi Gokul Automobile Works, Ahmedabad, vide summons dated 24.03.2010 were asked to submit the documents pertaining to above said rickshaw bearing brand name "Gokul Shakti" having registration No. GJ 1 XX 3303 fitted with Engine No. R9E 0522303. M/s. Atithi vide their letter dated 25.03.2010 informed that the documents pertaining to the said loading rickshaw were destroyed in fire that broke out in their premises on 19.03.2009. Therefore, since neither M/s. Shree Rajshakti Automobiles nor M/s. Atithi Gokul could produce the duty paying documents regarding the said detained Chhakdo rickshaw, the said chhakado rickshaw appeared liable for confiscation and the same was placed under seizure vide panchnama dated 24.03.2010.

2.5. Based on the prior information that M/s. Vishwakarma Engineering Works Maliyasana, NH-8B, Near Shaktipura Hotel, Rajkot, are doing job work of M/s. Atithi Gokul, Ahmedabad, the officers of DGCEI, AZU, Ahmedabad as well as officers from local Central Excise Commissionerates searched the factory premises of M/s. Vishwakarma Engineering Works, Rajkot on 06.10.2009 in the presence of two panchas and Shri Tushar Pravinchandra Sata, Supervisor of M/s. Vishwakarma Engineering Works, Rajkot.

2.6. During the course of panchnama, fifteen loading rickshaws in semi finished stage (chasis fitted with diesei engines) were found at the premises of M/s. Vishwakarma Engineering Works,



Rajkot. Later on, the said rickshaws were placed under seizure vide panchnama dated 06.01.2010 for non production of duty paying documents. The details of the said fifteen loading rickshaws are as under:

Sr. No.	Engine No.
01	R7K 0447796
02	R7L 0465111
03	R7L 0465113
04	R7L 0465115
05	R8E 0522291
06	R8E 0522292
07	R8E 0522293
08	R8E 0522294
09	R8E 0522296
10	R8E 0522298
11	R8E 0522299
12	R8E 0522300
13	R8E 0522301
14	R8E 0522302
15	R8E 0522089

2.7 Statement of Shri Navinbhai Maganbhai Umrana, Partner of M/s. Vishwakarma Engineering Works was recorded on 17.03.2010 under section 14 of the C. Ex. Act, 1944 wherein he stated that the said 15 loading rickshaws were sent to them by M/s. Atithi Gokul Automobiles Works, Ahmedabad in semi finished condition (chasis fitted with diesel engines) for body building on job work basis and that he was not having any documents of the same. M/s. Atithi Gokul Automobile Works vide their letter dated NIL received on 11.02.2010 requested to release the fifteen loading rickshaws seized at the factory premises of M/s. Vishwakarma Engineering Works. M/s. Atithi Gokul submitted the bills of diesel engines purchased by M/s. Atithi Gokul. However, it is noticed that all the diesel engines were purchased in the year 2007 and were sent to M/s. Vishwakarma Engineering Works, Rajkot under job work challan in September, 2009 (job work challan doesn't show the date on which the said goods were dispatched). Moreover, they have not produced any other related documents like purchase of iron & steel, gear boxes and other parts. Further, M/s. Atithi Gokul have already surrendered their C. Ex. Registration on 2.5.2008. Moreover, said rickshaws are not covered under Notification No. 08/03 CE dated 01.03.2003 as amended and hence the registration by manufacturers of said rickshaws are compulsory before commencing the production of rickshaws. Hence it is crystal clear that the above documents were created as an afterthought. The only explanation they had given in the above referred letter is that a new model was to be worked out and the negotiations with the different job workers were going on.

2.8 Since M/s. Athithi Gokul have surrendered their C.Ex. Registration, the documents were called for from them under Summons dated 15.10.2009. However, M/s. Atithi Gokul, vide their letter dated 22.10.2009 informed that all the records pertaining to M/s. Atithi Gokul were destroyed in fire broke out on 19.03.2009 and produced the copy of the panchnama dated drawn by officers of Sarkhej Police station.

2.9 As no record pertaining to M/s. Atithi Gokul was available, the ER-1 returns were called for from jurisdictional Central Excise authorities. The scrutiny of ER-1 returns for the period October, 2005 to April, 2008 revealed that during the above period they have shown clearance of 64 chhakado rickshaws only. The scrutiny of records seized from other premises, as discussed in latter part of this notice revealed that they have manufactured and cleared huge Nos. of chhakado rickshaws, but, in their ER-1 returns, they have shown meager 64 Nos. only. This fact also confirmed the intelligence.

2.10 Before discussing the investigation carried out against M/s. Atithi Gokul, the statutory requirements to be complied by the vehicle manufacturers with respect to other Acts and Rules is discussed below, for better comprehension of the issue involved in the investigation.

Need for RTO registration:

3.1.1 The Ministry of Road Transport & Highway, Govt, of India has enacted the Motor Vehicles Act which is amended from time to time in order to secure the safety of public in

general, to maintain the safety standards of components fitted in various vehicles, other technical aspects and to check the emission of smoke, vapour etc. from the vehicles plying on roads. The respective State Governments ensure the compliance of the Central Motor Vehicle Act and Rules framed thereunder. Accordingly, the registration of vehicles with Regional Transport Offices is compulsory. The Govt. of Gujarat has established Regional Transport Offices under the office of the Commissioner of Transport in different cities for the compliance of the Central Motor Vehicle Act and Rules framed thereunder. Section 39 of the Central Motor Vehicle Act, 1988 stipulates that "No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with Chapter IV and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner". Rule 42 of the Central Motor Vehicles, Rules, 1989 stipulates that "No holder of a trade certificate shall deliver a motor vehicle to a purchaser without registration, whether temporary or permanent". Further, Rule 47 of the Central Motor Vehicle Rules, 1989 stipulates the documents to be submitted for registration of vehicles. Accordingly, the following documents are required to be submitted for vehicle registration.

1. Sale certificate in form 21,
2. Valid Insurance Certificate,
3. Copy of the proceedings of the state Transport Authority or Transport Commissioner or such other authorities as may be prescribed by the state Government for the purpose of approval of the design in the case of a trailer or a semi trailer,
4. Original sale certificate from the concerned authorities in Form 21 in the case of ex-army vehicles,
5. Proof of address by way of any one of the documents referred to in rule 4,
6. Temporary registration, if any,
7. Roadworthiness certificate in Form 22 from the manufacturers (Form 22A from the body builders),
8. Customs clearance certificate in the case of imported vehicles along with the licence and bond, if any, and
9. Appropriate fee as specified in rule 81 of Central Motor Vehicle Rules, 1989.

3.1.2 Further Rule 44 of Central Motor Vehicle Rules, 1989 stipulates that "the registering authority shall before proceeding to register a motor vehicle or renew the certificate of registration in respect of motor vehicle, other than a transport vehicle, require the person applying for registration of the vehicle or, as the case may be, for renewing the certificate of registration to produce the vehicle either before itself or such authority as the state government may appoint in order that the registering authority may satisfy itself that the particulars contained in the application are true and that the vehicle complies with the requirements of this Act and the rules made there under. The above provision stipulates the need of production of vehicle before RTO authority for registration.

3.1.3 Rule 43 of Central Motor Vehicle Rules, 1989 stipulates that "Notwithstanding anything contained in section 40, the owner of a motor vehicle may apply to any registering authority or other prescribed authority to have the vehicle temporarily registered in the prescribed manner and for the issue in the prescribed manner of a temporary certificate of registration and a temporary registration mark"

3.1.4 The said rule further stipulates that a temporary registration made shall be valid only for a period not exceeding one month and shall not be renewable provided that where a motor vehicle so registered is a chassis to which a body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted, the period may, on payment of such fees, if any, as may be prescribed, be extended by such further period or periods as the registering authority or other prescribed authority as the case may be, may allow.

3.1.5 It may be mentioned that the term Chassis means the frame plus the "running gear" like engine, transmission, driveshaft, differential and suspension. A body which is usually not necessary for integrity of the structure is built on the chassis to complete the vehicle. Commercial vehicle manufacturers may have "Chassis only" versions that can be outfitted with specialized bodies.

3.1.6 From the above, it is clear that registration of all vehicles with the RTO is a statutory

requirement. Each vehicle with maker's name gets registered with RTO authorities functioning under the respective state governments. Hence the details provided by RTOs, regarding the vehicles registered during a particular period, are accurate and reliable in all respect. The temporary registration takes place where the factory of the vehicle manufacturer is situated and permanent registration takes place where buyer of the vehicle resides.

3.2 Details of vehicles of M/s. Atithi Gokul registered with RTO:

3.2.1 Based on the above said intelligence, a search was conducted at the premises of various manufacturers of chhakda rickshaw including M/s. Atithi Gokul, Ahmedabad. Since M/s. Athithi Gokul have surrendered their C. Ex. Registration in May. 2008, the documents were called for from them under Summons dated 15.10.2009. However, M/s. Atithi Gokul, vide their letter dated 22.10.2009 informed that all the records pertaining to M/s. Atithi Gokul were destroyed in the fire that broke out on 19.03.2009; and produced the copy of the panchnama dated 19.03.2009 drawn by officers of Sarkhej Police station.

3.2.2 The scrutiny of ER-1 returns for the period October, 2005 to April, 2008 revealed that during the above period they have shown clearance of 64 chhakado rickshaws only. The scrutiny of records seized from other premises, as discussed in the latter part of this notice, also revealed that they have manufactured and cleared huge Nos. of chhakado rickshaws, but, in their ER-1 returns, they have shown meager 64 Nos. only. Looking to the very few clearances shown by M/s. Atithi Gokul, to verify the genuineness of the sales of chhakado rickshaws, it was necessary to compare the same with the number of vehicles of M/s. Atithi Gokul registered with the RTO, Ahmedabad.

3.2.3 Since the registration of chhakdo rickshaws are compulsory with the RTO authorities before plying on roads, the details of auto rickshaw delivery vans, registered with RTO, Ahmedabad were called for. Accordingly, RTO, Ahmedabad, vide letter dated 03.12.2009 has submitted the details of registration of such vehicles, manufactured by various manufacturers, including M/s. Atithi Gokul. In case of vehicles manufactured by M/s. Atithi Gokul, the maker's name has been mentioned as "Atithi" or "Atithi Gokul". The scrutiny of details submitted by RTO, Ahmedabad reveals that 3114 Chhakdo rickshaws, manufactured and cleared by M/s. Atithi Gokul have been registered with RTO, Ahmedabad, during the period from October, 2005 to September-2009. M/s. Atithi Gokul have surrendered Central Excise registration in May, 2008. However, the scrutiny of RTO details reveals that the chhakado rickshaws having "Atithi" as maker's name have been registered in September, 2009. As per ER-1 returns, filed by M/s. Atithi Gokul, during the period from October, 2005 to April, 2008, they have shown clearance of 64 chhakdo rickshaws only. Thus, it is evident that M/s. Atithi Gokul have manufactured and cleared 3070 chhakado rickshaws, without payment of C. Ex. Duty, during the period October, 2005 to September, 2009. The above chhakado rickshaws were manufactured and cleared by them and have been registered with RTO, Ahmedabad. It also appears that in the month of September, 2009, they have manufactured and cleared chhakado rickshaws, without obtaining Central Excise registration. The chart showing details of Chhakda rickshaws, manufactured and cleared by M/s. Atithi Gokul and registered with RTO, Ahmedabad, showing maker's name as "Atithi" or "Atithi Gokul", during the period from October, 2005 to September, 2009 is enclosed as Annexure A-1 to the SCN dated 4.11.2010.

3.2.4 The details of auto rickshaw delivery vans, registered during the period October, 2009 to June, 2010, registered with RTO, Ahmedabad were called for. Accordingly, RTO, Ahmedabad has submitted the details of temporary registration of such vehicles, manufactured by various manufacturers, including M/s. Atithi Gokul. The scrutiny of details submitted by RTO, Ahmedabad reveals that 107 Chhakdo Rickshaws, manufactured and cleared by M/s. Atithi Gokul have been registered with RTO, Ahmedabad, during the period from October, 2009 to June, 2010. M/s. Atithi Gokul have surrendered C. Ex. Registration in May, 2008. However, during the period October, 2009 to June, 2010, M/s. Atithi Gokul have manufactured and cleared the chhakado rickshaws, without payment of duty of excise and other taxes. The above chhakado rickshaws were manufactured and cleared by them and have been registered with RTO, Ahmedabad. The chart showing details of Chhakda rickshaws, manufactured and cleared by M/s. Atithi Gokul and registered with RTO, Ahmedabad, showing maker's name as "Atithi", during the period from October, 2009 to June, 2010 is enclosed as Annexure A-2 to the SCN dated 4.11.10.

4 Obligation to obtain compliance certificate from Automotive Research Association of India (ARAI), Pune:

4.1 It is mandatory requirement that all vehicles need to be registered with local Regional

Transport Offices (RTO) before plying on the roads. Accordingly, the chhakdo rickshaws are also required to be registered with RTOs. It is obligatory on the part of the vehicle manufacturers to obtain compliance certificate from Automotive Research Association of India (ARAI), Pune, under the provisions of Rule 126 of Central Vehicle Rules, 1989. As the chhakdo rickshaw manufacturers have to comply with the provisions of Central Motor vehicle Rules, 1989, the manufacturers have to supply "Base Model" to the Automotive Research Association of India (ARAI), Pune for approval and obtain requisite certificate from ARAI, Pune. ARAI, Pune approves the design of chhakdo rickshaw on the basis of Base Model supplied by the vehicle manufacturer. The chhakdo rickshaws are permitted to be manufactured only by those persons/firms who possess such certificate issued by ARAI, Pune. The certificate issued by ARAI, Pune is non transferable and the certificate holder can only manufacture the vehicle approved by ARAI. As per Rule 122 of CMVR, 1989, the location of chassis number and code for month and year of manufacture are defined by ARAI, Pune. Accordingly, the manufacturers give chasis No. to the vehicles manufactured by them. The chasis No. contains name of manufacturer in short, Sr. No. of vehicle in a calendar year and year of manufacture. For illustration, chasis No. AGAW/01/09, depicts 'AGAW' the name of manufacturer viz. Atithi Gokul Automobile Works, '01' shows the Sr. No. of vehicle manufactured in a calendar year and '09' shows year of manufacture.

4.2 The RTO registers the vehicles of those manufacturers who are having such certificate from ARAI, Pune. The certificate holders of ARAI, Pune can only issue form 21 and form 22, required for registration of vehicles before RTO. In fact, the permission for the sale of said chhakdo rickshaws are given by the Commissioner of Transport, Gujarat state, Gandhinagar only after submission of the compliance certificate granted by ARAI as to the compliance of provisions of the Motor Vehicle Act, 1988 and the Rules in respect of Goods Vehicles. The scanned images of one such certificate granted by ARAI, Pune to M/s. Atithi Gokul is reproduced in the SCN dated 4.11.2010.

4.3 Perusal of the above certificate issued by ARAI, Pune reveals that it contains the details of base model. It also contains the details of diesel engine to be fitted in the Chhakdo rickshaw. The certificate reveals that the diesel engine to be fitted in chhakdo rickshaw is Greaves Cotton Ltd make GL-400 IIA having power 5.51 KW @ 3600 rpm. Para 3 of the certificate clearly indicates that the certificate is issued as per CMV Rule 126 to establish compliance with Central Motor Vehicles Rules, 1989 & shall not be construed as a certificate of compliance to any rules other than those listed in Annexure I & IA. It is also mentioned that the compliance to these rules has been verified based on use of specific components/parts/assemblies etc. It is specifically mentioned that "it is the vehicle manufacturer's responsibility to ensure fitment of same components/parts/assemblies etc. before submission of the vehicle for registration".

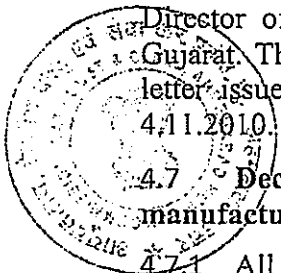
4.4 Para 4 of the certificate stipulates that ARAI issue type approval certificate for vehicle/component/parts/assemblies etc. based on the document produced/submitted by the customer and on this basis, the vehicles are examined and if approved, the certificate is issued. ARAI is in no way responsible for any misuse of copying of any design/type/system in connection with entire vehicle/component/parts/assemblies. Breach of any statutory provision of Indian law or laws of other country, will be the sole responsibility of the customer and ARAI shall not be liable for any claims or damages, made by the party, whatsoever, the customer shall alone be liable for the same, and undertake to indemnify ARAI in this regard. The ARAI has the right to initiate cancellation/withdrawal of the certificate of the issued, in case of any fraud, misrepresentation when it surfaces and comes in the knowledge of ARAI.

4.5 From the conditions listed in the certificate granted by ARAI, it is evident that the vehicle manufacturer has to use the same components/parts/assemblies etc. prescribed in the certificate issued by ARAI.

4.6 Based on the certificate issued by the ARAI, the Commissioner of Transport recommends the said model for registration. The recommendation letter issued by the Joint Director of Transport, Gujarat state, Gandhinagar is awarded to different RTOs/ARTOs in Gujarat. The recommendation letter issued in respect of M/s. Atithi Gokul. Scanned image of letter issued by Joint Director of Transport, Gujarat state, is reproduced in the SCN dated 4.11.2010.

4.7 Declaration of production volume to ARAI, Pune by Chhakdo rickshaw manufacturers:

4.7.1 All chhakdo rickshaw manufacturers who possess requisite certificate from ARAI,



Pune have to declare production volume on regular basis to ARAI, Pune. The purpose of this declaration is to enable the agency to carry out verification regarding conformity of production (CoP) as per the specified periodicity under the law and to verify compliance to emission performance. Hence, the production declaration submitted by various manufacturers of chhakda rickshaw to ARAI, Pune was called for vide letter F. No. DGCEI/AZU/12 (4) 29/2009-10 dated 03.11.2009. ARAI, Pune vide letter F. No. ARAI/HMR/Govt-Corr/09-10/11 dated 11.12.2009 submitted the details of chhakado rickshaws, manufactured by various manufacturers, including M/s. Atithi Gokul. The scrutiny of details submitted by M/s. Atithi Gokul to ARAI, Pune reveals that M/s. Atithi Gokul have not reported any production to ARAI, Pune.

4.7.2 Perusal of the figures reported to ARAI, Pune reveals that M/s. Atithi Gokul have not reported any production, during the years 2005-06 to 2009-10. The scrutiny of ER-1 returns reveals that during the period from October, 2005 to April, 2008, they have shown clearance of 64 chhakado rickshaws. From the above, it is evident that they have not submitted correct figures to ARAI, Pune also. As against the manufacture and clearance of 3114 chhakda rickshaws registered with RTO, Ahmedabad, during the period October, 2005 to September, 2009, they have not reported any production of chhakdos to the ARAI, Pune. The comparison of figures submitted to ARAI, Pune, figures of production mentioned in ER-1 returns and actual quantity of chhakado rickshaws cleared as per RTO details reveals that they have not disclosed correct figures to the C. Ex. Department and ARAI, Pune. The figures of production and clearance submitted to C. Ex. and ARAI, Pune are far lower than the actual quantity of vehicles manufactured and cleared by them. From the above, it is evident that M/s. Atithi Gokul have manipulated the figures of production and clearance and have submitted different figures to different agencies with malafide intentions.

5 Searches conducted at the premises of M/s. Atithi Gokul:

5.1. M/s. Athithi Gokul Automobile Works, Survey No. 477, S.G. Highway, Gota Chokdi, Chandlodia, Ahmedabad were registered with the Central Excise department having ECC No. AAJFA 7223 Q XM 001. M/s. Athithi Gokul had surrendered their C. Ex. registration on 02.05.2008. The officers of DGCEI, Ahmedabad Zonal Unit (AZU), Ahmedabad as well as officers of Central Excise Commissionerates conducted searches on 6.10.2009 at various premises of chhakado rickshaw manufacturers, including the above premises.

5.2 Since M/s. Athithi Gokul have surrendered their C. Ex. Registration, the documents were called for from them under Summons dated However, M/s. Atithi Gokul, vide their letter dated 22.10.2009 informed that all the records pertaining to M/s. Atithi Gokul were destroyed in fire broke out on 19.03.2009 and produced the copy of the panchnama dated drawn by officers of Sarkhej Police station.

6 Investigation from M/s. Manish Auto, Keshod:

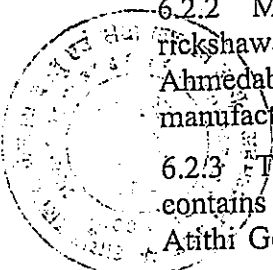
6.1 M/s. Manish Auto situated at Nagarpalika Shopping Centre, Keshod is a broker of chhakado rickshaw. They are also engaged in the RTO registration, Insurance etc. work of chhakado rickshaw. Therefore the premises of M/s. Manish Auto, Keshod were searched simultaneously by the officers of DGCEI, AZU, Ahmedabad as well as C. Ex. Commissionerates under panchnama dated 06.10.2009. The records relevant for further investigation of the case were resumed from the said premises as detailed in Annexure-A and Annexure-B to the said panchnama.

6.2 Scrutiny of documents recovered from M/s. Manish Auto, Keshod:

6.2.1 Seized file mentioned at Sr. No. 1 of Annexure-A to the panchnama contains purchase invoices of diesel engines, purchased by various chhakado rickshaw manufacturers. Page No. 93 of the above file is purchase invoice No. 37 dated 13.05.2008, issued by M/s. Swastik Electric Corporation, Keshod to M/s. Atithi Gokul. M/s. Atithi Gokul have purchased one GL 400 BS II diesel engine from M/s. Swastik Electric Corporation, Keshod for Rs.33,500/-. The scanned image of the above page is reproduced in the SCN dated 4.11.2010

6.2.2 M/s. Atithi Gokul had surrendered C. Ex. Registration on 02.05.2008. The chhakado rickshaws, manufactured and cleared by M/s. Atithi Gokul have been registered with RTO, Ahmedabad, even after they had surrendered the registration. Thus it is evident that they have manufactured and cleared the chhakado rickshaws, without payment of C. Ex. Duty.

6.2.3 The diary mentioned at Sr. No. 4 of Annexure-A to the panchnama dated 06.10.2009 contains details of chhakado rickshaws, manufactured by various manufactures, including M/s. Atithi Gokul. M/s. Manish Auto is a broker of chhakado rickshaw and is also engaged in the



business of RTO and insurance work of chhakado rickshaws. The scrutiny of the diary reveals that it contains details such as name of buyer, amount, chasis no., date, engine no., registration No. etc. Page No. 77 of the diary contains details of one such chhakado rickshaw manufactured by M/s. Atithi Gokul. For ease of reference, the scanned image of the above page (Page No. 77 of Diary A/4) is reproduced in the SCN dated 4.11.2010.

6.2.4 The perusal of above page reveals that M/s. Manish Auto have dealt with chhakado rickshaw having registration No. GJ 11 X 5547. The above vehicle bears chasis No. AGAW/232/07 and Engine No. A6G 244223. The above vehicle pertains to Rathod Pravin Parbatbhai. The comparison of the above vehicle with RTO details reveals that the above vehicle was registered with RTO, Ahmedabad on 17.01.2007. The details such as name of buyer, chasis No., Engine No. etc. tally with each other. Maker's name is shown as M/s. Atithi Gokul. Thus, it is evident that the above vehicle was manufactured and cleared by M/s. Atithi Gokul.

6.2.5 The details of 'Atithi' make chhakado rickshaws, contained in the above diary are summarized below:

Sr. No.	Name of Buyer	Date	Value	Registration No.	Chasis No.	Engine No.
1	Rupabhai Zilabhai	07.10.05		GJ1ZF 4684	AGAW/1014/05	
2	Bharwad Ghelabhai Ramabhai	03.11.05		GJW 1ZF 6788	AGAW/012/05	R5H 132952
3	Harnat Dharnatbhai Bhavabhai	07.11.05	70000	GJ 11 W 9592	AGAW/011/05	R5H 132951
4	Bhil Punabhai Gokalbhai	25.11.05	130000	GJW 1 ZG 1284	AGAW/241/05	R5K 170087
5	Bhil Jamnadas Shantilal	07.12.05		GJW 1 ZG 2417	AGAW/304/05	R5J285436
6	Bhil Mansingh Dalsukh	15.12.05		GJW 1 ZG 3121	AGAW/323/05	R5J 168922
7	Rathva Ambubhai	15.12.05		GJW 1 ZG 2417	AGAW/304/05	R5J 285436
8		21.12.05		GJW 1 ZG	AGAW/364/05	R5M 191554
9	Vanrajbhai mansukhbhai	02.01.06			AGAW/373/05	R5M 191561
10	Babariya Bhikhubhai Khimabhai	17.01.06	122000	GJ 11 W:9861	AGAW/390/05	R5M 191574
11	Bhil Maheshbhai	04.02.06		GJW 1 ZH 689	AGAW/538/06	R6A 198805
12	Bhint Hardas Visabhai	17.03.06	75000	GJ 11X4140	AGAW/209/06	R6J168998
13	Devabhai Merkhibhai	08.04.06	105000	GJ 13 V 3268	AGAW/1078/05	R5G 118558
14	Kavabhai	10.04.06		GJ 11X4147	AGAW/579/06	R6J169004
15		24.04.06		GJ 11X4160	AGAW/754/06	R6J 169014
16	Salimbhai Alibhai	07.07.06	57000	GJ 11X4516	AGAW/1023/06	R6E 248729
17	Rajput Khumansinh	13.07.06	135000	GJ11X 4140	AGAW/572/06	R6J 168998
18	Rana Anandba Ajitsinh	04.08.06	80000	GJ 13 V	AGAW/1206/06	R6F262830
19	Mansur Mahmatali Kasambhai	05.09.06	120000	GJ 11 X4832	AGAW/786/06	
20	Jaagdish bansi Auto		75000	GJ 11X4956	AGAW/1277/06	R6F262581
21	Kavabhai	31.12.06		GJ 11X4876	AGAW/1501/06	R6G 242951
22	Rathod Pravin Parbatbhai	15.01.07	136000	GJ 11 X5547	AGAW/232/07	A6G 244223
23	Dharajiya Vinu	04.04.07	130000		AGAW/306/07	A7F334207
24	Bajariya Naresh	18.04.07	135000	GJ 11 X5547	AGAW/232/07	A6G 244223
25	Sodha Bhupat Ugabhai	10.06.07	75000		AGAW/743/07	R7C 363927
26	Kalubhai Talaja	03.07.07	75000		AGAW/778/07	R7C 363947
27	Dhirubhai D. Makwana	14.07.07	75000		AGAW/820/07	R7C 363965
28	Kalubhai	23.07.07	75000		AGAW/846/07	R7C 363970
29	Mori Gogan Punjabhai	20.08.07	135000		AGAW/890/07	A7G 104932

6.2.6 The scrutiny of above details reveals that M/s. Manish Auto have dealt with chhakado rickshaws, manufactured and cleared by M/s. Atithi Gokul. M/s. Manish Auto are the broker of chhakado rickshaws and are engaged in the business of RTO and insurance work of chhakado rickshaws. The chasis Nos. of above chhakado rickshaws contain the maker's name as AGAW i.e. M/s. Atithi Gokul Automobile Works. The scrutiny of above details further reveals that the chhakado rickshaws were being sold at the rates ranging from Rs.57,000/- to Rs.1,36,000/-. The scrutiny of ER-1 returns reveals that M/s. Atithi Gokul have declared the value ranging from Rs.45,000/- to Rs.65,000/- per chhakado. Thus, it is evident that M/s. Atithi Gokul have

manufactured and cleared these chhakado rickshaws, without payment of C. Ex. duty. It is also evident that M/s. Atithi Gokul have not declared actual value of the chhakado rickshaws. Thus, they have short paid duty by undervaluation also.

6.2.7 The seized register mentioned at Sr. No. 7 of Annexure-A to the said panchnama contains details of chhakado rickshaws, manufactured by various manufactures, including M/s. Atithi Gokul. M/s. Manish Auto is a broker of chhakado rickshaw and is also engaged in the business of RTO and insurance work of chhakado rickshaws. The scrutiny of register reveals that it contains details such as name of buyer, chasis no., date, engine no. etc. The chart showing details of chhakado rickshaws, manufactured by M/s. Atithi Gokul is enclosed as Annexure-B to this notice.

6.2.8 The scrutiny of details of Annexure-B reveals that M/s. Manish Auto have dealt with the chhakado rickshaws, mentioned in above Annexure, which were manufactured and cleared by M/s. Atithi Gokul. The chasis No. of above chhakado rickshaws start with alphabets 'AGAW', which represent the name of manufacturer i.e. M/s. Atithi Gokul. Shri Govind Hirabhai Myatra, Karta of M/s. Manish Auto, in his statement dated 22.02.2010 inter alia admitted that the above chhakda rickshaws were manufactured by M/s. Atithi Gokul, For ease of comprehension, the scanned image of page No. 5 of of register A/7 is reproduced in the SCN dated 4.11.2010.

6.2.9 The perusal of the above image reveals that M/s. Manish Auto have dealt with "Gokul Shakti" brand chhakdo rickshaws. The scrutiny of details of temporary registration, submitted by RTO, Ahmedabad reveals that the above vehicles have been registered with RTO, Ahmedabad. The above entries also appear in Annexure-A to this notice, which is a statement of Chhakkdo rickshaws, temporary registered with RTO, Ahmedabad. The comparison of RTO details with the details mentioned in the above register reveals that the name of buyer, date and chasis number etc. exactly match with each other.

6.2.10 Thus, from the above, it is evident that M/s. Atithi Gokul have manufactured and cleared the chhakado rickshaws. The scrutiny of above register reveals that M/s. Manish Auto alone have dealt with 80 Nos. 'Gokul' brand chhakado rickshaws. The scrutiny of ER-1 returns reveals that during the period October, 2005 to April, 2008, M/s. Atithi Gokul have shown clearance of 64 chhakado rickshaws only. Thus, it is evident that M/s. Atithi Gokul have manufactured and cleared most of the chhakado rickshaws, clandestinely, without payment of duty of excise and other taxes.

6.3 Statements of Shri Govindbhai Hirabhai Myatra, Karta of M/s. Manish Auto, Keshod:

6.3.1 Statement of Shri Govindbhai Hirabhai Myatra, Karta of M/s. Manish Auto, Keshod was recorded under section 14 of the Central Excise Act, 1944 on 19.02.2010. The statement was recorded in question-answer form, which is reproduced below:

Que 1: Please peruse panchnama dated 06.10.2009 drawn at M/s. Manish Auto, Keshod.

Ans 1: I perused the above panchnama dated 06.10.2009. The facts mentioned in the said panchnama are true. Shri Laxmanbhai A. Baiasar, Accountant was present during the course of said panchnama.

Que 2: Please explain in detail the activities carried out by M/s. Manish Auto, Keshod.

Ans 2: We mainly undertake work relating to RTO. We also do the sale- purchase of old chhakados. We do the work of sale-purchase of chhakados, manufactured by M/s. Vaibhav Auto Industries, M/s. Athithi Gokul Automobile Works, M/s. Rajshakti Automobiles, M/s. Star Auto and M/s. Rajeshree Automeche. The above chhakado manufacturers, after getting the temporary registration of chhakado rickshaws, send the documents such as Form 21 & 22, sales Invoice. Sometimes for ease of transportation, they send the chhakado in dismantled condition. We assemble the same and get permanent registration.

Que 3: Please explain about original RC books, mentioned in Annexure-B to the panchnama dated 06.10.2009.

Ans 3: After Chhakkdo rickshaws manufactured, the respective manufacturers get the temporary registration in RTO and thereafter send to us for permanent registration. As we undertake the work related to RTO, said 31 original RC books were lying with us.

Que 4: which documents are submitted by you for permanent registration?

Ans 4: For permanent registration, we submit Form 21 & 22, Sale invoice, identity card of buyer, insurance slip and form of CRTEM to the RTO.

Que 5: Please peruse the registers listed at Sr. Nos. 04, 05, 06 and 01 of Annexure-A to the panchnama dated 06.10.2009 and explain in detail.

Ans 5: I perused all the above registers in detail. The details of chhakados received from different chhakado manufacturers are noted in the above registers. We have done the RTO and insurance related work of chhakados mentioned therein. We also recover the price of the chhakados from the vehicle owner/buyer thereafter; the same is being sent to chhakado manufacturers. For this job, chhakado manufacturers pay commission to me.

Que 6: Please peruse statement, prepared on the basis of note book mentioned at Sr. No. 4, seized from M/s. Manish Auto, Keshod and explain in detail.

Ans 6: I perused the above statement and inform that the details such as name of buyer, date, price, registration no., chasis no. and engine no. etc. are noted in it. I compared the above details with the details of note book mentioned at Sr. No. 4 and inform that both the details are same. The chhakado rickshaws mentioned in the said note book are manufactured by respective manufacturers. I perused the said statement and put my dated signature on it in token of correctness of the same.

Que 7: Please peruse statement, prepared on the basis of registers mentioned at Sr. No. 5, 6 and 1, seized from M/s. Manish Auto, Keshod and explain in detail.

Ans 7: I perused the above statement and inform that the details mentioned in the said statement exactly match with the details mentioned in registers mentioned at Sr. No. 5, 6 and 7. I perused the said statement and put my dated signature on it in token of correctness of the same.

Que 8: Please explain about Central Excise invoices of the chhakados mentioned in the seized records, mentioned at Sr. No. 4, 5, 6 and 7.

Ans 8: All the chhakados mentioned in the above records are not new. As I do the work of sale and purchase of chhakado rickshaw, the details of old chhakado rickshaws are also mentioned. After temporary registration of new chhakados in the RTO, the respective manufacturers used to send the documents of chhakados to me, which I used to submit at the time of permanent registration. Thus, I did not keep any document with me as the same were no more required by me.

Que 9: Which chhakado manufacturers' chhakados' sale purchase is mainly done by you? Explain in detail.

Ans 9: Mainly I do the sale and purchase of chhakados, manufactured by following manufacturers.

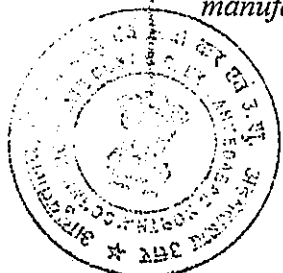
1. M/s. Star Auto Engineering, Junagadh, Keshod/Ahmedabad
2. M/s. Vaibhav Auto Industries, Ahmedabad
3. M/s. Rajeshree Auto Meche, Ahmedabad
4. M/s. Atithi Gokul Automobile Works, Ahmedabad
5. M/s. Shree Rajshakti Automobiles, Ahmedabad
6. M/s. Raj Auto Industries, Jamnagar
7. M/s. Fivestar Auto Industries, Junagadh

The work relating to RTO, finance, insurance in respect of chhakado rickshaws sold through me is also done by me. The payment received from the respective buyers is always in cash because they do not have bank accounts. Thus, the amount collected by me was handed over to the chhakado manufacturers.

Que 10: What does indicates SAE, VAI, RAM, AGAW, SRA, RAI, FAI etc. mentioned in the column of chasis No. in the above registers shown to you? Please explain about it in detail.

Ans 10: The English alphabets mentioned in the column of chasis No. in both the above statements indicate the names of chhakado rickshaw manufacturers in short. Thereafter, chasis no. and year of manufacture have been mentioned. I mention the full names of the manufacturers in respect of English alphabets mentioned in the chasis no.

SAE -	Star Auto Engineering
VAI -	Vaibhav Auto Industries
RAM -	Rajeshree Automech
AGAW -	Atithi Gokul Automobile works
SRA -	Shree Raj Shakti Automobiles
RAI -	Raj Auto Inds.
FAI -	Five Star Auto Industries



Que 11: Whether the work of manufacture and sale of new chhakado rickshaws is undertaken by Manish Auto, Keshod or not?

Ans 11: No. New chhakdo rickshaws are not being manufactured by us. To manufacture new chhakdo rickshaws, registration of ARAI, Pune is required, which is not with us. Sometimes, we undertake the body work of chhakdo and we also get the body work done from others. We also undertake the fitting work of accessories in the chhakdo rickshaws sold by us.

Que 12: Please peruse the details mentioned on page Nos. 05 and 07 of registers listed at Sr. No. 05 and 06 and explain.

Ans 12: I perused page Nos. 05 and 07 of both the above registers and put my dated signature on the same. The details of chasis no. of the companies, in respect of chhakdo rickshaws are mentioned therein. All the details of chasis No. pertain to M/s. Vaibhav Auto Industries, Ahmedabad. The details of chasis of 318 chhakados are there in register No. 5 whereas in the register at Sr. No. 06 the details of 592 chhakdos are mentioned.

6.4 As discussed hereinabove, the seized diary mentioned at Sr. No. 4 and seized register mentioned at Sr. No. 7 of Annexure-A to the panchnama dated 06.10.2009, drawn at the premises of M/s. Manish Auto, Keshod contain details of chhakado rickshaws, dealt with by M/s. Manish Auto, Keshod. The above chhakado rickshaws were manufactured by M/s. Atithi Gokul and after temporary registration, the said vehicles were sent to M/s. Manish Auto, Keshod. The above vehicles were cleared by M/s. Atithi Gokul during the years 2005-06 to 2008-09. Scrutiny of ER-1 returns reveals that during the period October, 2005 to April, 2008, M/s. Atithi Gokul have shown clearance of only 64 Auto Rickshaw Delivery Vans. The above chhakados, whose details are available in the registers, recovered from M/s. Manish Auto contain chasis No. of M/s. Atithi Gokul viz. AGAW (name in short). Thus, it is abundantly evident that M/s. Atithi Gokul have manufactured and cleared chhakado rickshaws, clandestinely, without issuing C. Ex. Invoices and without payment of C. Ex. Duty. The documentary evidences withdrawn from the premises of M/s. Manish Auto, Keshod and statement of Shri Govindbhai Hirabhai Mytra, Karta of M/s. Manish Auto, Keshod thus prove beyond any shadow of doubt that M/s. Atithi Gokul were clearing their finished goods i.e. Chhakdo rickshaws manufactured by them illicitly without payment of duty and without accounting for the same in their boltheir books of accounts.

7 Investigations from M/s. Parishram Marketing, Keshod:

7.1 The premises of M/s. Parishram Marketing, 64, Mayur Market, Opp. Police Station, Keshod were simultaneously searched under panchnama dated 06.10.2009. M/s. Parishram Marketing is an RTO/Insurance agent and financier of Chhakdo rickshaws. Records relevant for investigation were resumed from the said premises as detailed in Annexure-A to the panchnama.

7.2 Scrutiny of the documents recovered from M/s. Parishram Marketing, Keshod:

7.2.1 The Seized records recovered from M/s. Parishram Marketing, Keshod have been scrutinised. The scrutiny of registers mentioned at Sr. No. 4 and 6 of Annexure-A to the panchnama dated 06.10.2009 reveals that the registers contain the details such as Sr. No., Name, Village, Taluka, District, Chasis No., Engine No., Registration No., Date etc. Further scrutiny of the above register reveals that it contains details of chhakado rickshaws, manufactured by various manufacturers, including M/s. Atithi Gokul. The scanned image of one page of register A/4, containing details of chhakados, manufactured by M/s. Atithi Gokul is reproduced in the SCN dated 4.11.2010.

7.2.2 Perusal of above details reveals that M/s. Parishram Marketing, Keshod have dealt with one chhakdo rickshaw with Chasis No. AGAW/64/06. The scrutiny of details of temporary registration, submitted by RTO, Ahmedabad reveals that the above vehicle was registered with RTO, Ahmedabad. The above entry, is appearing at Sr. No. 59 of Annexure-A to this ' notice, which is a statement of "Atithi Gokul" make Chhakdo rickshaws, temporarily registered with RTO Ahmedabad. The comparison of RTO details with the details mentioned in the above register, seized from M/s. Parishram Marketing reveals that the chasis No., engine No., temporary registration No. exactly match with each other. As per the details submitted by RTO, Ahmedabad, the said vehicle was registered on 17.10.2005. As per ARAI guidelines, discussed in para 4 supra, the chasis No. of the vehicle should contain name of manufacturer in short, Sr. No. of vehicle manufactured in a calender year and year of manufacture. As per the guidelines, the Sr. No. should start from 01 evry calendar year. The above vehicle bears the name of

manufacturer as 'AGAW' i.e. short name of M/s. Atithi Gokul. Thus, it is established that the said Chhakkdo rickshaw has been manufactured and cleared by M/s. Atithi Gokul.

7.2.3 The details pertaining to vehicles manufactured by M/s. Atithi Gokul, appearing in the seized registers mentioned at Sr. No.4 and 6 have been summarised and are enclosed as Annexure-C to this notice. The scrutiny of above annexure reveals that M/s. Parishram Marketing alone have dealt with 64 Nos. chhakkdo rickshaws, manufactured and cleared by M/s. Atithi Gokul. The scrutiny of ER-1 returns reveals that M/s. Atithi Gokul have shown clearance of only 64 chhakkados during the period October, 2005 to April, 2008. Thus, it is evident that M/s. Atithi Gokul have manufactured and cleared chhakkdo rickshaws, clandestinely, without payment of duty.

7.2.4 From the above discussion, it is evident that M/s. Atithi Gokul have manufactured and cleared chhakkdo rickshaws, clandestinely, without payment of duty of excise and other taxes. The name of M/s. Atithi Gokul appearing in the chasis establishes that the vehicles bearing name 'AGAW' in chasis were manufactured by M/s. Atithi Gokul only. The scrutiny of records, seized from M/s. Parishram Marketing, Keshod reveals that they have dealt with chhakkados, manufactured by various chhakkdo manufacturers, including M/s. Atithi Gokul. As per the records of RTO, all the vehicles with 'AGAW' in the chasis No. were manufactured by M/s. Atithi Gokul. During the period from October, 2005 to April, 2008, M/s. Atithi Gokul have shown clearance of only 64 chhakkdo rickshaws. However, as per the details of seized records and the details furnished by RTO, M/s. Atithi Gokul have manufactured many such vehicles and have cleared the same without payment of duty.

7.3 Statement dated 20.11.2009 of Shri Nathubhai Gajera, Proprietor of M/s. Parishram Marketing, Keshod:

7.3.1 Statement of Shri Nathubhai Gajera, Proprietor of M/s. Parishram Marketing, Keshod was recorded under section 14 of the C. Ex. Act, 1944 on 20.11.2009. The statement of Shri Nathubhai Gajera was recorded in question- answer form, which is reproduced below:

Q-1. Please peruse two panchnamas both dated 06.10.2009 drawn at your premises M/s. Parishram, Keshod and comment

A-1. I have perused both the panchnamas and in token of having seen the same, I put my dated signature. I was present at the time of second panchnama proceedings which started at 6.15 pm and concluded at 9.30 pm and I state that facts mentioned in the said panchnama are true and correct and I am satisfied with entire proceedings of panchnama and that records withdrawn under the said panchnama are relating to my firm.

Q-2. Please explain the details of the activities being carried out by M/s. Parishram, Keshod.

A-2. We are RTO/Insurance agent and undertake the work relating to passing of new Chhakkdo rickshaws and insurance thereof and we act as a financier and give loan to purchasers of Chhakkdo rickshaws. The job of financing is done under the name of M/s. Parth Finance, Keshod. In rare case, we have got Chhakkdo rickshaws assembled from local technicians which were dismantled after temporary RTO passing for easy transportation purpose by various manufacturers.

Q-3. Which documents you have to submit to the RTO at the time of permanent registration of the vehicle?

A-3. At the time of permanent registration of the vehicle i.e. Chhakkdo rickshaws, we are submitting Form 21, Form 22 and Sales Invoice issued by the registered manufacturer, insurance slip and ID Proof of the buyers.

Q-4. Please peruse the registers listed at Sr. No. 04 and 06 of Annexure-A to the panchnama dated 06.10.2009 drawn at your premises and comment.

A-4. The said registers contain the details such as Name of the buyer of Chhakkdo rickshaws, Village, Taluka, District, Engine No. Chasis No. Temp. No. Date, Permanent No. of Chhakkdo rickshaws. We have done RTO passing and Insurance of the Chhakkdo rickshaws mentioned in the said registers. It also contains the details of Chhakkdo rickshaws whose insurance has been renewed by us.

Q-5. Please explain what in full, the abbreviated version of SAE, SRA, RAM, VAI, AGAW, FAI, RAI mentioned in the Chasis No. column.

A-5. The Chhakkdo rickshaw manufacturers give the Chasis no. to the rickshaws manufactured by them and thereafter they remove the same from the factory premises. The name of the manufacturers of Chhakkdo rickshaws and Chasis no. given by them in

abbreviated version are as under:

M/s. Star Auto Engineering (SAE), Junagadh, M/s. Shri Raj Shakti Automobiles (SRA), Ahmedabad, M/s. Rajeshree Automac (RAM), Ahmedabad, M/s. Vaibhav Auto Industries (VAI), Ahmedabad M/s. Athithi Gokul Automobile works (AGAW), Ahmedabad, M/s. Five Star Auto Industries (FAI), Junagadh M/s. Rajmandir Auto Industries (RAI), Junagadh.

Q-6. Please give information of Chasis and other details mentioned in the said registers.

A-6. The said registers contain the details of buyers of Chhakkdo rickshaws and other details whose RTO and Insurance related work are handled by us.

Q-7. Please produce the duty paying documents i.e. C. Ex. invoices in respect of above Chhakkdo rickshaws?

A-7. Since Chhakkdo rickshaws were received only after temporary passing from the concerned RTO, all duty paying documents i.e. C. Ex. invoices will be available with the concerned rickshaws manufacturers.

Q-8. Please go through the statement prepared on the basis of registers listed at Sr. No. 04 and 06 of Annexure-A to the panchnama dated 06.10.2009 withdrawn from your premises, pertaining to Chhakkdo rickshaw received by you during the period from January, 2005 to September, 2009 and comment.

A-8. I have gone through the said statement prepared on the basis of registers listed at Sr. No. 04 and 06 of Annexure-A to the panchnama dated 6.10.2009 withdrawn from our premises and in token of having seen the same and its correctness, I put my dated signature on the same. Accordingly, I state that we have received total 578 Chhakkdo rickshaws from the following manufacturers.

Sr. No.	Name of the Manufacturer of Chhakkdo rickshaws	No. of Chhakkdo rickshaws received
01.	M/s. Star Auto Engineering (SAE), Junagadh	275
02.	M/s. Shri Raj Shakti Automobiles (SRA), Ahmedabad	027
03.	M/s. Rajeshree Auto Meche (RAM), Ahmedabad	188
04.	M/s. Vaibhav Auto Industries (VAI), Ahmedabad	008
05.	M/s. Athitbi Gokul Automobile works (AGAW), Ahmedabad	064
06.	M/s. Five Star Auto Industries (FAI), Junagadh	006
07.	M/s. Rajmandir Auto Industries (RAI), Junagadh.	010

Q-9. Please peruse the data of 578 Chhakkdo rickshaws, sorted manufacturewise, which were received by you from different manufacturers.

A-9. I have gone through the said data and I put my dated signature on each of the manufacturers' data. I confirm that I have done the RTO registration, Insurance for the Chhakkdo rickshaws received by us and mentioned in the said statements. I put my dated signature in the said registers in token of having seen the same.

Q-10. Please give details about "Koni" mentioned in the said registers?

A-10. The said column mentioned details about the guarantor. We have also another firm viz. Parth Finance, Keshod and in the said column, we mentioned the details of guarantor.

Q-11. Do you like to say anything more?

A-11. I would not like to add anything further.

7.4 The documentary evidences withdrawn from the premises of M/s. Parishram Marketing, Keshod and statement of Shri Nathubhai Gajera, Proprietor of M/s. Parishram Marketing, Keshod thus prove beyond doubt that M/s. Parishram Marketing have dealt with 64 Chhakkdo rickshaws, manufactured and cleared by M/s. Atithi Gokul. The RTO passing and Insurance related work of above chhakados were done by M/s. Parishram Marketing, Keshod.

7.5 Scrutiny of ER-1 returns files by M/s. Atithi Gokul, Ahmedabad reveals that M/s. Atithi Gokul have shown clearance of only 64 chhakado rickshaws during the period from October, 2005 to April, 2008, which is equal to 'Atithi Gokul' make chhakado rickshaws dealt with by M/s. Parishram Marketing alone. This shows the extent of evasion of duty of excise and other taxes by M/s. Atithi Gokul, by way of clandestine clearance of chhakado rickshaws and clearance of chhakado rickshaws in the guise of diesel engines.

7.6 From the above, it is abundantly evident that M/s. Atithi Gokul have cleared their finished goods viz. Chhakkdo rickshaws, manufactured by them illicitly without payment of

duty, without accounting for the same in their statutory records and without issue of valid C. Ex. invoices. Thus, it is proved beyond any doubt that they have evaded the duty of excise and other taxes by way of clandestine clearance of goods.

8 Investigations from M/s. Chirag Auto Industries, Jamnagar:

8.1 M/s. Chirag Auto Industries, Jamnagar situated, at Shop No. 02, Plot No. 71, Aman Society, Kalawad Road, Jamnagar, were doing the job work of M/s. Shree Rajshakti Automobiles, Ahmedabad, M/s. Atithi Gokul Automobile Works, Ahmedabad and M/s. Raj Auto Industries, Jamnagar. Therefore, the premises of M/s. Chirag Auto Industries, Jamnagar were simultaneously searched under panchnama dated 06.10.2009 and records which appeared relevant for further investigation of the case were resumed from the said premises as detailed in Annexure-A to the said panchnama.

8.2 Scrutiny of the records recovered from M/s. Chirag Auto Industries:

8.2.1 Seized register mentioned at Sr. No. 03 of Annexure-A to the panchnama dated 06.10.2009 drawn at the premises of M/s. Chirag Auto Industries, Jamnagar contains the details of Chhakkdo rickshaws such as Name of the Owner, Village, Taluka, District, Date, Engine No., Chasis No., Temporary No. and Permanent No., Engine No. etc. M/s. Chirag Auto Industries had undertaken the job work of M/s. Shree Rajshakti Automobiles Works, Ahmedabad and M/s. Raj Auto Industries, Jamnagar, M/s. Atithi Gokul Automobile Works, Ahmedabad, M/s. Kismat Auto Industries, Rajula, M/s. Rajmandir Auto Industries, Junagadh, M/s. New Shreeji Engg. Works, Gondal and M/s. Vishwakarma Engg. Works, Rajkot. M/s. Chirag Auto Industries have undertaken the job work of chhakado rickshaw, manufactured by various manufacturers, including M/s. Atithi Gokul. The above register contains the details of Chhakkdo rickshaws for which they have done job work for different manufacturers. They had received the Chhakkdo rickshaws from different manufacturers after temporary RTO passing. They had also assembled Chhakkdo rickshaws which were sent to them for delivery to ultimate customers which were dismantled for transportation convenience. They had fitted additional accessories as per the requirement of customers and had delivered to the buyers. For better comprehension, the scanned image of page No. 12 of seized register A/3 is reproduced in the SCN dated 4.11.2010.

8.2.2 The perusal of the above image reveals that M/s. Chirag Auto Industries, Jamnagar have done job work of chhakado rickshaws of different manufacturers, including M/s. Atithi Gokul. M/s. Atithi Gokul manufactured the chhakado rickshaws and after temporary registration of the same, the chhakado rickshaws were sent to M/s. Chirag Auto Industries, Jamnagar for job work.

8.2.3 The details of chhakado rickshaws, manufactured by M/s. Atithi Gokul, which were received by M/s. Chirag Auto Industries, Jamnagar for job work have been summarized and is enclosed as Annexure-D to this notice. The scrutiny of the above Annexure reveals that M/s. Chirag Auto Industries, Jamnagar have undertaken job work of 312 Chakdo Rickshaws manufactured and cleared by M/s. Atithi Gokul. The scrutiny of ER-1 Returns filed by M/s. Atithi Gokul reveals that during the period, October, 2005 to April, 2008, they have shown clearance of only 64 Chakdo Rickshaws. Thus, it is evident that M/s. Atithi Gokul have manufactured and cleared most of the Chakdo Rickshaws illicitly without payment of central excise duty leviable thereon and without accounting the same in their statutory records.

8.4 Statement dated 07.10.2010 of Shri Sabirbhai Yusufbhai Ghatkai, Proprietor of M/s. Chirag Auto Industries, Jamnagar:

8.4.1 Statement of Shri Sabirbhai Yusufbhai Ghatkai, Proprietor of M/s. Chirag Auto Industries, Jamnagar was recorded under section 14 of the C. Ex. Act, 1944 on 07.10.2010. The statement of Shri Sabirbhai Yusufbhai Ghatkai was recorded in question-answer form. The question asked and answers given by him are reproduced below:

Q-1. Please peruse panchnama dated 06/10/09 and panchnama dated 11/1/10 drawn at your factory premises and please comment.

A-1. Today, I have seen the copy of both the panchnamas drawn at our factory premises and in token of having seen the same, I put my dated signature on the same.

Q-2. What business activities are undertaken by M/s. Chirag Auto Industries?

A-2. I state that M/s. Chirag Auto Industries is engaged in repairing of Three Wheeled Motor Vehicle commonly known as "Chhakkdo rickshaw". We had undertaken the job work of M/s. Shree Rajshakti Automobiles Works, Ahmedabad and M/s. Raj Auto Industries, Jamnagar. Earlier, we have done the job work of M/s. Atithi Gokul Automobile Works, Ahmedabad,



M/s. KismatAuto Industries, Rajula, M/s. RajmandirAuto Industries, Junagadh, M/s. New Shreeji Engg. Works, Gondal and M/s. Vishwakarma Engg. Works, Rajkot I further state that we are registered with Central Excise department and our ECC No. is AJBPG8409KXM001. I state that at present we are engaged in repairing of old Chhakkdo rickshaws only.

Q-3 Do you hold certificate issued by ARAI (Automotive Research Association of India - Pune).

A-3 I state that we don't hold certificate issued by ARAI, Pune and as a result we cannot manufacture and sell Three Wheeled Motor Vehicle commonly known as "Chhakkdo rickshaw". Hence we undertake the repairing of said Three Wheeled Motor Vehicle commonly known as "Chhakkdo rickshaw" and were doing the job work for other companies as stated above.

Q-4 What activities are undertaken by you as job worker of other companies.

A-4. As a job worker, the manufacturers send us the Chasis fitted with Diesel Engine, Gear box to us. We do the body work of the Chhakkdo rickshaws. Many a times, we also received the chasis, diesel engines, gear boxes from the above mentioned companies. We assemble chasis, engine, gear box etc. as per their instructions and do the Kachha body work and send the same back to them. They do the final body work, inspect the Chhakkdo rickshaws as per ARAI norms and get Chhakkdo rickshaws temporarily registered at RTO. We also assemble the Chhakkdo rickshaws to be delivered to the buyers which were dismantled after RTO passing for transportation purpose. We also fix the accessories as per the requirements of our clients.

Q.5 Please produce the job work challans under which goods are received by you from different 1 manufacturers and also produce copy of such job work challans under which goods have been sent back to the manufacturers by after making necessary endorsements in the said job work challans.

A-5 I state that we have not received any job work challans and hence I can't produce the same.

Q-6 M/s. Atithi Gokul Automobile Works, Ahmedabad, M/s. Kismat Auto Industries, Rajula, M/s. Rajmandir Auto Industries, Junagadh, M/s. New Shreeji Engg. Works, Gondal and M/s. Vishwakarma Engg. Works, Rajkot and M/s. Chirag Auto Industries, Jamnagar are registered with C. Ex. department. Why the procedure for job work as laid down in C.Ex. Act and Rules made there under were not followed.

A-6 As per the trade practice, none of us were preparing job work challans as per the C.Ex. Act and Rules made there under.

Q-7. What documents were received by you while receiving materials from different manufacturers from job work

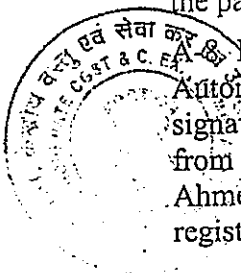
Q-7 We used to receive the goods with details of the same mentioned in piece of paper. Sometimes, they used to send the bills of diesel engines, gear boxes along with materials sent to us.

Q-8 Please peruse two C. Ex. invoices placed in file listed at Sr. No. 05 at page 5 and 8 respectively of Annexure "A" to the panchnama dated 06/10/2009 drawn at your premises and please comment on the same?

A-8 I have perused both the C. Ex. invoices dated 25/06/2009 and 10/07/2009 respectively and in token of having seen the same, I put my dated signature. I state that those two C.Ex. invoices were issued by M/s. Shree Rajshakti Automobile, Ahmedabad and along with said invoices we had received Chhakkdo rickshaws from M/s. Shree Rajshakti Automobile, Ahmedabad after temporary passing from RTO, Ahmedabad for delivery to the ultimate customers.

Q-9 Please peruse Form -21 placed in file listed at Sr. No. 26 at page 6 of Annexure "A" to the panchnama dated 06/10/2009 drawn at your premises and please comment on the same?

A-9 I have perused Form-21 Sr. No. 643 dated 12/08/2009 issued by Shree Rajshakti Automobile Works, Ahmedabad and in token of having seen the same, I put my dated signature. I state that along with the said Form 21, we had received one Chhakkdo rickshaw from M/s. Shree Rajshakti Automobile, Ahmedabad after temporary passing from RTO, Ahmedabad delivery to the ultimate customers. The said Form 21 is required for permanent registration of the vehicle.



Q-10. Please peruse another Form -21 dated 02/06/2008, Form-22, C.Ex. invoice issued by M/s. Raj Auto inds. Jamnagar placed in file listed at Sr. No. 26 at page 2,3 and 4 respectively of Annexure "A" to the panchnama dated 06/10/2009 drawn at your premises and please comment on the same?

A-10. I have perused said Form -21 dated 02/06/2008, Form-22, C.Ex. invoice issued by M/s. Raj Auto Inds. Jamnagar and in token of having seen the same, I put my dated signature. I state the Chhakkdo rickshaw bearing chasis No. 348/08 fitted with Engine No. R8E 525860 was manufactured by M/s: Raj Auto Industries and sold to Shri Mesurbhai Baghabhai Gadhvi. I further state that Shri Mesurbhai Baghabhai Gadhvi had given us the above papers to us for sell of Chhakkdo rickshaw to another customer.

Q-11. What are documents are required to be submitted to the RTO at the time of permanent registration of the vehicle?

A-11. For permanent registration of vehicle, Form 21, Form 22, Sales Invoice, ID, Proof of the buyers, insurance slip and CRTEM Form are required. Also vehicle is produced before RTO authorities.

Q-12. Please peruse the following bills of diesel engines issued by M/s. Swastik Electric Corporation, Keshod to Shree Rajshakti Automobiles Works, Ahmedabad.

Sr. No.	Invoice No. & Date	Description of goods	Qty (No)	Engine Nos.	Documents at Annexure "A" (page No.)
01.	264/12.03.09	Greaves Diesel Engine GL 400 BS II	02	R9B619842/48	A/5 page 300
02.	263/07.03.09	Greaves Diesel Engine GL 400 BS II	02	R9B619885/86	A/5 page 301
03.	234/02.02.09	Greaves Diesel Engine GL 400 BS II	01	R9A 609161	A/26 page 07
04.	232/29.02.09	Greaves Diesel Engine GL 400 BS II	01	R9A 609153	A/26 pae 08

Also peruse the following bills of diesel engines issued by M/s. Deepak Sales Agency, Junagadh to Shree Rajshakti Automobiles Works, Ahmedabad.

Sr. No	Invoice No. & Date	Description of goods	Qty (Nos)	Engine Nos.	Documents at Annexure "A" (page No.)
01.	102/19.08.2009	GL 400 II Engine for Chakkada	05	R9H2677634,41,45,76 and 2677712	A/12 page 10
02.	115/25.08.2009	GL 400 II Engine for Chakkada	03	R9H.2677691, 94,96	A/12 page 12

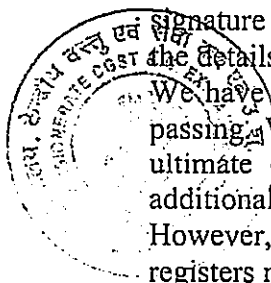
Please explain why those bills were lying at your premises?

A-12. As stated by me earlier that we do the job work of M/s. Shree Rajshakti Automobiles Works, Ahmedabad and they send us Chasis, diesel engines, gear boxes for assembling to us. They have sent the diesel engine to us under above referred invoices.

Q-13. Please peruse the register listed at Sr. No. 01, 02, 03 and 07 of Annexure-A to the panchnama dated 06.10.2009 drawn at your premises and comment.

A-13. I have perused the said registers and in token of having seen the same, I put my dated signature on first and last page of all the above mentioned registers. The said registers contain the details of Chhakkdo rickshaws for which we have done job work for different manufacturers. We have received the Chhakkdo rickshaws from different manufacturers after temporary RTO passing. We have also assembled Chhakkdo rickshaws which were sent to us for delivery to ultimate customers which were dismantled for transportation convenience. We have fitted additional accessories as per the requirement of Customers and have delivered to the buyers. However, I would to add the details contained in registers at Sr. No. 02 and 07 are repeated in registers mentioned at Sr. No. 01 and 03.

Q-14. Please explain what in full, the abbreviated version of SRA, VAI, AGAW, KAI, RAI, VEW mentioned in the Chasis No. column in the above referred registers.



A-14. I state that Chhakkdo rickshaws manufacturers gives the Chasis no. to the rickshaws manufactured by them and their after they remove the same from the factory premises. The name of the manufacturers of Chhakkdo rickshaws and Chasis no. given by them in abbreviated version are as under:

M/s. Shree RajShakti Automobiles (SRA), Ahmedabad, M/s. Athithi Gokul Automobile works(AGAW), Ahmedabad, M/s. Raj Auto Industries (RAI), Jamnagar, M/s. Kismat Auto Industries (KAI), Rajula, M/s. Rajmandir Auto Industries(RAI), Junagadh, M/s. Vishwakarma Engg. Works, Rajkot.

Q-15. Please produce the duty paying documents i.e. C.Ex. invoices in respect of below Chhakkdo rickshaws?

Sr. No.	Name of the Manufacturer of Chhakkdo rickshaws	No. of Chhakkdo rickshaws received
01.	M/s. Shree RajShakti Automobiles (SRA), Ahmedabad	166
02.	M/s. Athithi Gokul Automobile works(AGAW), Ahmedabad	312
03.	M/s. Raj Auto Industries (RAI), Jamnagar	192
04.	M/s. Kismat Auto Industries (KAI), Rajula	30
05.	M/s. New Shreeji Engg. Works, Gondal	08
06.	M/s. Vishwakarma Engg. Works	05

A-15. Since Chhakkdo rickshaws were received only after temporary passing from the concerned RTO, all duty paying documents i.e. C.Ex. invoices will be available with the concerned rickshaws manufacturers.

Q-16. Please peruse the statement prepared on the basis of registers listed at Sr.No. 01, 02, 03 and 07 of Annexure "A" to the panchnama dated 06/10/2009 withdrawn from your premises and comment.

A-16. I have seen the statement which contains details relating to Chhakkdo rickshaw such as Name of the Owner, Village, Taluka, District, Date, Engine No., Chassis No. Temporary No. and Permanent No. etc. prepared on the basis of the above mentioned registers. I have compared the said statement with said registers and the same are correct. All the Chhakkdo rickshaws mentioned in the said register are manufactured by concerned manufacturers. I put my dated signature in token of having seen, understood the same and facts contained therein as true and correct. Accordingly I can state that we have received total 713 Chhakkdo rickshaws from the following manufacturers.

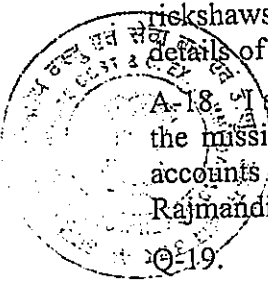
Q-17. Please peruse the registers listed at Sr. NO. 04 and 05 of Annexure "A" to the panchnama dated 06/10/09 drawn at your premises and comment.

A-17. The said registers contain the details of monthwise job work done by us of Chhakkdo rickshaws for different manufacturers. It may be mentioned that the details of some of the Chhakkdo rickshaws are repeated.

Q-18. The total of the above two registers shows that you have done job work done of 759 Chhakkdo rickshaws for different manufacturers. However the details of total 713 Chhakkdo rickshaws are mentioned in the registers mentioned at Sr.No. 01, 02, 03 and 07. Where are the details of remaining 46 Chhakkdo rickshaws.

A-18. I state we have done the job work for M/s. Rajmandir Auto Industries, Junagadh and that the missing Chhakkdo rickshaws are of M/s. Rajmandir Auto Industries. However, since the accounts with M/s. Rajmandir Auto Inds. were settled and no job work is done by us for M/s. Rajmandir Auto Inds., the records of the same were destroyed.

Q-19. Please tell the value of Chhakkdo rickshaws.



A-19. I state that the value of Chhakkdo rickshaws depends upon the materials used in Chhakkdo rickshaws. However, the minimum value of Chhakkdo rickshaws is around Rs. 80,000/- plus taxes.

Q-20. Do you like to say anything more?

A-20. I have nothing to say further.

8.5 The documentary evidences withdrawn from the premises of M/s. Chirag Auto Industries, Jamnagar and statement of Shri Sabir Yusufbhai Ghatkai, Proprietor of M/s. Chirag Auto Industries, Jamnagar thus prove beyond doubt that M/s. Atithi Gokul had cleared 312 Chhakkdo rickshaws which were received by M/s. Chirag Auto Industries, Jamnagar during the period from October 2005 to April 2008. The scrutiny of ER-1 Returns filed by M/s. Atithi Gokul reveals that during the period October 2005 to April 2008, they have shown clearance of only 64 Chhakkdo Rickshaws. Thus, it is evident that M/s. Atithi Gokul was indulged in evasion of C.Ex. duties by way of clandestine clearances.

9 Details of purchase of Diesel Engines:

9.1 It is obligatory on the part of the vehicle manufacturers to obtain compliance certificate from ARAI, Pune, under the provisions of Rule 126 of Central Motor Vehicle Rules, 1989, as discussed in detail in para 4 supra. As the chhakkdo rickshaw manufacturers have to comply with the provisions of Central Motor vehicle Rules, 1989, the manufacturers have to supply "Base Model" to the Automotive Research Association of India (ARAI), Pune for approval and obtain requisite certificate from ARAI, Pune. The ARAI, Pune approves the design of chhakkdo rickshaw on the basis of Base Model supplied by the vehicle manufacturer. The chhakkdo rickshaws are permitted to be manufactured only by those persons/firms who possess such certificate issued by Automotive Research Association of India (ARAI), Pune. The certificate issued by ARAI, Pune is non transferable and the certificate holder can only manufacture the vehicle approved by ARAI. The permission for the sale of said chhakkdo rickshaws are given by the Commissioner of Transport, Gujarat state, Gandhinagar only after submission of the compliance certificate granted by ARAI. The RTO registers the vehicles of those manufacturers who are having such certificate from ARAI, Pune.

9.2 As per the provisions of Central Motor Vehicle Rules, 1989, every manufacturer has to obtain compliance certificate from ARAI, Pune. The certificate is issued by ARAI under Rule, 126 of CMV Rules. ARAI verifies the compliance to the above Rules, based on the use of specific components/parts/assemblies etc. The certificate issued by ARAI stipulates that it is the responsibility of the manufacturer to ensure fitment of same components/parts/assemblies etc. before submission of the vehicle for registration.

9.3 The investigations revealed that it is statutory requirement to use the diesel engine of Greaves Cotton Limited make GL-400 II A having power 5.51 KW @ 3600 rpm for manufacture of chhakda rickshaw. It is also mentioned that "it is the vehicle manufacturer's responsibility to ensure fitment of same components/parts/assemblies etc. before submission of the vehicle for registration". In view of above, the information regarding sale of model GL-400 'Greaves' make diesel engines was gathered under summons proceedings from the various dealers. On the basis of data received from such different dealers, it was noticed that M/s. Atithi Gokul had totally purchased 940 Nos. 'Greaves' make GL-400 model Diesel Engines from various dealers during the period from 2005-06 to 2009-10 (upto 05.10.2009).

9.4 On the basis of the data supplied by the various dealers, it is evident that M/s. Atithi Gokul had purchased 940 Nos. 'Greaves' make GL-400 model Diesel Engines, during the period October, 2005 to September, 2009, whereas as per the data supplied by RTO, the number of vehicles manufactured by M/s. Atithi Gokul during the same period was 3134. Thus, looking into the huge difference between the Nos. of GL-400 engines purchased from the dealers and Nos. of vehicles registered with RTO, further investigation regarding use of diesel engines was carried out.

During investigation, it was revealed that M/s. Atithi Gokul have also used other models of 'Greaves' make diesel engines viz. Model Nos. G 1080, G 1450, G 1510, G 5520, G 5530 etc. to manufacture chhakda rickshaw. The data of various types of diesel engines sold to M/s. Atithi Gokul by the dealers of M/s. Greaves was gathered. On scrutiny of the said data, it is revealed that M/s. Atithi Gokul has also purchased other models of diesel engines. The investigation revealed that all the above models except GL-400 are originally meant for water handling, agriculture or other purposes. The investigation also revealed that GL-400 is the only automobile engine model and other models are not automobile engines but are used for other

purposes mentioned above.

9.6 Though ARAI, Pune has prescribed only Greaves make GL-400 IIA Diesel Engine, the manufacturers have purchased and fitted various other models of 'Greaves' make diesel engines as discussed hereinabove. The further investigation in the matter revealed that in addition to above models of diesel engines, the chhakado manufacturers have also used and fitted assembled diesel engines assembled by various local mechanics. The investigation also revealed that model number GL-400 is the only automobile diesel engine fit for vehicles. The other engine models are for the use of handling water for agriculture purpose and other purposes.

9.7 On going through the data of diesel engines supplied by the various dealers, it was revealed that huge numbers of individuals have also purported to have purchased diesel engines in cash from the dealers. Further, it is also revealed that M/s. Atithi Gokul had instructed the dealers of diesel engines to prepare invoices in the name of individuals and payment for such type of purchases have been made in Cash/DD by M/s. Atithi Gokul only.

9.8 The investigation also revealed that the manufacturers of chhakda rickshaws have also used/fitted assembled diesel engines, which were assembled by the local mechanics by using engine body of M/s. Greaves and other locally procured parts. The investigation was extended to such mechanics who are engaged in the assembly work of such diesel engines. Statement of Shri Kasambhai Umarbhai Kaida, Proprietor of M/s. Kamal Auto Centre, Vijay Plot, Main Road, Sheri No. 11, Rajkot was recorded under Section 14 of CEA, 1944 on 12.05.2010. Shri Kasambhai in his statement had stated that he is engaged in the automobile assembly & repairing work. He further stated that he is mainly doing the work relating to diesel rickshaw, diesel engine and gear box. On being specifically asked, he stated that he assembles and repairs diesel engines fitted in the chhakda rickshaw. He also stated that sometimes he purchases old diesel engine from the "kabadi" market and after fitting some new spare parts, he sell the same as new engines.

9.9 On being further asked, he stated that as he is having mastery/speciaity in diesel engine fitting; that the chhakda rickshaw manufacturers purchase the necessary parts of diesel engines and give him the same for fitting/assembly work; that thereafter, he assembled the parts to prepare the diesel engine, for which he gets Rs.750/-. He also stated that plate required to be affixed on diesel engine for engine number and its manufacturers name & logo is available in local market and it is possible that chhakda manufacturers may be affixing such type of locally procured plates on the diesel engines assembled by him on their own.

9.10 Investigations from M/s. Dattatrey Auto Centre, Rajkot:

9.10.1 M/s. Dattatrey Auto Centre situated at 8, Rajput Para, Opp. Lodhawad Police Station, Rajkot is engaged in the trading activity of spare parts of chhakado rickshaw & bullet. The premises of M/s. Dattatrey Auto Centre, Rajkot were searched by the officers of DGCEI, AZU, Ahmedabad under panchnama dated 22.07.2010. During the search, the officers found one set comprising of name plate and monogram of M/s. Greaves Cotton & Co. Limited, which was placed under seizure. The scanned image of the said plate and monogram is reproduced in the SCN dated 4.11.2010.

9.10.2 Statements of Shri Mansukh Patel, Proprietor of M/s. Dattatrey Auto Centre, Rajkot:

Statement of Shri Mansukh Patel, Proprietor of M/s. Dattatrey Auto Centre, Rajkot was recorded under section 14 of the Central Excise Act, 1944 on 22.07.2010. The statement was recorded in question-answer form, which is reproduced below:

Q.1. Please peruse the panchnama dated 22/07/2010 drawn at the premises of M/s. Dattatrey Auto Centre, Rajkot and please comment on the same.

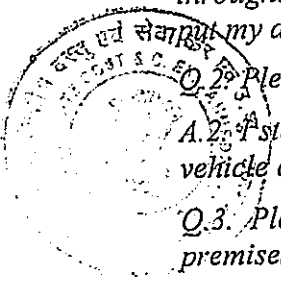
A.1. I have gone through the panchnama dated 22/07/2010 drawn at the premises of M/s. Dattatrey Auto Centre, Rajkot and agree to the facts contained therein. I have remained present throughout the panchnama proceedings and in token of my agreement to the said panchnama, I have placed my dated signature on the same.

Q.2. Please explain the business activities of M/s. Dattatrey Auto Centre, Rajkot.

A.2. I state that we are trading in spare parts of Bullets (two wheeler) and three wheeled motor vehicle commonly known as "Chhakdo rickshaw".

Q.3. Please peruse the monogram of M/s. Greaves Cotton & Co. Ltd. withdrawn from the premises of M/s. Dattatrey Auto Centre, Rajkot and please comment.

A.3. I state that such monogram were sold by us earlier. However, at present, we have



discontinued to stock and sell such monograms.

Q.4 From where did you purchase such monograms of Greaves Cotton & Co.?

A.4 One person had come with such monograms to market the same. I had purchased the monograms from him. However, I do not know the name and address of the said person.

Q.5. What is the use of such monogram of M/s. Greaves Cotton & Co. Ltd. ?

A.5. I state that such monograms are used by local technicians who use such monogram to affix on the diesel engines locally assembled by them.

Q.6. Which parts are required for assembling the diesel engines?

A.6. The parts such as crank shaft, crank case, cylinder head, connecting rod, cylinder, housing etc. are the main parts of the diesel engines.

Q.7. Can you tell the costing of diesel engines locally manufactured by local technicians and cost of diesel engine of GL 400 model manufactured by M/s. Greaves Cotton Ltd.

A. 7. The price of the GL-400 model engine is about Rs.35000A per engine. The cost of engine assembled locally is approximately Rs.20000A to Rs.22000/- per engine.

Q.8. How the diesel engines manufactured by local technicians are cheaper than those manufactured by M/s. Greaves Cotton Ltd. ?

A.8. The local mechanics, who are engaged in the assembly business use some parts of Greaves Cotton & Co and some parts procure from local manufacturers in Rajkot. They use crank case of Greaves Ltd and use other parts such as crank shaft, cylinder head, connecting rod, cylinder, housing, piston etc. manufactured by local manufacturers.

9.11 Statements of various dealers of diesel engines have been recorded. The Proprietors/Partners of the dealers in their respective statements have admitted that in addition to 'Greaves' make model GL-400 diesel engines, they have also sold various other models of diesel engines to the manufacturers of chhakda rickshaw. They also deposed that the chhakda rickshaw manufacturers also use/fit assembled diesel engines, assembled by local mechanics. They also stated that the local mechanics use body of diesel engine of 'Greaves' and procure other parts from local market and prepare the diesel engines. The statements of dealers of diesel engines are discussed in the following paras.

9.11.1 Statement of Shri Kishor Gordhanbhai Chandra, Partner of M/s. New Chandra Motor Cycle House, situated near Town Hall, Jamnagar was recorded under Section 14 of Central Excise Act, 1944 today on 23/07/2010. The said statement was recorded in question and answer form, which is reproduced below:-

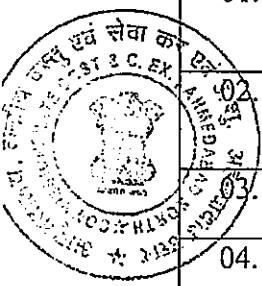
Q.1. Please explain the business activities of M/s. New Chandra Motor Cycle House, Jamnagar.

A.1. I state that we are the authorized distributors of M/s. Greaves Cotton Ltd. and M/s. Royal Enfield. We stock and sell the spare parts including diesel engines of M/s. Greaves Cotton Ltd. and sell the spare parts of gear boxes of M/s. Royal Enfield. We are also trading in spare parts of Bullets (two wheelers) and three wheeled motor vehicle commonly known as "Chhakkdo rickshaws" manufactured by other manufacturers.

Q.2. Please give the data of sales engines during the period from 2005-06 to 2009-10 (upto Sept. 09) to various manufacturers of "Chhakkdo rickshaws" by your firm.

A.2. The details of sales engines to various manufacturers of "Chhakkdo rickshaws" are as under:

Sr. No.	Name of the manufacturers	Model No.						
		GL400	5520	5530	1450	1510	1080	Total
01.	Atithi Gokul Automobile Works, A'bad.	298	0	0	6	2	14	320
	Atul Auto Industries,	28	0	0	4	0	4	36
	Dilavar Auto Industries.	171	1	1	17	15	3	208
04.	Five Star Auto Industries	36	2	0	11	1	3	53



05.	Hakikat Auto Inds.	28	0	0	28	1	10	67
06.	KISMAT Auto Inds.	43	0	0	85	28	8	164
07.	New Shreeji Enqq. Works	319	0	9	9	0	13	350
08.	Raj Auto Inds.	193	5	1	32	1	6	238
09.	Rajmandir Auto Inds.	43	0	0	0	1	7	51
10.	Rajshree Auto Meche, A'bad	97	0	0	1	0	0	98
11.	Shri Ram Diesel Pvt. Ltd.	343	0	0	5	0	1	349
12.	Shri Rajshakti Automobile	133	0	0	2	0	0	135
13.	Somanth Auto Inds.	34	1	0	1	0	2	38
14.	Vaibhav Auto Inds.	63	0	1	6	2	3	75
15.	Vishwakarma Enqq. Works	214	0	6	0	0	0	220

Q.3. As per ARAI norms, the manufacturers of three wheeled motor vehicles commonly known as "Chhakkdo rickshaws" have to use only GL 400 diesel engines. But from the above, it is observed that you have sold engines of other models to said manufacturers. Please comment.

A.3. Though ARAI has authorized to use GL 400 diesel engines only in the "Chhakkdo rickshaws", the manufacturers also use the diesel engines of other models.

Q.4. What is the cost of GL 400 diesel engines and what is cost of diesel engines of other models.

A.4. I state that the cost of GL 400, 1450, 1510, 1080 diesel engines is approx. Rs. 35,000/- whereas the cost of model No. 5520 is approx. Rs. 23,000/-.

Q.5. Are you selling the parts required for assembling of diesel engines?

A. 5. We also stock and sell all the parts of diesel engines manufactured by M/s. Greaves Cotton Ltd. only.

Q. 6. Which parts are required for assembling the diesel engines?

A.6. The parts such as crank shaft, crank case, cylinder head, connecting rod, cylinder, housing etc. are the main parts of the diesel engines.

Q. 7. Can you tell who are assembling the diesel engines?

A.7. I state Shri Kalubhai based at Rajkot, Shri Shivabhai based at Gondal and some other technicians based at Keshod are assembling the diesel engines.

Q.8. Can you tell the costing of diesel engines locally manufactured by local technicians.

A.8. The cost of engine assembled locally is approximately Rs.20000/- to Rs. 21000/- per engine.

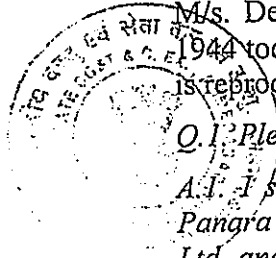
Q.9. How the diesel engines manufactured by local technicians are cheaper than those manufactured by M/s. Greaves Cotton Ltd. ?

A.9. The local mechanics, who are engaged in the assembly business use some parts of Greaves Cotton & Co and some parts of local manufacturers. They use crank case of Greaves Ltd and use other parts such as crank shaft, cylinder head, connecting rod, cylinder, housing, piston etc. manufactured by local manufacturers.

9.11.2 Statement of Shri Pankaj Chhagnabhai Panara, Authorized Signatory of M/s. Deepak Sales Agency, Junagadh was recorded under Section 14 of Central Excise Act, 1944 today on 28/07/2010. The said statement was recorded in question and answer form, which is reproduced below:-

Q.1. Please explain the business activities of M/s. Deeoak Sales Agency. Junagadh.

A.1. I state that I am a Authorized Signatory of the company. My father, Shri Chhaganbhai Panara is the proprietor of the company. We are the authorized dealer of M/s. Greaves Cotton Ltd. and M/s. Royal Enfield. We stock and sell the spare parts including diesel engines of M/s. Greaves Cotton Ltd. and sell the spare parts of gear boxes of M/s. Royal Enfield pertaining to



three wheeled motor vehicle commonly known as "Chhakkdo rickshaws" manufactured by other manufacturers.

Q.2. Please submit the details of sales of all type of engines during the period from 2005-06 to 2010-11 (upto June '2010) to various manufacturers of "Chhakkdo rickshaws" by your firm.

A. 2. The details of sales of different type of engines to various manufacturers of "Chhakkdo rickshaws" will be submitted within two days.

Q.3. As per ARAI norms, the manufacturers of three wheeled motor vehicles commonly known as "Chhakkdo rickshaws" have to use only GL 400 diesel engines. But from the above, it is observed that you have sold engines of other models to said manufacturers. Please comment.

A.3. Though ARAI has authorized to use GL 400 diesel engines only in the "Chhakkdo rickshaws", the manufacturers also use the diesel engines of other models.

Q.4. What is the cost of GL 400 diesel engines and what is cost of diesel engines of other models.

A.4. I state that the cost of GL 400, 1450, 1510, 1080 diesel engines is approx. Rs.33,000/- whereas the cost of model No. 5520 is approx. Rs.23,000/-.

Q.5. Are you selling the parts required for assembling of diesel engines?

A. 5. We also stock and sell all the parts of diesel engines manufactured by M/s. Greaves Cotton Ltd. only.

Q.6. Which parts are required for assembling the diesel engines?

A.6. The parts such as crank shaft, crank case, cylinder head, connecting rod, cylinder, housing etc. are the main parts of the diesel engines.

Q. 7. Can you tell who are assembling the diesel engines?

A.7. I state Shri Kalubhai based at Rajkot, Shri Musabhai based at Dhoraji, mechanics based at Keshod etc. are assembling the diesel engines.

Q.8. Can you tell the costing of diesel engines locally manufactured by local technicians.

A.8. The cost of engine assembled locally is approximately Rs.19000/- to Rs. 21000/- per engine.

Q.9. How the diesel engines manufactured by local technicians are cheaper than those manufactured by M/s. Greaves Cotton Ltd. ?

A.9. The local mechanics, who are engaged in the assembly business use some parts of Greaves Cotton & Co and some parts of local manufacturers. They use crank case of Greaves Ltd and use other parts such as crank shaft, cylinder head, connecting rod, cylinder, housing, piston etc. manufactured by local manufacturers.

9.11.3 Statement of Shri Maganlal Hansraj Dadhania, Partner of M/s. Swastik Electric Corporation, Keshod was recorded under Section 14 of Central Excise Act, 1944 today on 28/07/2010. The said statement was recorded in question and answer form, which is reproduced below:-

Q. 1. Please explain the business activities of M/s. Swastik Electric Corporation, Keshod.

A.1. I state that I am one of the partners of M/s. Swastik Electric Corporation, Keshod. We are the authorized dealer of M/s. Greaves Cotton Ltd. and M/s. Royal Enfield. We stock and sell the spare parts including diesel engines of M/s. Greaves Cotton Ltd. and sell the spare parts of gear boxes of M/s. Royal Enfield pertaining to three wheeled motor vehicle commonly known as "Chhakkdo rickshaws" manufactured by other manufacturers.

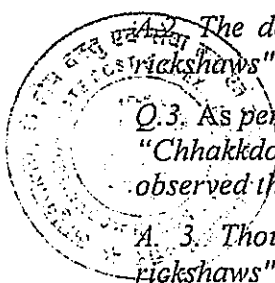
Q.2. Please submit the details of sales of all type of engines during the period from 2005-06 to 2010-11 (upto June '2010) to various manufacturers of "Chhakkdo rickshaws" by your firm.

A.2. The details of sales of different type of engines to various manufacturers of "Chhakkdo rickshaws" will be submitted within two days.

Q.3. As per ARAI norms, the manufacturers of three wheeled motor vehicles commonly known as "Chhakkdo rickshaws" have to use only GL 400 diesel engines. But from the above, it is observed that you have sold engines of other models to said manufacturers. Please comment.

A. 3. Though ARAI has authorized to use GL 400 diesel engines only in the "Chhakkdo rickshaws", the manufacturers also use the diesel engines of other models.

Q.4. What is the cost of GL 400 diesel engines and what is cost of diesel engines of other models.



A.4. I state that the cost of GL 400, 1450, 1510, 1080 diesel engines is approx. Rs.33,000/- whereas the cost of model No. 5520 is approx. Rs.23,000/-.

Q.5. Are you selling the parts required for assembling of diesel engines?

A. 5. We also stock and sell all the parts of diesel engines manufactured by M/s. Greaves Cotton Ltd. only.

Q.6. Which parts are required for assembling the diesel engines?

A.6. The parts such as crank shaft, crank case, cylinder head, connecting rod, cylinder, housing etc. are the main parts of the diesel engines.

Q.7. Can you tell who are assembling the diesel engines?

A.7. I state that mechanics such as S/Shri Kalubhai, Rajkot, Shri Musabhai, Dhoraji, Hulabhai, Keshod & Abbas, Keshod are assembling the diesel engines.

I also state that there are number of persons who assembles the diesel engines from local parts, but I do not remember the names of the such persons.

Q.8. Can you tell the costing of diesel engines locally manufactured by local technicians.

A.8. The cost of engine assembled locally is approximately Rs.19000/- to Rs.21000/- per engine.

Q.9. How the diesel engines manufactured by local technicians are cheaper than those manufactured by M/s. Greaves Cotton Ltd.?

A..9. The local mechanics, who are engaged in the assembly business use some parts of Greaves Cotton & Co and some parts of local manufacturers. They use crank case of Greaves Ltd and use other parts such as crank shaft, cylinder head, connecting rod, cylinder, housing, piston etc. manufactured by local manufacturers.

9.11.4 Statement of Shri. Prathmeshbhai Jitendrabhai Shah, Proprietor of M/s. Electro Trading Corporation, Ahmedabad was recorded under Section 14 of Central Excise Act 1944 today on 27/07/2010. The said statement was recorded in question and answer form, which is reproduced below:

Que 01: Explain the activities of M/s. Electro Trading Corporation in detail. What is your role in the above firm?

Ans 01: M/s. Electro Trading Corporation is engaged in the business of trading of automobile parts such as diesel engines, pumps and spare parts thereof since last 20 years. M/s. Electro Trading Corporation is authorized dealer of M/s. Greaves Cotton Ltd for sale of diesel engines and parts thereof. We also sale goods of other manufacturers such as pumps and spares of Tullu and Kirloskar brands. I am Proprietor of the firm and look after all the activities of the firm such as purchase, sales, marketing, collection of payment, accounts etc.

Que 02: Which models of diesel engines of Greaves Cotton Ltd are traded by M/s. Electro Trading Corporation? Give the details of spares of Greaves Cotton Ltd.

Ans 02: We purchase and sell different models of diesel engines and pump sets, purchased from M/s. Greaves Cotton Ltd. We sell diesel engines of model Nos. GL 400 BS-II, 1510, 1450, 1080. We also sell pump sets of model Nos. 5520 and 5530. We sell all the spares of diesel engines and pump sets.

Que 03: Is there any sister concern firm? If yes, give the details thereof.

Ans 03: We had one sister concern trading firm in the name and style of M/s. Shah & Sons, Near Zakariya Masjid, Relief Road, Ahmedabad. M/s. Shah & Sons was engaged in the business of trading of diesel engines, pump sets and parts thereof. The said firm has been closed since last 4 years. I was Proprietor of the said firm and all the work of the said firm was looked after by me.

Que 04: Who are the main buyers of your firm?

Ans 04: The main buyers of the diesel engines and pump sets are the manufacturers of chhakado Rickshaws in the state of Gujarat. In addition to above the pump sets and engines are also purchased by other buyers also.

Que 05: Do you sell the diesel engines and pump sets directly to the chhalado rickshaw manufacturers?

Ans 05: We sell the diesel engines and pump sets directly to the chhakado rickshaw manufacturers. However, sometimes we also sell the engines/pump sets to the buyers of chhakado rickshaw.

Que 06: How the payment of the goods is received?

Ans 06: The payment of the goods sold by us is received through cheques. However, sometimes, the payment is also received in cash and through DD also.

Que 07: Please give the details of sale of diesel engines and pump sets sold during the period from 2005-06 to 2010-11 (upto June, 2010) to various manufacturers of "Chhakkdo rickshaws" and other buyers by your firm.

Ans 07: I have already submitted the above details in respect of both the firms for the period 2005-06 to 2009-10 (Upto Sept). The remaining details for the period Oct, 2009 to June, 2010 will be produced in 2-3 days time.

Que 08: The details of sale of diesel engines and pump sets submitted by you reveals that you have sold various models of diesel engines and pump sets such as GL 400 BS-II, 1510, 1450, 1080, pump sets of model Nos. 5520 and 5530 to different chhakado rickshaw manufacturers. As per ARAI norms, the manufacturers of three wheeled motor vehicles commonly known as "Chhakkdo rickshaws" have to use only GL 400 BS-II diesel engines in the chhakado rickshaws. It is evident that you have sold engines of other models to said manufacturers. Please Explain.

Ans 08: Though ARAI has authorized to use GL 400 diesel engines only in the "Chhakkdo rickshaws" the manufacturers also use the diesel engines and pump sets of other models. In case of pump sets, they detach the pump from the engine, and use the engine in the chhakado rickshaw.

Que 09: Which documents are issued at the time of sale of diesel engines and pump sets to the chhakado rickshaw manufacturers?

Ans 09: In case of sale of GL 400 BS-II diesel engine directly to the chhakado rickshaw manufacturers, we prepare C. Ex. Invoice. However, in case of sale of above engine to the buyers of chhakado rickshaw, we issue tax/retail invoice. In case of sale of other models of diesel engines and pump sets to the chhakado rickshaw manufacturers or their buyers, we prepare tax/retail invoice only.

Que 10: Are you registered with C. Ex. to pass on the Cenvat credit?

Ans 10: Yes. We are registered with C. Ex. to pass on the Cenvat credit. We are registered dealer and pass on Cenvat credit to the buyers.

Que 11: Have you issued C. Ex. invoices to all the chhakado rickshaw manufacturers to pass on the Cenvat credit?

Ans 11: We have issued C. Ex. invoices to the chhakado rickshaw manufacturers to pass on the Cenvat credit in case of sale of GL 400 BS-II diesel engines only. In case of other models we have issued tax/retail invoices only. We have passed on Cenvat credit in case of GL 400 BS-II diesel engines only. In case of other models, we have not passed on Cenvat credit.

Que 12: Under which documents, the diesel engines and pump sets are received from M/s. Greaves Cotton Ltd?

Ans 12: We receive the diesel engines and pump sets under the cover of invoices from M/s. Greaves Cotton Ltd., Ahmedabad, who are registered dealer under C. Ex. and pass on Cenvat credit. However, I confirm that in case of only GL 400 BS-II model engines they have issued C. Ex. invoices and have passed on Cenvat credit. In case of other models of diesel engines and pump sets, M/s. Greaves Cotton Ltd have not issued C. Ex. invoices, on the basis of which Cenvat credit can be passed on.

Que 13: What is the cost of GL 400 diesel engines and what is cost of diesel engines and pump sets of other models.

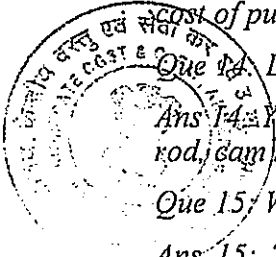
Ans 13: The cost of GL 400, 1450, 1510, 1080 diesel engines is approx. Rs. 35,000/- whereas the cost of pump set of model No. 5520 is approx. Rs.23,000/-.

Que 14: Do you sell the parts of diesel engines?

Ans 14: Yes. We also sell the parts of diesel engines such as piston, valve, crank case, connecting rod, cam shaft, crank shaft etc.

Que 15: Which parts are required for assembling the diesel engines?

Ans 15: The parts such as crank shaft, crank case, cylinder head, connecting rod, cylinder, housing etc. are the main parts of the diesel engines.



9.12 On going through the statements of dealers of diesel engines of M/s. Greaves Cotton Ltd., it reveals that the manufacturers of chhakda have also used different types of diesel engines other than the prescribed GL-400 diesel engine. Further, the dealers in their statements also confirmed the facts that the chhakado manufacturers also use assembled diesel engines, which are cost effective. Thus, the manufacturers are violating the various norms and terms prescribed by the different Government Agencies to manufacture vehicle.

10 Statements of Shri Dinesh B. Bharwad, Partner of M/s. Atithi Gokul:

10.1 During the course of investigation, statements of Shri Dinesh B. Bharwad, Partner of M/s. Atithi Gokul were recorded under section 14 of Central Excise Act, 1944. His statements are discussed herein below:

10.2 Statement dated 27.03.2010 of Shri Dinesh B. Bharwad, Partner of M/s. Atithi Gokul:

10.2.1 The statement of Shri Dinesh B. Bharwad, Partner of M/s. Atithi Gokul was recorded on 27.03.2010. The statement of Shri Dinesh B. Bharwad, Partner of M/s. Atithi Gokul was recorded in question answer form, which is reproduced below:

Que. 1: You are being shown the letter dated 22/10/09 of M/s. Atithi Gokul Automobile Works, Ahmedabad signed by Shri Vimal P. Kari. Please comment on the same.

Ans. 1: I have seen the the letter dated 22/10/09 of M/s. Atithi Gokul Automobile Works, Ahmedabad signed by Shri Vimal P. Karl and fully agree with the facts narrated in the said letter. After once again going through the said letter, I put my dated signature thereon. I reiterate that all our records relating to M/s. Atithi Gokul Automobile Works, Ahmedabad were destroyed in fire which broke out at our premises on 19/03/2009.

Que. 2: From which date M/s. Atithi Gokul Automobile Works were functioning, when it surrendered its C.Ex. registration and what activities were undertaken?

Ans. 2: M/s. Atithi Gokul Automobile Works was earlier working at 387, Sector-2, Chankayapuri, Ghatlodia, Ahmedabad since 14/08/2003. Later on it shifted to Survey No. 47, Sarkhej- Gandhinagar Highway, Gota Chokdi, Chandlodia, Ahmedabad on 11/03/2004. We surrendered the C. Ex. registration certificate of M/s. Atithi Gokul Automobile Works on 02/05/2008. In the said unit we were manufacturing Chhakkdo rickshaw under the brand name "Gokul Shakti ". We were also undertaking the repairing of the Chhakkdo rickshaws.

Ques 3: Who were the other partners of M/s.. Atithi Gokul Automobile Works, Ahmedabad.

Ans 3: I and my brother Shri Dilip B. Bharward were the partners of M/s. Atithi Gokul Automobile Works. I used to take all the decision regarding the day to day activities of M/s. Atithi Gokul Automobile Works, Ahmedabad.

Ques 4: At present, are you having C.Ex. registration in the name of M/s. Atithi Gokul Automobile Works, Ahmedabad.

Ans 4: At present, we don't hold valid C.Ex. registration.

Ques 5: Did you use to get any work of Chhakkdo rickshaw done from the job worker?

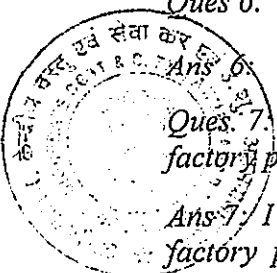
Ans 5 We used to get work of Chhakkdo rickshaw done from the job workers. We used to send Chasis fitted with engines, gearbox, etc to the job workers for doing the body building as per our specifications.

Ques 6: Please give the names of the job workers?

Ans 6: At present, I don't remember the names of our job workers.

Ques. 7. Please peruse the panchnama dated 06/10/2009 and 24/03/2010 drawn at the factory premises of M/s. Shree Rajshakti Automobile Works, Ahmedabad and please comment.

Ans: 7: I have perused both the panchnama dated 06/10/2009 and 24/03/2010 drawn at the factory premises of M/s. Shree Rajshakti Automobile Works, Ahmedabad and in token of having seen the same, I put my dated signature on it. M/s. Shree Rajshakti Automobile Works, Ahmedabad is operating from the same premises i.e. Survey No. 47, Sarkhej-Gandhinagar



Highway, Gota Chokdi, Chandolia, Ahmedabad which was earlier occupied by M/s. Atithi Gokul Automobile Works, Ahmedabad.

Ques 8: Please explain why loading rickshaw bearing brand name "Gokul shakti" having registration No. GJI XX 3303 seized at the factory premises of M/s. Shree Rajshakti Automobile Works, Ahmedabad was lying at the said premises and please produce the duty paying documents of the said rickshaw

Ans 8: I state that loading rickshaw bearing brand name "Gokul shakti" having registration No. GJI XX 3303 seized at the factory premises of M/s. Shree Rajshakti Automobile Works, Ahmedabad had gone to deliver the goods and hence the same lying at the premises of M/s. Shree Rajshakti Automobile Works, Ahmedabad. As regards duty paying documents, as informed vide our letter dtd. 24/03/2010, it is to inform you that the said rickshaw was not manufactured by us but purchased by us from M/s. Bhagyashree Auto Diesel Pvt. Ltd. Hyderabad in the year 2003-04 and the documents related to the said rickshaw have been destroyed in fire as informed by me earlier and hence, I cannot produce the documents of the said rickshaw.

Ques. 9: How the said rickshaws bears the brand name "Gokul Shakti"

Ans 9: As regards to the same, since the matter is very old, I have to inquire about the same from the staff.

Ques 10. Please peruse the panchnamas dated 06/10/2009 and 06/01/2010 drawn at the factory premises of M/s. Vishwakarma Engineering Works, Rajkot and statement dated 17/03/2010 of Shri Navinbhai Maganbhai Umrana, partner M/s. Vishwakarma Engineering Works, Rajkot and please comment.

Ans 10. I have perused both the panchnamas dated 06/10/2009 and 06/01/2010 drawn at the factory premises of M/s. Vishwakarma Engineering Works, Rajkot and statement dated 17/03/2010 of Shri Navinbhai Maganbhai Umrana, partner M/s. Vishwakarma Engineering Works, Rajkot and agree to facts narrated therein and I also put my dated signature in token of having seen the same. I state that we have sent the fifteen loading rickshaws seized at the premises of M/s. Vishwakarma Engineering Works, Rajkot for body building on job work basis.

Ques 11: Please peruse your letter submitted in this office on 11/03/2010 for release of fifteen loading rickshaws seized at M/s. Vishwakarma Engineering Works, Rajkot. Under the said letter, you have submitted the bills of diesel engines. Please produce the bills of iron and steel from which chasis is made, gearboxes etc.

Ans 11: I state that the bills relating to iron, gear boxes etc. of 15 loading rickshaws seized at the premises of M/s. Vishwakarma Engineering Works, Rajkot are destroyed in fire and hence the same are not available with us.

Ques 12: You have surrendered your registration certificate on 02/05/2008. How you have sent the goods to M/s. Vishwakarma Engg. Works, Rajkot under job work challan in September, 2009 since manufacturing of rickshaws are not covered under Notification No. 08/2003-CE dated 01/03/2003 as amended and hence there is no SSI exemption and therefore the manufacturers have to pay C.Ex. duty from the very first clearances. Please comment.

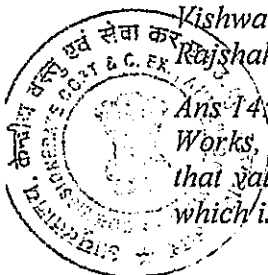
Ans 12: At present, I am unable to comment on the above.

Ques 13: It is noticed from the bills of diesel engines that the same were purchased in the year 2007 and were sent to M/s. Vishwakarma Engg. Works, Rajkot in September, 2009? Why?

Ans 13: As stated in our letter submitted in your office on 11/03/2010, we were trying out new model and hence the negotiations with the different job workers were going on and hence there was delay in sending the goods to M/s. Vishwakarma Engg. Works, Rajkot.

Ques 14: What is value of 15 loading rickshaws seized at the premises of M/s. Vishwakarma Engg. Works, Rajkot and one rickshaw seized at the premises of M/s. Shree Rajshakti Automobiles, Ahmedabad.

Ans 14: Since the 15 loading rickshaws seized at the premises of M/s. Vishwakarma Engg. Works, Rajkot are in semi finished stage, the value of one such rickshaw may be Rs. 40,000/- and that value of rickshaw seized at the premises of M/s. Shree Rajshakti Automobiles, Ahmedabad which is of model 2003-04 may be around Rs. 50,000/-



recorded under section 14 of Central Excise Act, 1944 on 28.10.2010. His statement was recorded in question-answer form, which is reproduced below:

Que: Describe the activities of M/s. Atithi Gokul Automobile Works in detail and your role in the above firm.

Ans: M/s. Atithi Gokul Automobile Works is a Partnership firm and is engaged in the manufacture and sale of Auto Rickshaw/Delivery Van commonly known as Chhakado Rickshaw since 2004. My above firm is registered with Central Excise department. My above firm was earlier registered with Central Excise department. We had surrendered C. Ex. Registration on 02.05.2008. Thereafter, we have obtained new C. Ex. Registration in September, 2009.

Que: Please peruse panchnama dated 06.10.2009, drawn at the premises of M/s. Shree Rajshakti Automobiles, Surevy No. 477, Sarkhej, Gandhinagar Highway, Gota Chokdi, Chandolia, Ahmedabad. Explain.

Ans: I perused the above panchnama and put my dated signature on it. I confirm that the facts mentioned in the above panchnama are true and correct and acceptable to me.

Que: Please peruse panchnama dated 06.10.2009, drawn at the premises of M/s. Vishwakarma Engineering Works Maliyasana, NH-8B, Near Shaktipura Hotel, Rajkot. Explain.

Ans: I perused the above panchnama and put my dated signature on it. Fifteen loading rickshaws in semi finished stage (chasis fitted with diesel engines) found at the premises of M/s. Vishwakarma Engineering Works, Rajkot were sent by us for body building on job work basis.

Que: Please peruse the details of Temporary Registration of chhakado rickshaws, registered with RTO, Ahmedabad, during the period 03.10.2005 to 30.09.2009, submitted by RTO, Ahmedabad. Also peruse worksheet, showing details of 'Gokul Shakti' make chhakado rickshaws, registered with RTO, Ahmedabad during the period 03.10.2005 to prepared on the basis of details submitted by RTO, Ahmedabad. Explain.

Ans: I perused the details of Temporary Registration of chhakado rickshaws, registered with RTO, Ahmedabad. I also perused the worksheet, showing details of 'Gokul Shakti' make chhakado rickshaws, registered with RTO, Ahmedabad. I confirm that maker's name "Atithi" or "Atithi Gokul" has been mentioned, in case chhakados of M/s. Atithi Gokul Automobile Works. I confirm that during the period 03.10.2005 to 30.09.2009, 3134 chhakado rickshaws have been registered with RTO, Ahmedabad. I confirm that the above chhakado rickshaws pertain to M/s. Atithi Gokul Automobile Works, Ahmedabad. However, in our books of accounts/records, we have shown clearance of 64 chhakado rickshaws only during the period October, 2005 to April, 2008. Due to general practice prevailing in the chhakado rickshaw industry and due to market conditions, we have not shown all the clearances in our books of accounts/records. We have cleared the chhakado rickshaws, without preparing Central Excise invoices and without payment of C. Ex. Duty.

Que: Is M/s. Atithi Gokul Automobile Works registered with Automotive Research Association of India (ARAI), Pune?

Ans: Yes. M/s. Atithi Gokul Automobile Works is registered with ARAI, Pune. We have obtained compliance certificate from ARAI, Pune from time to time. To manufacture chhakado rickshaw, we have to comply with the provisions of Central Motor vehicle Rules, 1989. For this purpose, we supply "Base Model" to the Automotive Research Association of India (ARAI), Pune for approval and obtain requisite certificate from ARAI, Pune. ARAI, Pune approves the design of chhakado rickshaw on the basis of Base Model supplied by us. The chhakado rickshaws are permitted to be manufactured only by those persons/firms who possess such certificate issued by Automotive Research Association of India (ARAI), Pune. The certificate issued by ARAI, Pune is non transferable and the certificate holder can only manufacture the vehicle approved by ARAI. The RTO registers the vehicles of those manufacturers who are having such certificate from ARAI, Pune. The certificate holders of ARAI, Pune can only issue form 21 and form 22, required for registration of vehicles before RTO. The permission for the sale of said chhakado rickshaws are given by the Commissioner of Transport, Gujarat state, Gandhinagar only after submission of the compliance certificate granted by ARAI as to the compliance of provisions of the Motor Vehicle Act, 1988 and the Rules in respect of Goods Vehicles. The certificate granted by ARAI is valid for one year and fresh certificate is required to be obtained every year.

Que: Please peruse letter F. No. ARAI/HMR/Govt-Corr/09-10/11 dated of ARAI, Pune, under which they have furnished the details of production of chhakado rickshaws, manufactured by

various manufacturers, submitted by various manufacturers, including M/s. Atithi Gokul Automobile Works. Explain.

Ans: I perused the above letter and put my dated signature on it. The chhakdo rickshaw manufacturers who possess requisite certificate from ARAI, Pune have to declare production volume on regular basis to ARAI, Pune. We have declared Nil production of chhakado rickshaw to ARAI, Pune, during the period from 2005-06 to 2008-09. During the period from October, 2005 to September, 2009, we have shown production of 64 chhakado rickshaws only in our books of accounts. We have not submitted correct figures to ARAI, Pune. As against the registration of 3134 'Gokul Shakti' make chhakda rickshaws, registered with RTO, Ahmedabad, during the period 03.10.2005 to 30.09.2009, we have reported Nil production of chhakdos to the ARAI, Pune.

Ques: Please peruse panchnama dated 06.10.2009, drawn at M/s. Manish Auto, Nagarpalika Shopping Centre, Keshod. Explain.

Ans: I perused the above panchnama and put my dated signature on it. M/s. Manish Auto, Keshod is a broker of chhakado rickshaw. They are also engaged in the RTO reg/sfra/on, Insurance etc. work of chhakado rickshaw.

Ques: Please peruse page No. 93 of seized file mentioned at Sr. No. 1 of Annexure-A to the panchnama dated 06.10.2009, drawn at M/s. Manish Auto, Keshod. Explain.

Ans: I perused the above page and put my dated signature on it. The above page is the purchase invoice No. 37 dated 13.05.2008, issued by M/s. Swastik Electric Corporation, Keshod to M/s. Atithi Gokul Automobile Works. We had purchased one GL 400 BS II diesel engine from M/s. Swastik Electric Corporation, Keshod for Rs.33,500/-.

Ques: Please peruse diary mentioned at Sr. No. 4 of Annexure-A to the panchnama dated 06.10.2009, drawn at M/s. Manish Auto, Keshod. Explain.

Ans: I perused the above diary and put my dated signature on first and last page of the diary. The above diary contains details of chhakado rickshaws, manufactured by various manufactures, including M/s. Atithi Gokul Automobile Works. M/s. Manish Auto is a broker of chhakado rickshaw and is also engaged in the business of RTO and insurance work of chhakado rickshaws. The diary contains details such as name of buyer, amount, chasis no., date, engine no., registration No. etc. The 'Gokul Shakti' make chhakado rickshaws have been sold at the prices ranging from Rs.57,000/- to Rs.1,36,000/-. We had declared the value ranging from only Rs.45,000/- to Rs. 65,000/- per chhakado.

Ques: Please peruse worksheet showing details of 'Gokul Shakti' make chhakado rickshaws, prepared on the basis of the above diary. Explain.

Ans: I perused the above worksheet and put my dated signature on it and confirm that the above worksheet is prepared on the basis of above diary. I also confirm that the above diary contains details of 29 Nos. chhakado rickshaws, manufactured and cleared by M/s. Atithi Gokul Automobile Works.

Ques: Please peruse seized register mentioned at Sr. No. 7 of Annexure-A to the said panchnama dated 06.10.2009, drawn at M/s. Manish Auto. Explain.

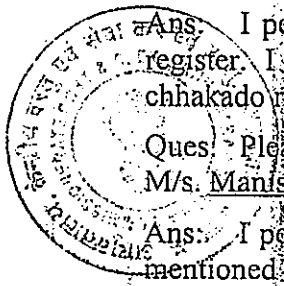
Ans: I perused the above register and put my dated signature on first and last page of the register. The above register contains details of chhakado rickshaws, manufactured by various manufactures, including M/s. Atithi Gokul Automobile Works. The register contains details such as name of buyer, chasis no., date, engine no. etc.

Ques: Please peruse the chart showing details of chhakado rickshaws, manufactured by M/s. Atithi Gokul Automobile Works, prepared on the basis of above register. Explain.

Ans: I perused the above chart and confirm that the same is prepared on the basis of above register. I confirm that M/s. Manish Auto have dealt with 80 Nos. 'Gokul Shakti' brand chhakado rickshaws, manufactured and cleared by us.

Ques: Please peruse statement dated 19.02.2010 of Shri Govindbhai Hirabhai Myatra, Karta of M/s. Manish Auto. Keshod and explain.

Ans: I perused the above statement and put my dated signature on it. I confirm that the facts mentioned in the above statement are true and correct and are acceptable to me.



Ques: Please peruse panchnama dated 06.10.2009, drawn at M/s. Parishram Marketing, 64, Mayur Market, Opp. Police Station, Keshod. Explain.

Ans: I perused the above panchnama and put my dated signature on the said panchnama. M/s. Parishram Marketing is an RTO/Insurance agent and financier of Chhakkdo rickshaws.

Ques: Please peruse registers mentioned Sr. No. 4 and 6 of Anneuxre-A to the panchnama dated 06.10.2009, drawn at M/s. Parishram Marketing, Keshod. Compare the details of the said registers with the chart showing details of 'Atithi' make chhakado rickshaws, registered with RTO, Ahmedabad. Explain in detail.

Ans: I perused the above registers and put my dated signature on first and last page of the registers. I confirm that the registers contain the details such as Sr. No., Name, Village, Taluka, District, Chasis No., Engine No., Registration No., Date etc. The above registers contain the details of chhakado rickshaws, manufactured by various manufacturers, including M/s. Atithi Gokul Automobile Works. M/s. Parishram Marketing, Keshod have dealt with many chhakkdo rickshaws, manufactured by us. I compare the details of chhakado rickshaws of the above registers with the details submitted by RTO, Ahmedabad and confirm that the details tally with each other. The CRTEM (Temporary Registration) of chhakado rickshaws, manufactured and cleared by us is obtained from RTO, Ahmedabad. After CRTEM, the vehicles are registered permanently at respective RTC, where the buyer of the vehicle resides.

Ques: Please peruse worksheet showing details of 'Gokul Shakti' make chhakdo Rickshaws, prepared on the basis of the above registers.

Ans: I perused the above worksheet and confirm that the chart is prepared on the basis of above two registers and contain the details of "Gokul Shakti" make chhakado rickshaws, dealt with by M/s. Parishram Marketing, Keshod. I confirm that M/s. Parishram Marketing have dealt with 64 Nos. chhakado rickshaws, manufactured and cleared by us. I also confirm that we have not issued Central Excise invoices against all the clearance of these chhakado rickshaws and we have not paid the duty on all the chhakado rickshaws.

Ques: Please peruse statement dated 20.11.2009 of Shri Nathubhai Gajera, Proprietor of M/s. Parishram Marketing, Keshod. Explain.

Ans: I perused the above statement and put my dated signature on the same. I also confirm that the facts mentioned in the above statement are true and correct and acceptable to me. M/s. Parishram Marketing are RTO/Insurance agent and undertake the work relating to passing of new Chhakkdo rickshaws and insurance thereof and also act as a financier and give loan to purchasers of Chhakkdo rickshaws.

Ques: Please peruse panchnama dated 06.10.2009, drawn at M/s. Chirag Auto Industries, Shop No. 02, Plot No. 71, Aman Society, Kalawad Road, Jamnagar. Explain.

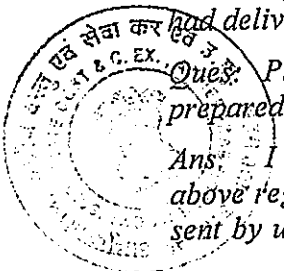
Ans: I perused the above panchnama and put my dated signature on it. M/s. Chirag Auto Industries were doing the job work of chhakado hckshaws. We had sent our vehicles to them for job work.

Ques: Please peruse seized register mentioned at Sr. No. 03 of Annexure-A to the above panchnama. Explain.

Ans: I perused the above register and put my dated signature on first and last page of the register. The above register contains the details of Chhakkdo rickshaws such as Name of the owner, village, taluka, district, date, Engine No., ChasisNo., Temporary Registration No. and Permanent No. etc. We had sent the chhakado rickshaws to M/s. Chirag Auto Industries for job work. We had sent the above vehicles after temporary RTO passing. They had also assembled Chhakkdo rickshaws, which were dismantled for transportation convenience and were delivered to the buyers. They had fitted additional accessories as per the requirement of customers and had delivered to the buyers.

Ques: Please peruse worksheet showing details of 'Gokul Shakti' make Chhakdo Rickshaws, prepared on the basis of the above register.

Ans: I perused the above worksheet and confirm that the chart is prepared on the basis of above register and contain the details of "Gokul Shakti" make chhakado rickshaws, which were sent by us for job work to M/s. Chirag Auto Industries. M/s. Chirag Auto Industries assembled



the chhakado rickshaws, fitted some accessories and delivered to the buyers. I confirm that M/s. Chirag Auto Industries, Jamnagar had undertaken job work of 312 Chakdo Rickshaws manufactured and cleared by us.

Ques: Please peruse statement dated 07.10.2010 of Shri Sabirbhai Yusufbhai Ghalkai, Proprietor of M/s. Chirag Auto Industries, Jamnagar.

Ans: I peruse the above statement and put my dated signature on it. M/s. Chirag Auto Industries is engaged in job work and repairing of Three Wheeled Motor Vehicles. We had sent chhakado rickshaws for job work to M/s. Chirag Auto Industries.

Ques: From where did you purchase the spare parts of chhakado rickshaws?

Ans: We had purchased diesel engines and gear boxes from the dealers. In some cases, the invoices of diesel engines were purchased in the name of buyers. We purchased other parts and spares from open market. We have purchased such parts in cash and the traders/dealers have not issued bills against the purchase of other parts and spares. We have not accounted for such parts and spares in our books of accounts. I confirm that we had sold the chhakdo rickshaws in cash to our buyers and we have utilized the cash to purchase the parts and spares from open market.

11 Shri Dinesh B, Bharwad, Partner of M/s. Atithi Gokul in his statement dated 28.10.2010 has confirmed that they have manufactured and cleared chhakado rickshaws, without issuing C. Ex. nvoices and without payment of C. Ex. Duty.

12 Result of investigation:

12.1 Investigations as discussed in the foregoing paras reveal that M/s. Atithi Gokul have evaded Central Excise duty by way of clandestine removal of the chhakdo rickshaws, manufactured and cleared from their factory. The investigations also revealed that they have not declared actual value of the chhakado rickshaws in their invoices. They have declared lower value in the invoices in order to reduce the burden of duty of excise and other taxes. Thus, they have also evaded the payment of duty of excise by way of gross undervaluation. The nature of evidences collected from the premises of M/s. Manish Auto, Keshod and M/s. Parishram Marketing, Keshod, M/s. Chirag Auto Industries, Jamnagar, M/s. Vishwakarma Engineering Works, Rajkot, the details of registration of chhakado rickshaws obtained from Regional Transport Offices, oral evidences recorded from the Partner of M/s. Atithi Gokul and other witnesses etc., as discussed in the foregoing paras, conclusively establish the entire modus operandi adopted by M/s. Atithi Gokul for large scale evasion of duty of excise.

12.2 The investigations from M/s. Manish Auto, Keshod, as discussed in para 6 supra revealed that M/s. Manish Auto, Keshod dealt with 80 Nos. chhakado rickshaws, manufactured by M/s. Atithi Gokul. M/s. Manish Auto is a broker of chhakado rickshaws and is also engaged in the RTO and insurance work of chhakado rickshaws. The above chhakados bear the chasis No. of M/s. Atithi Gokul. However, the ER-1 returns of M/s. Atithi Gokul show clearance of only 64 chhakados, during the period October, 2005 to April, 2008. Thus, it is evident that M/s. Atithi Gokul have cleared chhakado rickshaws, illicitly without payment of duty.

12.3 The investigations from M/s. Parishram Marketing, Keshod, as discussed in para 7 supra revealed that they have dealt with 64 chhakda rickshaws, manufactured and cleared by M/s. Atithi Gokul. M/s. Parishram Marketing is a broker of chhakado rickshaws and is also engaged in the RTO and insurance work of chhakado rickshaws. The above said chhakda rickshaws bears the chasis No. of M/s. Atithi Gokul. However, M/s. Atithi Gokul had shown clearance of only 64 chhakados in the ER-1 Returns during the period from October, 2005 to April, 2008. Thus, it is evident that M/s. Atithi Gokul have cleared chhakado rickshaws, illicitly without payment of duty.

The investigation from M/s. Chirag Auto Industries, Jamnagar, as discussed in para 8 supra revealed they were doing the job work of M/s. Atithi Gokul Automobile Works, Ahmedabad. M/s. Chirag Auto Industries, Jamnagar have undertaken job work of 312 Chakdo Rickshaws manufactured and cleared by M/s. Atithi Gokul. However, M/s. Atithi Gokul, during the period October, 2005 to April, 2008 have shown clearance of only 64 Chakdo Rickshaws. Thus, it is evident that M/s. Atithi Gokul have manufactured and cleared most of the chakdo rickshaws illicitly without payment of



centra! excise duty leviable thereon.

- 12.5 ARAI, Pune have recommended 'Greaves' make GL-400 model diesel engines to be fitted on the chhakado rickshaw. The investigation revealed that M/s. Atithi Gokul have also used other models of 'Greaves' make diesel engines viz. Model Nos. G 1080, G 1450, G 1510, G 5520, G 5530 etc. to manufacture chhakda rickshaw. The investigation revealed that all the above models except GL-400 are originally meant for water handling, agriculture or other purposes. The investigation also revealed that GL-400 is the only automobile engine model and other models are not automobile engines but are used for other purposes mentioned above. The investigation also revealed that the manufacturers of chhakado rickshaw have also used assembled diesel engines in their chhakado rickshaws. In order to show less quantity of purchase of diesel engines, the manufacturers got the bills prepared in the name of individuals from the dealers. This also explains the reason for purchase of less number of GL-400 Diesel Engines from the dealers by M/s. Atithi Gokul when compared to the actual number of Chakdo rickshaw manufactured and cleared by them.
- 12.6 The investigations, as discussed in brief in the foregoing paras reveal that M/s. Atithi Gokul have manufactured and cleared chhakdo rickshaws, without issuing C. Ex. Invoices and without payment of duty. The registration of chhakado rickshaws with RTO is statutory requirement and can not ply on road, without RTO registration. As per the details, submitted by RTO, Ahmedabad, 3134 chhakado rickshaws, manufactured and cleared by M/s. Atithi Gokul have been registered with RTO, Ahmedabad during the period October, 2005 to September, 2009. However, scrutiny of ER-1 returns reveals that they have cleared 64 chhakado rickshaws only, during the period October, 2005 to April, 2008. From the above, it is evident that during the period October, 2005 to September, 2009, M/s. Atithi Gokul have manufactured and cleared 3134 chhakdo rickshaws, but they have paid C. Ex. Duty on 64 chhakdo rickshaws only. Thus, during the period from October, 2005 to September, 2009, they have cleared 3070 chhakdo rickshaws, clandestinely, without payment of C. Ex. duty, which is required to be recovered from them along with interest.
- 12.7 During the searches carried out at various premises, documentary evidences, showing clandestine clearances of chhakado rickshaws by M/s. Atithi Gokul were recovered. The records recovered from M/s. Manish Auto, M/s. Parishram Marketing and M/s. Chirag Auto Industries, Jamnagar clearly establish that M/s. Atithi Gokul had manufactured and cleared chhakado rickshaws, without payment of duty of excise.
- 12.8 The oral evidences also indicate that M/s. Atithi Gokul were engaged in large scale evasion of excise duty by way of clandestine clearances. Shri Govindbhai Hirabhai Mytra, Karta of M/s. Manish Auto, Keshod, Shri Nathubhai Gajeria, Proprietor of M/s. Parishram Marketing and Shri Navinbhai Maganbhai Umrania, Partner of M/s. Vishwakarma Engineering Works in their statements categorically admitted that they had received Chhakdo rickshaws from M/s. Atithi Gokul without cover of C. Ex. Invoices or without proper documents. Shri Sabirbhai Yusufbhai Ghatkai, Proprietor of M/s. Chirag Auto Industries, Jamnagar has admitted that he had received chhakado rickshaws from M/s. Atithi Gokul, without payment of C. Ex. duty. Shri Dinesh B. Bharwad, Partner of M/s. Atithi Gokul has also confirmed the above facts.
- 12.9 The documentary as well as oral evidences, as discussed hereinabove reveal that M/s. Atithi Gokul were indulged in large scale evasion of Central Excise duty by resorting to illicit manufacture and clearance of chhakado rickshaws, without recording them in any of the statutory records, such as C. Ex. Invoices, daily stock accounts etc. From the above, it is evident that M/s. Atithi Gokul have manufactured and cleared chhakado rickshaws, without payment of duty of excise and other taxes. They have neither prepared any valid duty paying documents nor accounted for the quantity of excisable goods so manufactured and cleared by them, in any of the statutory records.
- 12.10 The oral evidences, as discussed hereinabove also reveal that M/s. Atithi Gokul have evaded duty of excise by of gross under valuation. They were not declaring the actual value of Chakdo rickshaw manufactured by them in their central excise invoices. The



value declared in the invoices was much lower than the actual value of the Chakdo. The scrutiny of documents recovered from M/s. Manish Auto, Keshod reveals that the chhakado rickshaws were being sold at the rates ranging from Rs.57,000/- to Rs.1,36,000/-. The scrutiny of ER-1 returns reveals that M/s. Atithi Gokul have declared the value ranging from Rs.45,000/- to Rs.65,000/- per chhakado. Thus, it is evident that M/s. Atithi Gokul have not declared actual value of the chhakado rickshaws. Thus, they have short paid duty by undervaluation also.

13 Quantification of duty:

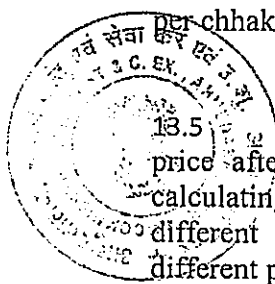
13.1 From the discussion in the foregoing paras, it is evident that M/s. Atithi Gokul have cleared their finished goods i.e. Chhakdo Rickshaws, illicitly without payment of Central Excise duty. They have accounted for small quantity of chhakado rickshaws in their statutory records. M/s. Atithi Gokul have not maintained any records of chhakado rickshaws, manufactured and cleared, illicitly, without payment of duty. It is also evident that M/s. Atithi Gokul have not declared actual value of the chhakado rickshaws in their C. Ex. Invoices. The value declared by them in the C. Ex. Invoices is much lower than the actual value of the chhakado. Thus, they have evaded the payment of duty of excise by way of gross undervaluation also.

13.2 As per Central Motor Vehicle Rules, each and every vehicle has to be registered with Regional Transport Offices. Accordingly, the chhakado rickshaws manufactured and cleared by M/s. Atithi Gokul were being temporarily registered with RTO, Ahmedabad. Therefore, in order to quantify the exact amount of duty not paid, the details of chhakado rickshaws temporarily registered with RTO, Ahmedabad, submitted by RTO, Ahmedabad have been relied upon. The C. Ex. Duty is demanded on the total number of chhakdo rickshaws bearing the name of M/s. Atithi Gokul and registered with RTO, Ahmedabad.

13.3 During the period October, 2005 to April, 2008, M/s. Atithi Gokul have shown clearance of only 64 chhakado rickshaws, on payment of duty. During the period October, 2005 to September, 2009, 3134 chhakdo rickshaws bearing the name of 'Atithi Gokul' have been registered with RTO, Ahmedabad. During the period October, 2009 to June, 2010, 107 chhakdo rickshaws bearing the name of 'Atithi Gokul' have been registered with RTO, Ahmedabad. Thus, during the period October, 2005 to June, 2010, M/s. Atithi Gokul have cleared 3177 chhakado rickshaws, without preparing C. Ex. invoices and without payment of C. Ex. Duty. They have not accounted for these 3177 illicitly cleared chhakado rickshaws in any of their records. Therefore, C. Ex. Duty on 3177 chhakado rickshaws, manufactured and cleared clandestinely, without payment of duty is required to be recovered from M/s. Atithi Gokul along with interest.

13.4 M/s. Atithi Gokul have not declared actual value of the chhakado rickshaws. The value declared by them is much lower than the actual value of the chhakado rickshaws. The records recovered from M/s. Manish Auto, Keshod, as discussed in para 6 supra revealed that the value the chhakado rickshaws, manufactured and cleared by M/s. Atithi Gokul were being sold at the rates ranging from Rs.57,000/- to Rs.1,36,000/-. The scrutiny of ER-1 returns reveals that M/s. Atithi Gokul have declared the value ranging from Rs.45,000/- to Rs.65,000/- per chhakado only. The details of 18 chhakado rickshaws are available. Therefore, the average price has been considered for calculating the C. Ex. duty not paid by M/s. Atithi Gokul. M/s. Atithi Gokul have sold above 18 chhakado rickshaws for an amount of Rs.18,05,000/-. Therefore, the average price per chhakado comes to Rs.1,00,278/- per chhakado.

13.5 The above price is the sole consideration for sale of chhakado. Therefore, the price after deducting C. Ex. duty and VAT has been considered as assessable value for calculating the C. Ex. Duty not paid by them. The rates of C. Ex. duty were different during different periods. Therefore, the assessable value per chhakado has been calculated during different periods. The assessable value of chhakado during different periods are as under:



Period	Total value (Rs. Per Chhakado)	Rate of C. Ex. Duty	Rate of VAT	Assessable value after deducting C. Ex. Duty and VAT
01.12.2005 to 28.02.2007	100278	16.32	15	74964
01.03.2007 to 28.02.2008	100278	16.48	15	74861
01.03.2008 to 06.12.2008	100278	14.42	15	76209
07.12.2008 to 23.02.2009	100278	10.3	15	79055
24.02.2009 to 28.02.2010	100278	8.24	15	80560
01.03.2010 to 30.06.2010	100278	10.3	15	79055

13.6 The above assessable value has been considered for calculating the C. Ex. Duty not paid by M/s. Atithi Gokul. The chart showing calculation of duty not paid on the chhakado rickshaws, cleared illicitly, during the period October, 2005 to September, 2009 is as per Annexure E-1 enclosed to this notice. Therefore, C. Ex. Duty amounting to Rs.3,82,85,626/- is required to be recovered from them along with interest.

13.7 As discussed hereinabove, M/s. Atithi Gokul were not declaring actual value of the chhakado rickshaws in their C. Ex. Invoices. The value declared by them was much lower than the actual value of the chhakados, manufactured and cleared by them. During the period October, 2005 to April, 2008, M/s. Atithi Gokul have shown clearance of only 64 chhakado rickshaws, on payment of duty. They have declared these chhakado rickshaws by declaring assessable value of Rs.45,000/- or Rs.65,000/-. Therefore, the Central Excise duty short paid on 64 chakdos cleared during the period October, 2005 to April, 2008 on account of under valuation is calculated by considering the value, discussed in para 13.5 supra. The chart showing calculation of duty short paid on these 64 chakdos is as per Annexure E-2 enclosed to this notice. Therefore, C. Ex. Duty short paid amounting to Rs.1,76,028/- is required to be recovered from them along with interest.

13.8. It is also noticed that M/s. Atithi Gokul have not paid M. V. Cess on 3241 chhakko rickshaws, cleared during the period October, 2005 to June, 2010. Therefore, M. V. Cess is also required to be recovered from them on 3241 chhakado rickshaws cleared by them during the October, 2005 to June, 2010. Therefore, the M. V. Cess not paid by them on 3241 chakdos cleared during the period October, 2005 to June, 2010 is calculated by considering the value, discussed in para 13.5 supra. The above value is considered to calculate the M. V. Cess not paid by them. The chart showing calculation of M. V. Cess not paid is annexed as Annexure E-3 to this notice. Therefore, M. V. Cess amounting to Rs.3,04,419/- is also required to be recovered from them along with interest.

14 Contraventions of provisions of Central Excise Act and Rules:

14.1 M/s. Atithi Gokul have contravened the following provisions of Central Excise Act, 1944 and the Rules made thereunder:

- (i) Section 3 of the Central Excise Act, 1944 in as much as they have cleared the excisable goods without appropriate payment of central excise duty;
- (ii) Rules 4 and 8 of the Central Excise Rules, 2002 (here-in-after referred to as "CER, 2002"), in as much as they failed to discharge appropriate Central Excise duty payable on the finished excisable goods viz. chhakado rickshaws, cleared to various buyers, at the appropriate time and in the manner prescribed under the said Rules; .
- (iii) Rule 6 of CER, 2002, in as much as they have failed to remove the excisable goods on payment of appropriate Central Excise duty and follow proper procedure regarding self determination of duty as prescribed in the said Rules;
- (iv) Rule 9 of the CER, 2002, in as much as they have failed to obtain Central Excise

registration:

(v) Rule 10 of CER, 2002, in as much as they have not maintained the account of such stock of finished excisable goods manufactured and clandestinely removed by them, without making appropriate entries in the statutory stock register in Form 'Daily Stock Account' and/or private Stock Account of finished excisable goods, as prescribed under the said Rules;

(vi) Rule 11 of CER, 2002, in as much as they failed to prepare proper Central Excise invoice in respect of goods clandestinely cleared, as prescribed under the said Rules;

(vii) Rule 12 of CER, 2002, in as much as they furnished false monthly returns without including the details of manufacture and clearance of such finished excisable goods which were clandestinely cleared;

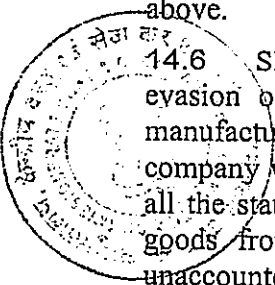
14.2 They have procured and consumed required raw materials for manufacture of the Chakdo Rickshaw, but did not account for all such raw materials in their records and thereby contravened the provisions of the Central Excise Rules, 2002 and the supplementary instructions issued there under, in as much as, they failed to account for the impugned quantities of raw materials and excisable goods manufactured out of it in their books of accounts, and have dealt with the said goods in the manner not prescribed under the Central Excise Act and the Rules made there under.

14.3 In view of aforesaid violations of Central Excise Act, 1944 and Rules made there under, M/s. Atithi Gokul appears to be liable for penal action under rule 25 of the Central Excise Rules, 1944. The duty was evaded by way of fraud, wilful mis-statement, suppression of facts and contravention of the provisions of Central Excise Act, 1944 and Rules made there under with intent to evade duty. Therefore, M/s. Atithi Gokul are liable to penal action under Section 11 AC of the Act, *ibid*. Due to the aforesaid reasons, the C. Ex. duty not paid by way of clandestine clearance is recoverable from them by invoking extended period of 5 years as per proviso to Sub-section (1) of Section 11A of the Act, *ibid*. They are also liable to pay interest under Section 11AB of the Act, *ibid* on duty not paid or short paid.

14.4 It also appears that all these acts of contravention on the part of the assessee appears to have been committed with sole intention to evade payment of C. Ex. Duty. The assessee suppressed the fact of manufacture and clearance of excisable goods from the department and cleared their goods without payment of duty by reason of fraud, willful misstatement and by suppressing the material facts and therefore duty totally amounting to Rs.3,87,66,073/- (as detailed in Annexure E-1 to E-3 to this notice) is required to be demanded and recovered from them under the proviso to section 11A (1) of the Central Excise Act, 1944 by invoking extended period of limitation of five years along with interest under section 11AB of the said Act. Further, the assessee has rendered them liable to penalty under section 11 AC of the said Act for the acts and omissions as described above. The noticee is also liable to penal action under Rule 25 of the Central Excise, 2002 for the contravention of the various Central Excise Rules as mentioned above.

14.5 M/s. Manish Auto, Keshod, M/s. Parishram Auto, Keshod, M/s. Chirag Auto Industries, Jamnagar and M/s. Vishwakarma Engineering Works, Rajkot appear to have dealt with the chhakado rickshaws, manufactured and cleared without payment of C. Ex. duty by M/s. Atithi Gokul. M/s. Manish Auto, Keshod, M/s. Parishram Auto, Keshod, M/s. Chirag Auto Industries, Jamnagar and M/s. Vishwakarma Engineering Works, Rajkot had acquired possession of, or in any way concerned themselves in transporting, depositing, keeping, concealing, selling or purchasing, or in any other manner dealt with chhakado rickshaws, which they knew or had reasons to believe that no Central Excise duty had been paid on such goods and the goods were liable to confiscation under C. Ex. Act or Rules made thereunder. Yet they have dealt with such goods in contravention of the Central Excise Act and the Rules made thereunder. Therefore, M/s. Manish Auto, Keshod, M/s. Parishram Auto, Keshod, M/s. Chirag Auto Industries, Jamnagar and M/s. Vishwakarma Engineering Works, Rajkot are also liable to penal action under Rule 25 of the Central Excise, 2002 for the contravention of the various Central Excise Rules as mentioned above.

14.6 Shri Dinesh B. Bharwad, Partner of M/s. Atithi Gokul appears to have masterminded the evasion of Central Excise duty on the finished excisable goods viz. chhakado rickshaws, manufactured and cleared by M/s. Atithi Gokul, in as much as all the day to day work of his company was looked after by him and he was overall supervisory in-charge for maintenance of all the statutory records relating to receipt, consumption, production and dispatch of excisable goods from their factory. He further appears to have closely handled the realization of unaccounted portion of sale proceeds, as the remittances of such unaccounted amounts were paid



by the buyers to him. He appears to be the key person in arranging purchase of required raw materials, production, storage, dispatch and sale the subject goods to the buyers. All the finance related work such as making payments to suppliers of raw materials, follow-up of payments against supplies made to various buyers, banking etc. appears to be closely monitored and appropriate decisions and actions are taken by him. Further, it is established beyond doubt that he was in-charge of all the daily business being transacted by M/s. Atithi Gokul. Thus, he has concerned himself in manufacturing, storing, depositing, concealing, removing, selling and in all such manners dealt with excisable goods on which no Central Excise duty has been paid. Thus he had reasons to believe that such goods so removed were liable for confiscation. Yet he dealt with such goods in contravention of the Central Excise Act and the Rules made there-under. It therefore, appears that Shri Dinesh B. Bharwad, Partner of M/s. Atithi Gokul is liable to penal action under rule 26 of Central Excise Rules 2002.

15. Therefore, M/s Atithi Gokul Automobile Works [the assessee] vide notice F.No.DGCEI/AZU/36-109/2010-11 dated 04.11.2010 were called upon to show cause to the Commissioner, Central Excise, Ahmedabad-II, as to why-

- (i) Central Excise duty amounting to Rs.3,84,61,654.00 [as detailed in Annexure-E1 and E2 to notice dated 04.11.2010] and MV Cess Rs.3,04,419.00], as detailed in Annexure-E3 to the notice, should not be recovered from them under proviso to Section 11A(1) [now Section 11A(4)] of the said Act;
- (ii) Interest at appropriate rate on the aforesaid amount should not be recovered from them under Section 11AB [now Section 11AA] of the said Act; and
- (iii) Penalty under Section 11AC of the said Act read with Rule 25 of the said Rules should not be imposed upon them.

15.1 Shri Dinesh B. Bharwad, partner of the assessee was also called upon to show cause as to why personal penalty should not be imposed upon them under Rule 26 of the said Rules.

15.2 M/s Manish Auto, Keshod; M/s Parishram Marketing, Keshod; M/s Chirag Auto Inds, Jamnagar; and M/s Vishwakarma Engineering Works, Rajkot; were also called upon to show cause as to why personal penalty should not be imposed upon them under Rule 25 of the said Rules.

16. Further Show Cause Notice No. DGCEI/AZU/36-04/2010-11, dated 02.04.2010, was issued to the assessee, M/s. Vishwakarma Engineering Works and Shri Rajshakti Auto Industries, for confiscation of seized goods i.e one chakkdo rickshaw at the premises of M/s. Shree Rajshakti Automobile Works, Ahmedabad and 15 chhakado rickshaws at the premises of M/s. Vishwakarma Engg. Works, Rajkot. Penalty was proposed to be imposed upon them under Rule 25 of the Central Excise Rules, 2002.

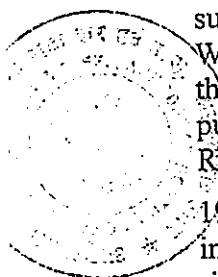
17. The assessee vide dated 15.06.2012 requested for provisional release of 15 vehicles seized under panchnama dated 06.01.2010 at the premises of M/s Vishwakarma Engg Works, Rajkot, which were ordered to be provisionally released vide letter dated 26.06.2012 on execution of Bond for Rs. 12,08,400/- with security equal to 25% of the value of bond amount.

18. Since the letters dated 11.05.2011 sent to the assessee and Shri Dinesh B. Bharwad requesting them to file reply to the notices were received back from the postal authorities, the same were served under panchnamas on 18.08.11 by the jurisdictional Range Superintendent. All subsequent letters dated 04.07.12, 13.08.12 and 30.08.12 intimating the dates of personal hearing on 17.07.12, 30.08.12 and 18.09.12 were served to the assessee, M/s Shree Rajshakti Automobiles and Shri Dinesh B. Bharwad under panchnamas.

19. DEFENCE REPLY

19.1 The assessee, vide its letter dated 15.09.2012 filed its reply. They have inter alia, submitted that during the course of search in the premises of M/s Vishwakarma Engineering Works, Rajkot, on 06.10.2009, its Supervisor Shri Tushar Praveenchandra Sata, informed that they had been engaged in manufacture of chhakda rickshaw since last 10 years; that for this purpose, they were holding Central Excise Registration; that they had surrendered the Registration in June, 2008.

19.2 That during the course of search of M/s Manish Auto, Keshod, on 06.10.2009, it was informed by Shri Laxmanbhai A. Balsara that they were engaged in the manufacture of chhakda rickshaw, for which the required parts were purchased from various local dealers; that they were



not registered with ARAI; that as such the sale letters were procured by them from the registered manufacturers.

19.3 That though M/s Manish Auto and M/s Viswakarma Engineering Works had manufactured vehicles, the list relating to chhakda rickshaw manufactured by various manufacturers in Gujarat from 2006-06 to 2008-09 does not reveal anything about these two firms; that no investigation about the details of the names from whom the sale letter were procured for temporary registration from RTO had been conducted; that under the Central Excise law, the person, who actually undertakes manufacturing, is considered as manufacturer and is required to pay duty; that the investigation would have brought the fact on record that for the chhakda rickshaw manufactured by these two firms, temporary registration was sought based on the sale letters given by the manufacturers with ARAI but the duty liability was fastened on the person other than the manufacturer; that the RTO had registered the vehicles based on sale letters submitted to them without any verification of actual manufacturer; that, thus, the demand of duty against them was based on report received from RTO, was inconclusive investigation and presumption; that, therefore, the proceedings were vitiated;

19.4 That the allegation of clandestine removal in the impugned notice was not supported by cogent and corroborative evidence; that the procurement of raw materials has not been proved; that the basis of the present demand was based only on records recovered from the premises of M/s Manish Auto, M/s Parishram Marketing, and M/s Chirag Auto Indus; that the entries made by third party cannot be applied to them; that the entries need to be verified for its correctness before demanding any duty from them; that they desired to cross-examine the following persons, whose statements had been relied upon and the documents recovered from their premises had been considered as evidence to sustain the charge of clandestine manufacture and removal by them -

- (i) Shri Govindbhai Hirabhai Mytra, Proprietor of M/s Manish Auto, Keshod,
- (ii) Shri Nathubhai Gajera, Proprietor of M/s Parishram Marketing, Keshod,
- (iii) Shri Sabirbhai Yusufbhai Ghatkai, Proprietor of M/s Chirag Auto Inds, Jamnagar,
- (iv) Shri Kishor Gordhanbbhai Chandra, Partner of M/s New Chandra Motor Cycle House,
- (v) Shri Mansukh Patel, Proprietor of M/s Dattatrey Auto Centre, Rajkot,
- (vi) Shri Kasambhai Umarbhai Kaida, proprietor of M/s Kamal Auto Centre, Rajkot.

19.5 That since the demand was based on the report submitted by the RTO vide letter dated 03.12.2009, they would like to cross-examine him to appreciate the method and procedure adopted by him for temporary registration; that in the case of State of Kerala Vs M M Mathew [AIR 1978 (SC) 1517], it was held that a satisfactory proof to the effect that the place from which the secret books of account were seized formed part of the place of business of the respondents was required to be established.

19.6 That that applying the ratio of the above decision, the investigation has not been able to link any evidence to show that the vehicles bearing their name as maker in the RTO records, were manufactured and cleared clandestinely by them;

19.7 That in decisions by the appellate Tribunal in the cases of M/s Arti Steels Ltd [1999 (114) ELT 537 (T)], M/s Velavan Spinning Mills [2004 (167) ELT 91 (T)], M/s Murugan Enterprise [2003 (162) ELT 233 (T)], M/s CDC Carbolite [2002 (148) ELT 1001 (T)] and M/s Ambica Chemicals [2002 (148) ELT 101 (T)], it was held that charge of clandestine manufacture and removal solely based on private records and registers was not sustainable in absence of corroborative evidence; that they stood on a better and stronger footing as no document has been recovered from their place to show that they had undertaken manufacturing of vehicles clandestinely; that report given by RTO may give rise to some suspicion but it cannot be a substitute for proof as held in the case of State of Punjab Vs Bhajan Singh [AIR 1975 (SC) 259]; that allegation of clandestine manufacture and removal were sought to be sustained on the basis of confessional statement given by the partner; that mere confession does not amount to proof as held in the case of M/s Krishna & Co Vs CCE [1998 (97) ELT 74 (T)] and Gopalchand Khandelwal Vs DRI [2009 TIOL 535 HC Del Cus].

19.8 That even if it was accepted that they had manufactured the vehicles, it was submitted that the same cannot be manufactured without the raw material like Gear boxes, Diesel Engines, etc; that purchase of 940 Greaves make Diesel Engines from various dealers was merely a bald

statement in absence of details not having been brought out in the notice; that the allegation that they had instructed the dealers of Diesel Engines to prepare invoices in the names of individual buyers and payment was made by them in cash/DD, was not supported by any evidence; that recovery of plate (monogram of Greaves Cotton) from the premises of M/s Dattatreya Auto Centre, Rajkot, should have created some suspicion in the mind of investigating officers.

19.9 That it was not clear as to how Shri Kishor G. Chandra, partner of M/s New Chandra Motor Cycle House, Jamnagar, was aware that during the course of recording of his statement, details of sale of Diesel Engine manufacturer-wise for last four year, would be required to be submitted in view of the fact that he was given summons dated 23.07.2010 and his statement was recorded on 23.07.2010; that source of compilation of figures have not been revealed in the notice; that as such, they were deprived of the opportunity to meet with the allegation levelled against based on the statement of Shri Kishor G.Chandra.

19.10 That similarly, the statement of Shri Pankaj Panara, authorised signatory of M/s Deepak Sales Agency, Junagadh, Shri Maganlal H Dadhania, partner of M/s Swastik Electric Corporation, Keshod, and Shri Prathmesh J. Shah, proprietor of M/s Electric Trading Company, Ahmedabad, were recorded; that the former two stated that they would submit the details of sale of Diesel Engines within 2 – 3 days and the last dealer stated that he had already submitted the details that these two statements were of no consequence in arriving at any inference against them for sustaining the charge; that the department had failed to corroborate the allegation of purchase of Gear Boxes or Diesel Engines without which the manufacture of vehicles was not possible; that as held in the cases of Ruby Chlorates [2006 (204) ELT 607 (T)] D Suyaraj [2001 (135) ELT 202 (T)], Minakshi Steels [2005 (190) ELT 395 (T)], Chemco Steels [2005 (191) ELT 856 (T)], M/s Velavan Spinning Mills [2004 (167) ELT 91 (T)], charge of clandestine removal without establishing procurement of inputs was not sustainable.

19.11 That the notice was issued on the basis of registration numbers obtained from RTO without proving viability of the same; that if the Deptt alleges that the assessee had removed the vehicles mentioned therein, the Deptt should prove it with the help of corroborative evidence; That, as held in the cases of Rama Shyama Papers [2004 (168) ELT 494 (T)], Opel Alloys [2005 (182) ELT 64 (T)], Ruby Chlorates [2006 (204) ELT 607 (T)], Biharji Mfg [2005 (186) ELT 587 (T)], Charminar Bottling Co [2005 (192) ELT 1057 (T)], onus to establish the entries and clandestine removal lies on the part of the Deptt.

19.12 That since the report dated 03.12.2009 of the RTO showing 3134 entries, on the basis of which Annexure-A to notice was prepared, was not furnished to them and the entries did not reveal the names of the buyers, they were unable to offer any comment.

19.13 That the information provided by the RTO was based on documents and it does not lead to any inference that the vehicles registered were manufactured by a particular manufacturer.

19.14 That non-submission of production details for the period from 2005-06 to 2008-09 to ARAI in terms of Rules 126 of the Central Motor Vehicle Rules, 1989 [for short, CMVR], does not *ipso facto* lead to conclusion of production/non-production of vehicles by them; that in the scanned image of ARAI certificate, the name of manufacturer has been shown as Atithi Gokul Automobiles Works, Plot No.9, GIDC, Anjar, Kutch; that no investigation at the said plant was carried out; that inquiry being inconclusive and incomplete, no adverse inference can be drawn against them on the basis of such certificate of ARAI; that other manufacturers, who do not hold ARAI certificate, seek permission from the certificate holders to manufacture and get the said vehicles registered with the RTO as if the same were manufactured by the certificate holder; that these facts were corroborated by Shri Laxmanbhai Balsara of Manish Auto at the time of drawl of panchnama on 06.10.2009; that the said Rule 126 of the CMV Rules stipulated submission of prototype of the vehicles; that the said requirement is only for the compliance of the provisions of the CMV Rules; that non-obtaining of such a certificate from ARAI, does not make the goods liable for confiscation under the provisions of Central Excise law in view of the fact that both the enactments were for two different purposes; that provisions of CMV Rules cannot be applied to the proceedings under the Central Excise law.

19.15 That inference drawn that as the figures submitted by the assessee to ARAI, reported in ER-1 returns and the actual quantity of vehicles cleared as per the report of the RTO do not tally, the assessee had not disclosed the correct figures to the Department, was based on conjectures and surmises and without any basis.

19.16 That Rule 122 of the CMV Rules requires embossment, etching or punching of Chassis No., month and year of manufacture on or after 01.04.2009 in respect of vehicles falling

under category - L, M & N; that it had not been revealed what type/category of vehicles were manufactured by them; that Rule 122(2) ibid provides that the vehicle manufacturer shall intimate the certifying testing agency, the place where the numbers shall be embossed and that the said place shall not be changed without prior intimation to the testing agency; that the investigating agency had not conducted any investigation with ARAI to ascertain as where the Chassis number or the Engine No. was required to be embossed and compare the same physically with the Chassis/Engine numbers available on the vehicles.

19.17 That Section 39 of the CMV Act merely makes registration necessary for the owner of the vehicle and does not impose any condition on the manufacturer; that it cannot be argued by the department that the vehicles showing their name as maker, were manufactured by them; that registration of vehicle cast upon the owner; the manufacturer cannot be made liable for any action.

19.18 That Rule 42 to Rule 47 of the CMV Rules have been dealt in support of charge of clandestine manufacture and removal by them; that Rule 33 of the CVM Rules provides that a motor vehicle in possession of a dealer shall be exempt from necessary registration subject to condition that he obtains trade certificate; that on a cumulative reading of Rule 33 and Rule 42, it is precisely clear that the said Rules are applicable to a dealer only and for a manufacturer; that since the assessee was admittedly a manufacturer, provisions of Rule 42 cannot be made applicable against them for arriving at any adverse inference; that, therefore, reference to Rule 43 and 44 of the CMV Rules were not applicable in their case as they were -manufacturer and not a dealer; that since Section 43 starts with a non-obstante clause, it means that Section 43 would prevail over all other sections for registration of vehicle; that thus the obligation to obtain temporary certificate is on the owner of the vehicle and not on the manufacturer; that reliance on the report from RTO was not correct as Section 44 provides for production of the vehicle by the person applying for registration of the vehicle; that Section 40 of CMV Act provides that every owner of a motor vehicle to cause vehicle to be registered; that no efforts had been made to locate the owners of the said vehicles purported to have been manufactured by the assessee; that it had been alleged that temporary registration takes place where the factory of the manufacturer is situated and permanent registration takes place where the buyer of the vehicle resides; that the Section 43 of the MV Act provides registration by the owner; that no evidence the vehicles registered with RTO Ahmedabad, were manufactured by the assessee.

19.19 That the charge that even after surrender of registration on 02.05.2008, the assessee continued to manufacture and remove excisable goods was required to be proved by adducing positive and tangible evidence; that it was obligatory on the part of the investigating officer to have brought on record the documents required to be submitted for obtaining temporary registration with the documents recovered from the premises of the assessee to corroborate the charge that the vehicles registered with RTO Ahmedabad, were manufactured and cleared clandestinely by the noticee.

19.20 That no inquiry with the owner of the vehicle [Shri Rathod Pravin Parbatbhai] shown on page 77 [diary seized at Sr.No.4 of Annexure-A to panchnama a dated 06.10.09 drawn at the premises of M/s. Manish Auto, Keshod] had been conducted; that the said details do not tally with Annexure A to the notice dated 04.11.10.

19.21 That as held in the case of Ganga Rubber Ind [1989 (39) ELT 650], Kashmir Vanaspati [1989 (39) EO 655], and Shree Packaging [1987 (32) ELT 94], to uphold the charge of clandestine removal, the entire chain right from the procurement of the raw material to its consumption, manufacture of the goods and ultimate transportation has to be established.

19.22 That as held in the case of Rama Shyama Papers [2000 (168) ELT 494], it was necessary to bring on record to show the vehicles were manufactured and cleared from their factory as also evidence of the ultimate owners show that they had purchased the goods manufactured by them; That third party evidence was required to be corroborated by evidence; that applying ratio of the decisions in the cases of Sarvana Alloys Steels [2011 (274) ELT 248], Sulekhrum Steels [2011 (273) ELT 140], Prince Gutka [2006 (194) ELT A125 (SC)], Ravishankar Inds Ltd [2002 (150) ELT 1317], Ravi Food [2011 (266) ELT 399], Kaveri Lime Ind [2005 (189) ELT 285], Renny Steel Castings [2011 (274) ELT 94], Gandhi Texturisers [2008 (230) ELT 186], Opel Alloys [2005 (182) ELT 64], Rinkoo Processors [2007 (212) ELT 529], the charge of clandestine manufacture and clearance cannot be considered to have been proved remotely.

19.23 That as held by the Tribunal in the case of Haryana Petrochemicals [2002 (149) ELT 902] it was obligatory to disclose the source of entries in the register/diary seized from the

premises of brokers viz M/s Manish Auto and Parishram Marketing.

19.24 That as held in the cases of Mahavir Plastic [2010 (255) ELT 241], Sujana Steel [2009 (243) ELT 711], Aditya Ind [2007 (220) ELT 196], Sridhar Paints Vs CCE Hyderabad-III, in case of confirmation of demand, related benefit Cenvat credit paid on the inputs should be extended to them; that gear boxes purchased from M/s Royal Enfield and Diesel Engines purchased from Greaves Cotton during the period December, 05 to Sept. 09 ;

19.25 That as held in the case of Maruti Udyog [2005 (179) ELT A102 (SC)], Srichakra Tyres [2002 (142) ELT A279 (SC)], MK Asokan [2003 (151) ELT A187], Mahavir Plastic [2010 (255) ELT 241], Vapi Paper Mills [1993 (67) ELT 109] Monarch Metals [2002 (148) ELT 826], Narang Scientific Works [2003 (152) ELT 305], the demand may be reduced proportionately by treating the invoice amount as cum-duty price.

19.26 That average price had been adopted on the basis of price shown in the seized diary from the premises of M/s Manish Auto; that said diary contained the final price of the financed vehicle; that there was no evidence that the said price was the price charged by them; that in terms of Section 4 of the Central Excise Act, the assessable value would be the price at which the goods are sold by the manufacturer and does not include Sales Tax, Excise duty or any other tax; that as held in the case of Baba Synthetics [2012 (278) ELT 113], no evidence to show that the value as shown in the invoices raised by them was not correct and that they had recovered excess amount from their buyers; that in absence of evidences showing collection of additional consideration, enhancement of value was not sustainable; that as held in the case of Sterlite Ind [2005 (189) EWL 329], the onus to adduce receipt of extra consideration was on the department.

19.27 That the proposal of recovery of differential duty of Rs. 1,76,028.00 [as detailed in Annexure E2 for the period from 1.10.2005 to 6.12.2008] was not sustainable on the ground that abatement towards the duty and taxes from the total value was not given to them. It was further submitted that since they had filed ER1 returns showing details of vehicles manufactured together with its value, extended period was not invocable. The same argument was adopted for demand of differential MV cess as shown in Annexure E3 to the said notice.

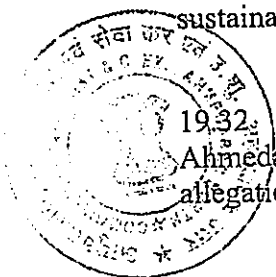
19.28 That it was held in case of Rainbow Ind [1994 (74) ELT 3 (SC)], essential ingredient viz. suppression, willful mis-statement and fraud with intent to evade payment of duty were absent in the notice.

19.29 That in the case of Chemphar Drugs & Liniments [1989 (40) ELT 276 (SC) and Padmini Product, it was held that mere inaction or mere negligence or failure to pay duty on the part of manufacture was not sufficient ground to allege suppression and invoke extended period. That as held in the case of Tulsiani Builder and Textiles [2012 (276) ELT 451 (Guj)] since clandestine removal of the excisable goods was not proved, extended period of limitation was not invocable.

19.30 That imposition of penalty was not justified as no evidence direct or even indirect had been adduced to show that they had some knowledge of contravention of law - Liladhar Pasoo Forwarders [2000 (122) ELT 737].

19.31 That it has been consistently held by the Courts/Tribunals that penalty should not be imposed in ordinary course unless it could be shown that the person had acted deliberately in defiance of law - Southern Steels [AIR 1970 SC 253 = 1979 ELT (J.402)]; that further as held in the case of Akbar Badruddin Jiwani [1990 (47) ELT 161 (SC)] imposition of penalty was not warranted in absence of mens rea; that as held in the cases of Karnataka Mineral 85 Mfg Co [1989 (41) EKT 444] and Smt Shyam Kumari [1982 ELT 391 (CBEC)], penal liability depends on the role played; that since the show cause notice does not disclose any of the roles played by them in the alleged offence, no penalty could be imposed on them; that in the case of Brahma Vasudeva [1988 (33) ELT 20 (P&H)], it was held that in absence of a whisper or a remote reference as to in what manner the petitioners were in any way concerned with the commission of offence, the noticee could not be proceeded against; that interest under Section 11AB was not sustainable as the interest was payable only after duty was determined.

19.32 Shri Dinesh B. Bharwad, partner of M/s Atithi Gokul Automobile Works, Ahmedabad, filed his defence vide letter dated 15.09.2012. It was, inter alia, submitted that allegation in para 14.5 of the notice dated 04.11.10 for imposing penalty under Rule 26 of the



Central Excise Rules, 2002, was without any basis; that it was only stated by him that day-to-day work of the assessee was handled by him; that he never stated that he had handled the realization unaccounted portion of sale proceedings; that the Hon'ble Supreme Court in the case of Southern Steel Ltd [AIR 1970 SC (253) = 1979 ELT (J.402)] has held that for imposition of penalty it has to be brought on record that the party had acted deliberately in defiance of law; that in the present case, there was nothing on record which revealed that he had acted in any way in defiance of law; that element of *mens rea* viz willfully, maliciously, fraudulently, recklessly, negligently, corruptly, feloniously and wantonly were absent in his case; that as held in the case of Akbar Badruddin Jiwani [1990 (47) ELT 161 (SC)], before imposing penalty, requisite *mens rea* has to be established.

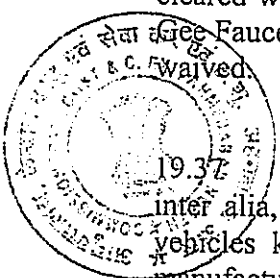
19.33 That the assessee was a partnership firm; that as held in the case of Harish Dyeing & Printing Works [2001 (138) ELT 772] and BC Sharma [2000 (122) ELT 158], penalty was not imposable on a partner.

19.34 That some degree of involvement of knowledge of contravention on the party of the abettor must be shown as held in the case of Liladhar Pasoo Forwarders [2000 (122) ELT 737 (T)]; that did not have remotest knowledge that the goods manufactured and cleared by the assessee were liable to confiscation; that as per the decision in (165) ELT 206, no penalty can be imposed on him. That in the case of Smt. Shyam Kumari & Ors [1982 ELT 392(CBEC)], it was held that penal liability depends on the role played by each of the persons to be penalized after examining seriousness of his role.

19.35 That in the case of Brahma Vasudeva [1988 (33) ELT 20 (O&H)], it was held that petitioner in that case could be proceeded against since complaint was not maintainable; that in the case of Vidyavati [1988 (37) ELT 341 (Del)], the High Court had held that in absence of material on record that the person concerned was in charge and responsible to the company for the conduct of the business, the accused was liable to be discharged; that no evidence has been disclosed that he was responsible for the omission and commission of offence and had prior knowledge that the goods were liable to confiscation; that as held in the case of ITC [1992 (59) ELT 163 (T)] preknowledge of liability of the goods to confiscation was must; that in the case of Steel Tubes of India [2007 (217) ELT 506 (T)], it was held that penalty could be imposed only if the excisable goods had been dealt with by a person sought to be penalized; that there was no evidence which even remotely suggested that he had dealt with the goods knowing or having reasons to believe that the same were liable to confiscation. It was, therefore, submitted that no penalty could be imposed on him under Rule 26 of the Central Excise Rules, 2002.

19.36 Shri Paresh V. Sheth, Advocate, vide his letters dated 16.2.2011, 09.03.2012 filed reply on behalf of M/s Parishram, and M/s Manish Auto, inter alia, submitted that his clients was involved in the business of registration of the vehicle in the capacity of an agent with the RTO; that for the purpose of registration, his clients was submitting prescribed application, sales invoice, ID proof of the buyers, insurance slip, etc necessary for registration of vehicle; that it is clear that his clients had submitted all supporting documents to get the vehicles registered; that they were getting the vehicles registered on the basis of Form-21 & 22 and Sales Invoice given by the manufacturer; that his clients could not have knowledge about contravention of the provisions by the assessee by suppressing the clearance value in the ER-1 returns; that, therefore, his clients cannot be said to have contravened the provisions of the Central Excise Rules; that the assessee has contravened the provisions by suppressing the clearance value in their ER-1 returns. It was submitted that penalty under Rule 26 (sic) of the Central Excise Rules, 2002, could not be imposed on his clients; that they did not have any reason to believe that the said vehicles were cleared without payment of duty/taxes; Reliance was placed on the decision in the case of Vee Faucets [2010 (259) ELT 273 (Tri.Del)]. The personal hearing fixed for 18.07.2012 was also

19.37 M/s Chirag Auto Industries, vide letter dated 27.08.2012 [received on 30.08.2012], inter alia, stated that they were engaged only in job-work and repairing of 3 wheeled motor vehicles known as chhakda rickshaw; that since he was not approved by ARAI, he could manufacture 3 wheeled vehicles; that they undertake job-work for various manufacturers of vehicles, including the assessee herein, after temporary registration with RTO; that



manufacturers send them Chassis fitted with Diesel Engine and Gear Box; that they undertake body building work and send the vehicle back to the manufacturer; that after receipt from the job-workers, the manufacturers undertake remaining work so as to complete the vehicles; that he received Rs.2,000 towards job work; that he had to use own colour, welding rods, man power, machinery, etc; that he used to receive vehicles for job work on chits and used to send back the vehicles after job work on chits; that they had not preserved such chits.

19.38 That it was not brought out as to which act of acquiring, possession or in any way concerned in transportation, depositing, keeping, concealing, selling or purchasing or in any manner dealt with the vehicle which they knew or had reason to believe that no Central Excise duty had been paid on the goods and that the impugned goods were liable for confiscation; that as held in the case of Amrit Foods [2005 (190) ELT 433] whereby penalty was set aside in absence of specific clause of Rule 173Q of the erstwhile Central Excise Rules, 1944, which was alleged to have been contravened; that Rule 25 ibid was applicable to producer, manufacturer, and registered person of a warehouse or a registered dealer and not to job-worker; that they were holding Central Excise Registration since they intended to get approval from ARAI; that they had manufactured 3 vehicles on trial basis, which they had cleared on payment of duty; that they had abandoned the idea of manufacturing in view of time consuming procedure at ARAI; that since last 8-9 years, they had doing job-work.

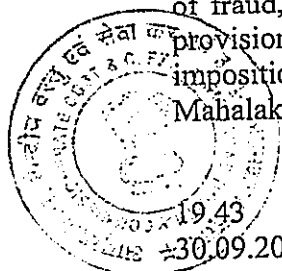
19.39 That under Notification No.214/86-CE, the burden to follow the prescribed procedure of filing undertaking with the jurisdictional Central Excise Officers and usage of the material received from job worker in the manufacture of final products or clearance thereof on payment of duty or under bond, was on the supplier-manufacturer; that they used to receive the goods under the cover of a chit describing the job to be undertaken; that such a chit was considered as challan; that they had been maintaining record for this purpose; that in the case of Moon Chemicals [2007 (215) ELT 434], Malvika Metals [2008 (230) ELT 469 and Helios India [2008 (231) ELT 502, it was that for procedural lapse, benefit of Notification No.214/86-CE could not be denied.

19.40 That the allegation that Shri Sabir Y.Ghatkai had accepted having received the vehicles without payment of duty and confirmed by Shri Dinesh B. Bharwad was not correct; that Shri Bharwad had stated that they had sent us vehicle for job-work duly temporarily registered with RTO; that in the notices issued in connection with other manufacturer, penalty had been proposed under Rule 26; that only in the present case penalty under Rule 25 had been proposed; that there appeared to be confusion in the mind of the investigation agency in applying specific rule for same type of offence detected on the same day and by same team of officers; that hence the notice was not sustainable; that under the Central Excise law, it was nowhere it is mentioned that the job worker has to ascertain the duty paid character of the goods received for job work; that in the case of ITC [1998 (104) ELT 151], it had been held that job worker cannot be penalized for fraud committed by raw material supplier as job-worker had not suppressed any fact with intent to evade duty; that when there was no liability to pay duty, there cannot be penalty.

19.41 It was further stated that as against their demand for relied upon documents vide their letter dated 22.05.2012, they had received copies of only 3 documents as appearing at Sr.No.14, 15 & 16 of Annexure-F to the notice dated 04.11.2010; that non-supply of all documents was violation of principles of natural justice. Vide letter dated 01.10.2012, the co-noticee waived personal hearing.

19.42 That the notice proposes penalty under Rule 25 of the Central Excise Rules; that violation of the provisions had not been spelt out clearly in the notice; that penalty provisions under Rule 25 was subject to provisions of Section 11AC of the Central Excise Act; that element of fraud, collusion, willful mis-statement, suppression of fact and contravention of any of the provisions of the Act or the Rules with intent to evade payment of duty must be present before imposition of penalty under Rule 25 or Section. 11 AC; that in light of decision in the case of Mahalakshmi Profiles [2012 (279) ELT 355 (AP)] penalty cannot be imposed on them.

M/s Vishwakarma Engineering Works, the co-noticee, vide its letter dated 30.09.2012, HPCL [2009 (245) ELT 361], ADMC Pharma [2008 (226) ELT 473], Kamkhiya



Alloys [2011 (267) ELT 97], Dharampal Premchand [2011 (265) ELT 81] upheld by Hon'ble High Court of Delhi as reported at 2012 (277) ELT 23, Saurashtra Cement [2010i (260) ELT 71 (Guj)], Narindra Pulp & Paper [2009 (247) ELT 593 inter alia stated that intent to evade payment of duty as provided under clause (d) of Rule 25(1) of the Central Excise Rules, 2002, was absent; that the co-noticee had been implicated on the strength of evidences collected by the department; that it is not the charge that seized 15 loading rickshaws for non production of duty paying documents, were to be sold by the co-noticee that these seized vehicles were to be sent back to the assessee after necessary processes; that the provisions of Rule 25 of the Central Excise Rules, 2002, get attracted only subject to the provisions of Section 11AC of the Central Excise Act; that no specific clause of Rule 25 ibid had been discussed; that since the provisions of Rule 25 of the said Rules are not independent but are subject to Section 11AC of the said Act, penalty can be imposed only on person who is required to pay duty.

20. Shri N.K.Tiwari, Consultant, appeared for personal hearing on 30.08.2012 on behalf of the assessee and Shri Dinesh B. Bharwad, partner. However, since he was not having authorization from the noticees, he promised to submit the same and the fact that he had been called by the DGCEI for inspection of relied upon documents on 30.08.2012, the personal hearing was postponed to 18.09.12. Shri N.K.Tiwari, Consultant, again appeared for personal hearing on 18.09.12. He submitted the authorization and reiterated the submissions filed vide letter dated 15.09.2012. **No further point regarding supply of relied upon documents was raised by him meaning thereby that he was satisfied in regard to the same after visit to DGCEI's Office.**

20. The adjudicating authority vide the OIO NO. 30-31/COMMR/AKG/AHD-II/2012, dated 12.11.2012, had decided the SCN No. DGCEI/AZU/36-04/2010, dated 02.04.2010 and SCN No. DGCEI/AZU/36-109/2010-11, dated 4.11.2010. The adjudicating authority had ordered as under:

(i) Confirmed the demand of Central Excise duty and other duties amounting to Rs.3,84,61,654.00 [Rupees Three crores, Eighty four lakhs sixty one thousand six hundred fifty four only] as detailed in Annexure-E1 and E2 to the show cause notice bearing F.No. DGCEI/AZU/36-109/2010-11 dated 04.11.2010 against M/s. Atithi Gokul Automobile Works, Survey No. 477, Sarkhej Gandhinagar Highway, Gota Chokdi, Chandlodia, Ahmedabad, under proviso to Section 11 A (1)/Section 11A(4) of the Central Excise Act.

(ii) Confirmed the demand of MV Cess amounting to Rs.2,99,768.00 [Rupees two lakhs ninety nine thousand seven hundred sixty eight only], as detailed in Annexure-E3 to the show cause notice bearing F.No.DGCEI/AZU/36-109/2010-11 dated 04.11.2010 against M/s Atithi Gokul Automohaite Works, Ahmedabad, and others, under proviso to Section 11A(1)/Section 11A(4) of the Central Excise Act. The remaining demand of Rs.4,651.00 is dropped.

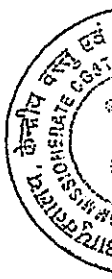
(iii) M/s Atithi Gokul Automobile Works, Ahmedabad, was ordered to pay interest under Section 11AB/11AA of the Central Excise Act, 1944, on the above confirmed demand at the prescribed rate.

(iv) Imposed a penalty of Rs. Rs.3,87,61,422.00 [Rupees Three crore eighty seven lakh sixty one thousand four hundred twenty two only] on M/s Atithi Gokul Automobile Works, Ahmedabad, under Section 11AC of the Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules, 2002.

(v) Imposed a penalty of Rs.50,00,000 [Rupees fifty lakh only] on Shri Dinesh B. Bharwad, partner of M/s Atithi Gokul Automobile Works, Ahmedabad, under Rule 26 of the Central Excise Rules, 2002.

(vi) Ordered confiscation of one vehicle placed under seizure vide panchnama dated 24.03.2010 drawn at the premises of M/s Shree Rajshakti Automobiles, Ahmedabad. The adjudicating authority, however, gave an option to M/s Atithi Gokul Automobile Works, Ahmedabad, to redeem the same on payment of redemption fine of Rs. 10,000.00 [Rupees ten thousand only].

(vii) Ordered confiscation of fifteen vehicles placed under seizure vide panchnama dated 06.01.2010 drawn at the premises of M/s Vishwakarma Engineering Works, Rajkot. The adjudicating authority, however, give an option to M/s Atithi Gokul Automobile Works, Ahmedabad, to redeem the same on payment of redemption fine of Rs.2,00,000.00 [Rupees two lakh only].



- (viii) Imposed a penalty of Rs. 10,00,000 [Rupees ten lakh only] on M/s Manish Auto, Nagarpalika Shopping Centre, Keshod, under Rule 25 of the Central Excise Rules, 2002.
- (ix) Imposed a penalty of Rs.8,00,000 [Rupees eight lakh only] on M/s Parishram Marketing, 64, Mayur Market, Keshod, under Rule 25 of the Central Excise Rules, 2002.
- (x) Imposed a penalty of Rs. 1,00,000 [Rupees One lakh only] on M/s Vishwakarma Engineering Works, National Highway N0.8-B, Plot No.41/42, Bansidhar Weigh Bridge, GIDC, Kuvawada, Rajkot, under Rule 25 of the Central Excise Rules, 2002.
- (xi) Imposed a penalty of Rs.5,00,000 [Rupees five lakh only] on M/s Chirag Auto Industries, Shop No.02, Plot No.71, Aman Society, Kalawad Road, Jamnagar, under Rule 25 of the Central Excise Rules, 2002.
- (xii) Imposed a penalty of Rs.5,000 [Rupees five thousand only] on M/s Shree Rajshakti Automobiles, Ahmedabad, under Rule 25 of the Central Excise Rules, 2002.

21. The assessee on being aggrieved with the above OIO, has filed an appeal before CESTAT and CESTAT vide Final Order No. A/10885-10886/2014, dated 1.5.2014 remanded back the matter to the adjudicating authority. Primarily, the grounds on which the appeal was filed before CESTAT against the impugned OIO, as understood from the CESTAT order itself, is as under:

- (i) The assessee had only filed an interim reply to the Show Cause Notice. Attention was drawn specifically to para no. 7 of their reply dated 15.09.2012, wherein they had sought cross-examination of the persons indicated in the said interim reply to the Show Cause Notice.
- (ii) That at Para 54 of their reply they had clearly mentioned that their reply may be considered as a preliminary submission and after cross examination they will file a detailed reply.
- (iii) The adjudicating authority has not rejected nor allowed the cross examination which itself is a violation of principles of natural justice.
- (iv) The assessee relied on judgment of Hon'ble High Court of Gujarat in the case of M/s. Mahek Glazes Pvt. Ltd. V/s. UOI [2014(300) ELT 25 (Guj.)], wherein it has been held that cross examination needs to be granted.
- (v) The Motor vehicle Act has been considered by the adjudicating authority.
- (vi) The Cross examination having been denied, the assessee has been deprived from bringing on record the correctness of relied upon documents.
- (vii) The assessee has specifically stated that they want cross-examination of the following persons (hereinafter referred to as 'the witnesses'), on the grounds that the demand raised based on the entries being of third party and they cannot be applied directly to the assessee's case.

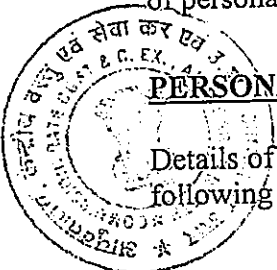
- Shri Govindbhai Hirabhai Mytra, Proprietor of M/s. Manish Auto, Keshod
- Shri Nathubhai Gajera, Proprietor of M/s. Parishram Mktg., Keshod.
- Shri Sabirbhai Yusufbhai Ghatkai, Proprietor, M/s. Chirag Auto Industries, Jamnagar
- Shri Kishor Gordhanbhai Chandra, Partner, M/s. New Chandra Motor Cycle House.
- Shri Mansukh Patel, Proprietor, M/s. Dattatrey Auto Centre, Rajkot.
- Shri Kasambhai Umarbhai Kaida, Proprietor, Kamal Auto Centre, Rajkot.

(viii) The assessee has denied that the cross-examination of RTO has been called for, but had sought the cross-examination of the individuals on whose records, the demands have been raised.

22. CESTAT, vide its order dated 1.5.2014, has remanded the matter back to the adjudicating authority without expressing any opinion on the merits of the case. CESTAT has ordered that the adjudicating authority will grant cross-examination of the persons as mentioned above; and subsequently grant four weeks time to the appellant to file a detailed reply. After receiving such detailed reply, the adjudicating authority shall grant an opportunity of personal hearing and pass a reasoned order.

PERSONAL HEARING

Details of the Personal hearing and Cross examinations accorded, are discussed in detailed in the following paras.



DISCUSSION AND FINDINGS:

23. I have carefully gone through the facts of the case, material on record and the submissions made by the assessee. I have also gone through the Order-in-Original No. 30-31/COMMR/AKG/AHD-II/2012, dated 12.11.2012, which has been remanded back to the adjudicating authority vide CESTAT order No. A/10885-10886/2014, dated 1.5.2014.

24. The issue involved in the present case is manufacture and removal of excisable goods clandestinely without accounting for in the records, without payment of Central Excise duty, under-valuation of the goods, clearance of goods for job-work without the cover of stipulated documents and proposal for imposition of penalty for evasion of Central Excise duty.

25. I find that appeal has been filed before CESTAT against the impugned OIO no. 30-31/COMMR/AKG/AHD-II/2012, dated 12.11.2012, by the assessee, (1) M/s. Atithi Gokul Automobile Works and (2) Shri Dinesh Bharwad, Partner of the assessee only. The other five co-noticees of the Show Cause Notices dated 2.4.2010 and 4.11.2010, viz. (1) M/s. Parishram Marketing, (2) M/s. Manish Auto, (3) M/s. Chirag Auto Industries, (4) M/s. Vishwakarma Engineering Works and (5) M/s. Vishwakarma Engineering Works, have not preferred any appeal before CESTAT, against the impugned OIO. Penalty had been imposed on these co-noticees under Rule 25 of the Central Excise Rules, 2002 vide the aforesaid OIO by the predecessor adjudicating authority. Since no appeal has been filed by these co-noticees, it is apparent that their role in the entire operation of illicit removal and undervaluation of excisable goods, stands settled and there is no need to discuss the charges leveled against them in the Show Cause Notices dated 2.4.2010 and 4.11.2010 again. Further, as appeal has been filed by the assessee and Shri Dinesh B. Bharwad, Partner of the assessee and CESTAT has remanded the case back to the adjudicating authority to decide the case for the appellants only, I proceed to adjudicate the case on the basis of material evidence available on record for the appellants only.

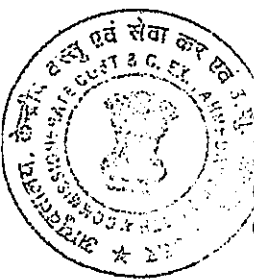
26. Before addressing the main issue to be decided, it is imperative to understand and examine the reason why CESTAT has remanded the impugned OIO to the adjudicating authority. I find that the main ground of appeal made by the assessee before CESTAT is (i) that cross-examination of witnesses was not accorded to them. (ii) Their other ground of appeal before CESTAT was that the Show Cause Notices were decided even before they could file their final reply.

27. The assessee vide their appeal filed before CESTAT, had sought the cross examination of the following persons, whose statements have been relied upon in the Show Cause Notices (hereinafter referred to as "witnesses").

- (1) Shri Govindbhai Hirabhai Mytra, Proprietor of M/s. Manish Auto, Keshod
- (2) Shri Nathubhai Gajera, Proprietor of M/s. Parishram Mktg., Keshod.
- (3) Shri Sabirbhai Yusufbhai Ghatkai, Proprietor of M/s. Chirag Auto Industries, Jamnagar.
- (4) Shri Kishor Gordhanbhai Chandra, Partner, M/s. New Chandra Motor Cycle House
- (5) Shri Mansukh Patel, Proprietor, M/s. Dattatey Auto Centre, Rajkot.
- (6) Shri Kasambhai Umarbhai Kaida, Proprietor, Kamal Auto Centre, Rajkot.

28. As directed by CESTAT, cross-examination of the witnesses was allowed and accorded, as desired by the assessee, as detailed in the Table 'A' below. On going the Table, it becomes apparent that cross-examination in the matter, was accorded to the assessee ample number of times. A brief history of the outcome of the scheduled cross examination of witnesses is as under:

- (i) 7 times, the assessee has failed to appear on the scheduled date and sought adjournments.
- (ii) In 11 instances, the witnesses have failed to appear citing various reasons
- (iii) There have been 4 instances when the witnesses have refused to even receive the letter of cross-examination from the postal authorities.
- (iv) In most of the cases, where the witnesses have not appeared for the cross examination, the postal dak has been returned by the Postal authorities undelivered.

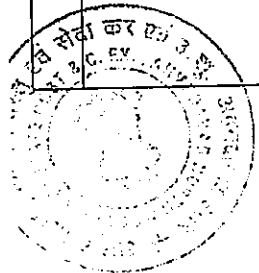


- (v) On 10 occasions, the assessee had appeared for the cross examination, but the same was not held as either the witnesses were not present, however, four times, the assessee and the witnesses were present but were not cross examined by the assessee on the pretext that were not prepared, i.e. they did not have ample time to prepare for the cross-examination. or their advocate Shri Paresh Dave was not present.
- (vi) On one occasion, two witnesses were present but the assessee did not appear, therefore the cross-examination could not be conducted.

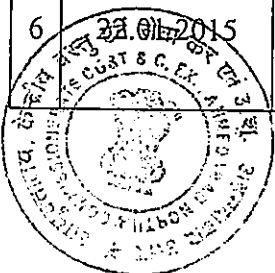
28.1 The Show Cause Notices were issued to the assessee in the year 2010, CESTAT has remanded back the case to the adjudicating authority in the year 2014, implying that even after a lapse of more than nine years from the issuance of Show Cause Notices, and a lapse of five years from the date of CESTAT order, the assessee is still not prepared with the cross-examination. It appears that the demand for cross examination was frivolous and was made merely with an intent to prolong the matter.

TABLE A

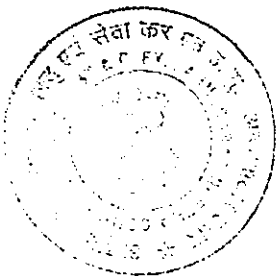
RECORD OF CROSS EXAMINATION/PERSONAL HEARING								
		1	2	3	4	5	6	7
	NAME OF THE WITNESSES/ Representative of the assessee	Paresh M. Dave, Advocate, on behalf of M/s. Athithi Gokul Automobile Works and Shri Dinesh B. Bharwad, Partner	Shri Govindhai Hirabhai Mytra, Proprietor of M/s. Manish Auto, Keshod	Shri Nathubhai Gajera, Proprietor of M/s. Parishram Mktg., Keshod	Shri Sabirbhai Yusufbhai Ghatkai, Proprietor of M/s. Chirag Auto Industries, Jamnagar.	Shri Kishor Gordhanbhai Chandra, Partner, M/s. New Chandra Motor Cycle House.	Shri Mansukh Patel, Proprietor, M/s. Dattatey Auto Centre, Rajkot.	Shri Kasambhai Umarbhai Kaida, Proprietor, Kamal Auto Centre, Rajkot.
	DATES ON WHICH CROSS EXAMINATION WAS FIXED		1	2	3	4	5	6
1	13.10.2014/ 20.10.2014	Requested to postpone and reschedule personal hearing and cross examination to second week of November.2014 or thereafter because he would be out of the country from 17.10.2014 to 6.11.2014 owing to Diwali vacation.	Did not appear	Did not appear	Not in a position to appear due to coming Diwali festival	Will not be able to remain present as he will be out of station for business purpose.	Did not appear	Did not appear



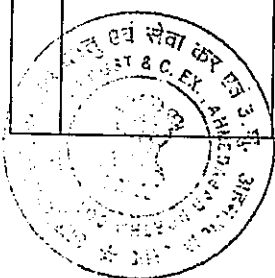
2	11.11.2014	Did not appear	Did not appear	Did not appear	Cross examination is not possible as he does not have copy of statement recorded by DGCEI. Requested for copy of Statement. Copy supplied on 14.11.2014.	Did not appear	Did not appear	Did not appear
3	21.11.2014	Did not appear	Did not appear	Did not appear	Did not appear	Will not be able to remain present as busy with marriage in family. Requested time after 8.12.2014	Did not appear	Did not appear
4	9.12.2014	Did not appear	Did not appear	Did not appear	Claims not received copy of statement. Copy provided again on 12.12.2014		Did not appear	Did not appear
5	18.12.2014		Did not appear	Did not appear	Claims not received copy of statement	Appeared but requested for copy of statement. Copy given on 18.12.2014	Appeared but requested for copy of statement. Copy given on 18.12.2014	
6	22.01.2015	Appeared, but no witnesses appeared.	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear



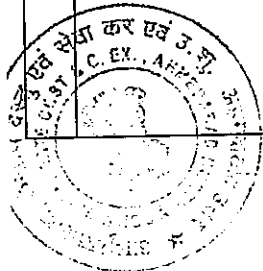
7	23.1.2015	Requested for copies of Relied upon documents seized by DGCEI and sought inspection of records for the first time.	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear
8	14.11.2017	Shri Aditya Tripathi, Advocate, appeared on behalf of the assessee, but stated time was insufficient for preparing for detailed cross-examination.	Did not appear	Did not appear	Did not appear	Did not appear	Sought another date for cross-examination	Appeared but not cross examined by the assessee
9	11.04.2018	Shri Aditya Tripathi, Advocate, appeared on behalf of the assessee, but since no witnesses appeared for cross-examination, he sought further adjournment	Did not appear	Did not appear	Did not appear stating that his wife is sick and sought adjournment of another 15 days	Did not appear	Did not appear	Did not appear
10	17.5.2018	Shri Aditya Tripathi, Advocate, and Shri Amal Dave, Adv., appeared on behalf of the assessee, but since no witnesses appeared for cross-examination, he sought further adjournment	Did not appear	Did not appear	Did not appear as it was the month of Ramzan and requested that a date for cross examination may be fixed after the month of Ramzan.	Did not appear	Did not appear citing ill health. Sought further adjournment.	Did not appear



1 1	23.7.2018	Shri Aditya Tripathi appeared for the cross examination. The witnesses Shri Kasambhai Kaida and Shri Mansukhbhai Patel, also appeared. But were not cross-examined and the witness was asked to appear on 2.8.2018. Shri Aditya Tripath, also gave the reason that Shri Paresh Dave was not that day and he will be back by 8 P.M. and that the witnesses were to be cross-examined in the presence of Shri Paresh Dave.	Did not receive the letter of cross-examination.	Did not receive the letter of cross-examination.	Did not appear	Appeared, but was not cross-examined by the assessee.	Appeared, but was not cross-examined by the assessee.	Appeared, but was not cross-examined by the assessee.
1 2	2.8.2018	Appeared, but personal hearing not held, as they sought copies of documents and inspection of records seized by DGCEI.	Refused to receive the letter of cross-examination.	Refused to receive the letter of cross-examination.	Did not appear	Sought adjournment and did not appear citing health problems	Sought adjournment and did not appear citing health problems	Did not appear citing the reason that he was busy due to social work. Sought adjournment.
1 3	28.01.19	No one appeared	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear
1 4	14.2.2019	Shri Aditya Tripathi and Shri Amal Dave, appeared on behalf of the assessee and emphasised that inspection of records is relevant to the case and pleaded that the matter be taken up with DGCEI.	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear



1 5	1.10.2019	Shri Aditya Tripathi and Shri Amal Dave, appeared on behalf of the assessee and submitted that they will send a letter mentioning the documents they have requested for and also name of persons whose cross-examinations are required.	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear
1 5	1.10.2019	Shri Aditya Tripathi and Shri Amal Dave, appeared on behalf of the assessee and submitted that they will send a letter mentioning the documents they have requested for and also name of persons whose cross-examinations are required.	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear
1 6	2.09.2020	Requested for abeyance of cross examination due to covid situation. Also informed that one of the witnesses had expired and further heavy rains in Saurashtra affecting means of travelling	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear
1 7	28.9.2020	Sought adjournment on the ground that 4 members of the assessee were suffering from Covid	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear



1 8	28.10.2020	Sought adjournment on the ground that one of the witnesses had met with an accident, another down with covid and also cited approaching Diwali holidays	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear
1 9	23.12.2020	Sought adjournment as one of their advocates was held up in virtual hearing before Hon'ble High Court	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear
2 0	22.1.2021	Advocate appeared but sought adjournment as none of the witnesses had appeared	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear
2 1	4.2.2021	Did not appear, but sent a letter by post on 8.2.2021 requesting the adjudicating authority to intimate the details of the concerned witnesses about two weeks prior to fixing of cross examination	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear	Did not appear

28.2 Further, as a deviation from the demand of cross examination of the witnesses, Shri Paresh M. Dave, Advocate, on behalf of the assessee, vide his letter dated 23.1.2015, has requested for copies of certain documents, files, documents seized during panchnama and also requested inspection of all the documents seized by DGCEI. He further requested that the cross examination of the witnesses be fixed after relevant documents are obtained by the assessee. It is pertinent to note that at no time before 23.01.2015, has the assessee requested for inspection and copies of seized records and such a request was never put forth until so many opportunities for cross examinations were already granted to the assessee, even after the case was remanded back by CESTAT. The issue of examination of Relied upon documents was not even raised in the appeal against the impugned OIO before CESTAT. It is very apparent that this request has been made after a very long period from the issuance of the Show Cause Notices dated 2.4.2010 and 4.11.2010, i.e after almost five years of issuance of Show Cause Notices. Further, it is also pertinent to note that an opportunity for inspection of the records seized by DGCEI, had already been accorded to the assessee. This fact has been brought on record during the course of Personal

hearing held on 30.8.2012, wherein, Shri N.K.Tiwari, consultant, who appeared on behalf of the assessee, had informed that the assessee had been called to the office of DGCEI, for inspection of Relied Upon Documents. Further, on the personal hearing held on 18.09.12. Shri N.K.Tiwari, Consultant, again appeared on behalf of the assessee and during the course of the personal hearing, only reiterated the submissions filed vide letter dated 15.09.2012. No further point regarding supply of relied upon documents was raised by him, meaning thereby that the assessee was satisfied in this regard after the visit to the office of DGCEI.

28.3 However, in response to their letter dated 23.1.2015, the assessee was asked by the department, vide letters dated 19.02.2015 and 23.03.2015, to specify the documents/records, that they desire to inspect and their relevance for the defence. Shri Paresh M. Dave, Advocate, vide his reply dated 31.3.2015, had informed that he wanted the inspection, photocopies of the relied upon documents. It should not be missed that the assessee took almost two months to inform as to what documents they need to inspect.

28.4 Vide letter dated 2.2.2017, copies of all the relied upon documents as per Annexure F to SCN no. DGCEI/AZU/36-109/2010, dated 4.11.2010 and Annexure A of SCN no. DGCEI/AZU/36-04/2010, dated 2.4.2010, were handed over to the assessee. It is also emphasised that copies of all the Relied Upon Documents were handed over to the assessee alongwith the Show Cause Notices and the receipt of the same was also acknowledged by the assessee at the time of serving of the Show Cause Notices.

28.5 After the copies of the relied upon documents were handed over to the assessee, further cross-examination was accorded on 14.11.2017. Shri Aditya Tripathi, Advocate, appeared for this on behalf of the assessee. One of the witnesses, Shri Kasambhai Umarbhai Kaida, Proprietor of M/s. Kamal Auto Centre, appeared for the cross examination on 14.11.2017. Even at this stage, after the lapse of such a long period of time, i.e. even after the impugned OIO was remanded back for cross-examination, the assessee was still not prepared for the cross examination and stated that the time accorded to them is insufficient for preparing for cross examination. It is pertinent to note that even after a lapse of almost 8 years from the issuance of the Show Cause Notices, the assessee was still not prepared for cross examination of the witness who appeared for the same.

28.6 Further, Shri Kishorbhai Gordhanbhai Chandra, Partner, M/s. New Chandra Motor Cycle House, Jamnagar Shri Mansukhbhai Patel, Proprietor, M/s. Dattatrey Auto Centre, Rajkot and Shri Kasambhai Umarbhai Kaida, Proprietor, M/s. Kamal Auto Centre, Rajkot, appeared for the cross-examination on 23.7.2018. Shri Aditya Tripathi, Advocate, had also appeared on behalf of the assessee. However, the cross-examination of these witnesses were not conducted by the assessee on the ground that Shri Paresh Dave, Advocate, was not in town and that he would return on 8 P.M. on the same day. The above witnesses were requested to appear again on 2.8.2018.

28.7 Further, vide letters dated 2.8.2018, 10.8.2018, 24.8.2018 and 28.8.2018, the assessee has again requested for inspection and copies of relied upon documents from DGCEI, by falsely claiming that the relied upon documents have not been provided to them. This is factually incorrect as the copies of the relied upon documents were provided to them even at the time of issuance of the Show Cause Notices and the copies were again supplied to them on 2.2.2017.

28.8 More than sufficient opportunities for cross examinations were accorded to the assessee and it is also on record that all the documents relied upon for issuing the demand to the assessee have been provided to the assessee. Even DGCEI, had allowed the inspection of records way back on 30.8.2012, which is evident by the submission made by Shri N. K. Tiwari, who appeared for the personal hearing on the same day. Even after the inspection of the records by the assessee, no queries or demands were raised by the assessee then, assuming that they were satisfied with the inspection.

28.9 However, the department vide letter dated 21.12.2018, has once again directed the assessee to visit this office in order to inspect the relied upon documents, so that the specific documents seized and withdrawn under the panchnamas, required by them can be ascertained. However, no response was received from the assessee.

28.10 Even though the copies of the relied upon documents were handed over to the assessee at

the time of issuance of Show Cause Notices, the same were provided again to the assessee vide letter dated 2.2.2017. However, the assessee continued to make vague requests for copies of relied upon documents, without stating specifically, as to which documents are required by them. Therefore, vide letter dated 21.12.2018, the assessee was directed to visit the office and inspect the Relied upon documents again so that the specific documents required by them can be ascertained and be handed over to them. However, no response was ever received from them, which itself goes to show all these modus operandi have been undertaken by them merely for delaying the adjudicating proceedings.

29 Vide letter dated 30.4.2019 and 16.5.2019, this office had informed the assessee that all the copies of the Relied Upon documents have been handed over to them again and they were requested to file their reply. However, vide their letter dated 21.5.2019, Shri Paresh Dave, Advocate on behalf of the assessee has again requested for inspection of all the seized documents and also to supply copies of records and documents seized under panchnama. They have also requested for opportunity of cross examination of witnesses.

29.1 At this stage, it is not discernable as to which documents are still required by the assessee, as it is on record that copies of all the Relied Upon Documents have been already handed over to the assessee. Consequently personal hearing was fixed on 01.10.2019/9.10.2019, wherein Shri Aditya Tripathi, Advocate and Shri Amal P. Dave, Advocate, appeared on behalf of the assessee. They once again requested for supply of documents and cross examination of witnesses. However, during the course of the hearing they submitted that they will send a letter mentioning the documents and the names of the persons to be cross-examined.

29.2 Further, in this matter, personal hearing was held on 22.1.2020, the assessee has reiterated their demand of supply of documents. I find that all the copies of the documents have been supplied to the assessee as informed by DGGI, vide their letter No. DGCEI/AZU/15-01/2013-14/Report/2342, dated 10.12.2018. Vide this letter, DGGI, AZU, Ahmedabad, had also enclosed the acknowledged receipts of the assessee. However, DGGI, Ahmedabad Zonal Unit, vide their letter no. DGGI/AZU/36-04/2010-11, dated 12.6.2020 had again informed that opportunity to inspect the documents seized under panchnama has been accorded to the assessee. Accordingly, vide this office letter dated 23.6.2020, the assessee was requested to coordinate with DGGI and complete the inspection of the requisite documents. However, in spite of this, the assessee has not yet filed their reply to the Show Cause Notice.

29.3. Lastly, attention is drawn to the letter dated 8.2.2021, vide which Shri Aditya Tripathi, Advocate on behalf of the assessee, has informed that they had visited the office on 4.2.2021 at 1.30 P.M. for conducting cross examination of the witnesses; however no one had visited this office on behalf of the assessee on the said day. The records of this office do not show that they have visited this office on the said date. Further, the second para of their letter reads as under:

"Therefore, we request you to fix another date for cross-examination of the witnesses in the present case, in compliance with the order of the Hon'ble Tribunal. We request you to intimate us and the details of concerned witnesses about two weeks prior of the date fixed for cross-examination so as to enable us to make proper preparation for cross examination of concerned witnesses."

29.4. From the above letter, it comes out clearly that the assessee is now resorting to fabrication of facts and putting forth wrong facts by way of misinforming that they had appeared for the cross examination, when they had not appeared before the adjudicating authority at all. Further, from the above letter it is crystal clear that they are taking the Tribunal and the adjudicating authority for a ride in as much as in spite of the lapse of almost nine years, they are still seeking time to prepare for cross examination; and after so many years are still seeking the details of the witnesses from the adjudicating authority. This clearly brings out the fact the assessee simply intends to delay the adjudication process, for reasons best known to them and is misusing the reprieve given to them by CESTAT.

29.5. The Show Cause Notices were issued in the year 2010 and there was more than sufficient time for the assessee to prepare their defence and file their reply to the Show Cause Notices. I find that plenty of opportunities of cross examination of the six witnesses, as detailed in para 27 and 28 above, were accorded to the assessee, as directed by CESTAT. On going through the previous correspondences, I find that the assessee is not even prepared for cross examination of

witnesses, as desired by them and as directed by CESTAT, even after a lapse of more than nine years.

30. Attention is also drawn to the fact that Cross examination of witnesses is covered under Section 137 of the Indian Evidence Act, 1872 (as amended). Quasi-judicial proceedings are not governed strictly by the provisions of law observed by the Courts in the legal proceedings before them.

a. Requests for cross-examination may be denied under the following situations:

- (i) *Warranting cross examination of the source(informer):*
- (ii) *When there are enough and more documentary evidences, the copies of all of which furnished;*
- (iii) *When the witnesses to be made available for cross examination are in foreign countries.....*
- (iv) *Enough care to be taken in allowing cross examination of experts by another expert which should not be unnecessarily protract or prolong the proceedings....*

31. Even in the Indian Evidence Act, 1872, it is made clear that when there are enough documentary evidences, and all the copies are furnished, there is no need for cross-examination.

32. I also rely on the following judgments:

(A) *The Hon'ble Supreme Court vide its judgement dated 07.02.1972, in the case of Kanungo & Company vs Collector Of Customs and Ors reported at AIR 1972 SC 2136 = 2003 (89) ECC 764, in para-12, held as under.*

12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show-cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross examine them. In our-opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant.

(B) *The Hon'ble Supreme Court vide its judgement dated 17.07.1995 in the case of Tapan Kumar Biswas vs Union Of India (UOI) And Ors [1996 (53) ECC 9] vide para-17 to 22 has held that denial of cross-examination is not violative of principles of natural justice.*

17. *However, the Supreme Court in construing Section 124 of the Customs Act, appears to have taken a different view in Kamungo & Co. v. Collector of Customs. Calcutta and Ors. reported in 1983 Excises Law Times page 1486 wherein it was clearly held that in a proceeding under the Customs Act the proceeedees are not entitled to cross-examine the witnesses. In Ashutosh Ghosh and Anr. v. Union of India and Ors. reported in 1977 Crl Law Journal NOC 67, A.N. Sen, J. (as his Lordships then was) while considering a similar question under the Customs Act also held the principles of natural justice do not extend to the cross-examination of the witnesses.*

18. *Similarly in a case, a Division Bench comprising of P.B. Mukharji and S.A. Masood, JJ., while considering a matter under the Sea Customs Act also held that cross-examination of the witnesses is not comprehended under the said provision.*

19. *The aforesaid decisions, therefore, in clear and unmistakable terms state that whereas a proceeedee would be entitled to inspect the relevant documents, they would not be entitled to cross-examine any witness nor would they be entitled to inspect any document which is confidential in nature and cannot be disclosed in the interest of the department.*

20. *It has been emphasised by Mr. Dutta that D.R.I-I is a confidential document and the*

contents thereof are not even disclosed to the superior Officers. It is now well settled that the principles of natural justice cannot be put in a straight jacket formula. By reason of a provision of statute, its applicability can be curtailed or excluded. In flirts of Section 124 of the Customs Act, the proceedee is only entitled to file a representation. He is also entitled to be heard in the matter.

21. Furthermore, the Supreme Court in Ashutosh Ghosh's case has categorically held that a proceedee is not entitled to cross-examine the witnesses. The decision cited by Mr. Dutta having been rendered under the Customs Act must be preferred to the decision cited by Mr. Moitra. The petitioner evidently did not file any show cause despite having been given an opportunity to do so and upon inspection of the relevant document.

22. As held hereinbefore, he is not entitled to cross-examine any witness. He is also not entitled to any copy of D.R. I-I on the basis where of the petitioner may have been implicated as it is evident, the contents of the said document would not be used as against him. Such information for obvious reasons cannot be disclosed. So far as the copies of the affidavits of Shri Samir Sarkar and Shri Karunamoy Paul are concerned, evidently they are not going to be used against the petitioner as the said documents are not in possession of the department.

(C) The Hon'ble High Court of Punjab & Haryana has observed at para 17 in the case of Harinder Pal Singh Shergill Versus Registrar, CEGAT [2010 (255) ELT 188 (P & H)], as under :-

"17. The learned counsel for the petitioner did not point out any provision of law, which would give him the legal right to file final reply after cross-examination of the witnesses. On the contrary, only legal requirement was to give him a show cause notice to enable him to file representation and opportunity of being heard as contemplated under Section 124 of the Act. The mere fact of filing a long list of 14 assesseees for cross-examination by the petitioner in his reply itself is sufficient to prove that from the very beginning, he intended and considerably delayed the disposal of the matter."

The Apex Court vide order dated 1.10.2010 reported in 2010 (259) E.L.T. A19 (S.C.) had dismissed the Special Leave Petition filed by Harinder Pal Singh Shergil against aforesaid order of the High Court of Punjab & Haryana, dated 01.10.2010 reported in 2010

(D) The Hon'ble High Court of Judicature at Madras [Madurai Bench] has in the case of Sanjay Shah Versus Commissioner of Customs, Tuticorin [2011 (264) ELT 211 (Mad.)] held that when systematic method was adopted for evading duty and confessional statement also made regarding evasion of duty, then there is no reason to give opportunity to cross-examine and therefore failure to give opportunity to cross-examine the witnesses did not violate principal of natural justice.

(E) The Hon'ble High Court of Delhi has in the case of: J & K Cigarettes Ltd. Versus Collector of Central Excise [2011 (22) S.T.R. 225 (Del.)] held that right to cross-examination in quasi judicial proceedings can be taken away in the cases where the presence of witnesses cannot be obtained without an amount of delay or expense and statement already taken can be made relevant under Section 9D of the Central Excise Act, 1944.

(F) The Hon'ble Supreme Court of India in its judgment dated 13.2.2013 in the case of M/s. Telestar Travels P. Ltd. V/s. Special Director of Enforcement, reported in 2013 (289) E.L.T. 3 (S.C.), has held as under:

Evidence - Cross-examination - Documents produced by witnesses disclosed and allowed to be inspected by noticee - Production of such documents was in terms of Section 139 of Evidence Act, 1872 where witness producing documents is not subjected to cross-examination - Refusal to permit cross-examination of such witnesses cannot be faulted on principles of Evidence Act, 1872 and it does not cause any prejudice - Otherwise also, disclosure of documents and opportunity to noticee to rebut and explain them same was substantial compliance of natural justice principles. [para 20]

20. Coming to the case at hand, the Adjudicating Authority has mainly relied upon the statements of the appellants and the documents seized in the course of the search of their premises. But, there is no dispute that apart from what was seized from the business premises of

the appellants the Adjudicating Authority also placed reliance upon documents produced by Miss Anita Chotrani and Mr. Raut. These documents were, it is admitted disclosed to the appellants who were permitted to inspect the same. The production of the documents duly confronted to the appellants was in the nature of production in terms of Section 139 of the Evidence Act, where the witness producing the documents is not subjected to cross-examination. Such being the case, the refusal of the Adjudicating Authority to permit cross examination of the witnesses producing the documents cannot even on the principles of Evidence Act be found fault with. At any rate, the disclosure of the documents to the appellants and the opportunity given to them to rebut and explain the same was a substantial compliance with the principles of natural justice. That being so, there was and could be no prejudice to the appellants nor was any demonstrated by the appellants before us or before the Courts below. The third limb of the case of the appellants also in that view fails and is rejected.

(G) *The Hon'ble Patna High Court in the case of Bijoy Kumar Bharti And Ors. vs State Of Bihar And Ors. on 3 August, 1983, on the applicability of the principles of natural justice has held that.... "But this is on the ground that nothing unfair can be inferred by not affording an opportunity to the person likely to be affected to present his viewpoint or meet the case against him. That is why it has been said that audi alteram partem rule is Intended to inject justice into law and it cannot be applied to defeat the ends of justice or to make the law "lifeless, absurd, stultifying self-defeating or plainly contrary to the common sense of the situation.""*

(H) *The Hon'ble Supreme Court in the case of Maharashtra State Board Of Secondary and Higher Secondary Board. vs K.S. Gandhi And Ors, in its decision datd 12 March, 1991, has held as under:*

The omnipresence and omniscience of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a straight jacket formula as an abstract proposition of law. It depends on the facts of the case nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances.

33. CESTAT, has remanded back the case for denovo adjudication, without expressing any opinion on the merits of the case. CESTAT has ordered that the adjudicating authority will grant cross-examination of the persons as mentioned above; and subsequently grant four weeks time to the appellant to file a detailed reply. After receiving such detailed reply, the adjudicating authority shall grant an opportunity of personal hearing and pass a reasoned order. All the directions of the Hon'ble Tribunal has been followed by the Department, but the reprieve given by CESTAT has been merely exploited by the assessee for deliberately delaying and prolonging the adjudication process, the reason for which is best known to them. The above judgments of the Hon'ble Supreme Court of India and the other Courts, establish that there is no provision of law, which gives the assessee the legal right for cross-examination of the witnesses and that he need not file the reply to the Show Cause Notice, in the absence of the cross examination of witnesses. Even then, this case in hand is not a case where the cross examination of witnesses has not been allowed. As detailed in the above paras, ample opportunities of cross examination of witnesses have been accorded to the assessee, as appraised in detail in the foregoing paras. As such, any further claim of the assessee of denial of principals of natural justice does not hold good.

34. I do not find it appropriate to wait perennially to fulfill the incessant demands that are cropped up by the assessee and or wait for the cross examination of witnesses to be conducted at some uncertain time in future. It has been almost five years, since the case was remanded back. I find that ample time has lapsed for preparation of cross examination of witnesses and study of the documents upon documents by the assessee. However, the matter remains status quo even after the remanding of the case for denovo, inasmuch as the assessee has not filed their final reply nor has been conducive for cross examination of the witnesses. I therefore rely of the above judgments in relation to cross examination and the Principle of Natural Justice, wherein denial of cross-examination has not been held to be violative of principles of natural justice.

35. Therefore, in view of the above, I proceed to decide the issue on the basis of the facts of the case, material on record and the submissions made by the main noticee and co-

noticees from time to time.

36. The issue involved in the present case is manufacture and removal of excisable goods clandestinely without accounting for in the records, without payment of Cenvat duty, under-valuation of the goods, clearance of goods for job-work without the cover of stipulated documents and proposal for imposition of penalty for evasion of Cenvat and other duties or for abetting in the commission of offence.

37. Before addressing the main issue, it is imperative to examine the statutory requirement relating to compliance certificate granted by ARAI based on approval of the base model of a prototype vehicle by ARAI and registration with the jurisdictional RTOs. Relevant provisions of the Central Motor Vehicles Act, 1988 and Central Motor Vehicles Rules, are reproduced as under:

37.1. Necessity for registration-

No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carriers a registration mark displayed in the prescribed manner.

Rule 142: No holder of a trade certificate shall deliver a motor vehicle to a purchaser without registration, whether temporary or permanent.

Rule 47: Following documents are stipulated for the purpose of registration.

- (1) sale certificate in Form 21;
- (2) valid insurance certificate;
- (3) copy of the proceedings of the State Transport Authority or Transport Commissioner or such other authorities as may be prescribed by the State Government for the purpose of approval of the design in the case of a trailer or a semi-trailer;
- (4) original sale certificate from the concerned authorities in Form 21 in the case of ex-army vehicles;
- (5) proof of address by way of any one of the documents referred to in rule 4;
- (6) temporary registration, if any;
- (7) road-worthiness certificate in Form 22 from the manufacturers [Form 22-A from the body builders];
- (8) custom's clearance certificate in the case of imported vehicles along with the licence and bond, if any; and
- (9) Appropriate fee as specified in Rule 81 of the said Rules 1989.

Section 44: The registering authority shall before proceeding to register a motor vehicle or renew the certificate of registration in respect of a motor vehicle, other than a transport vehicle, require the person applying for registration of the vehicle or, as the case may be, for renewing the certificate of registration to produce the vehicle either before itself or such authority as the State Government may be order appoint in order that the registering authority may satisfy itself that the particulars contained in the application are true and that the vehicle complies with the requirements of this Act and of the rules made thereunder.

Section 43: Notwithstanding anything contained in section 40 the owner of a motor vehicle may apply to any registering authority or other prescribed authority to have the vehicle temporarily registered in the prescribed manner and for the issue in the prescribed manner of a temporary certificate of registration and a temporary registration mark.

☆(2) Provided that where a motor vehicle so registered is a chassis to which a body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted the period may, on payment of such fees, if any, as may be prescribed, be

extended by such further period or periods as the registering authority or other prescribed authority, as the case may be, may allow.

Section 40: Subject to the provisions of section 42, section 43 and section 60, every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept.

Rule 122: Every motor vehicle shall bear the identification number including month and year of manufacture, embossed or etched or punched on it.

Rule 126: Every manufacturer or importer of motor vehicles other than trailers and semi-trailers shall submit the prototype of the vehicle to be manufactured or imported by him for test by the Vehicle Research and Development Establishment of the Ministry of Defence of the Government of India or Automotive Research Association of India, Pune.

37.2 From the above legal provisions, it is seen that before commencement of production of vehicles, compliance certificate from the Automotive Research Association of India, Pune, is mandatory in terms of Rule 126 of the Central Motor Vehicle Rules, 1989. For this purpose, the manufacturers are required to supply Base Model for approval for obtaining requisite certificate. Only such persons/manufacturers, who hold the certificate, can manufacture the vehicles. The said compliance certificate is person specific and is not transferable. Even the vehicles manufactured partly on job-work basis are accounted for in the name of the ARAI approved manufacturer. Such manufacturers are required to pay duty on the vehicles manufactured by them. In terms of Rule 122 of the said Motor Vehicle Rules, every motor vehicle shall bear the identification number including month and year of manufacture, embossed or etched or punched on it. Accordingly, the manufacturers are required to give Chassis Nos, name of the manufacturer in short and year of manufacture i.e. in case of the noticee AGAW/01/09, 'AGAW' represents name of manufacturer M/s Atithi Gokul Automobile Works, '01' represents the Sr.No. of the vehicle and '09' shows the calendar year of manufacture. Holder of ARAI certificate can issue Form 21 and Form 22 required for registration of a vehicle. Permission for sale of vehicles is granted by the State Transport Commissionerate only after submission of compliance certificate granted by the ARAI. The manufacturer possessing the aforesaid certificate is required to declare volume of production to ARAI periodically with a view to carry out Conformity of Production [COP] as to the compliance to emission performance.

37.3 Vide Section 40 of the CMV Act, registration of all vehicles manufactured in a factory has been made mandatory with local RTO. Therefore, each vehicle with the maker's name gets registered with RTO authorities functioning under the respective State Governments. The temporary registration takes place where the factory of the vehicle manufacturer is situated and permanent registration takes place where the buyer of the vehicle resides. The argument that investigation needed to ascertain as to where the Chassis number or the Engine No. was required to be embossed and compare the same physically with the Chassis/Engine numbers available on the vehicles in terms of Rule 122(2) of the CMV Rules, does not appear to be relevant. The argument whether a vehicle falls under category L or M or N is not relevant insofar as excisability and demand of duty and taxes is concerned. The main noticee has argued that vehicle showing their name as maker does not go to show that they had, in fact, manufactured the vehicle. In this context, it may be stated that it is not the case of the main noticee that someone had manufactured and got the vehicles temporarily registered with RTO Ahmedabad and manufacturers located approximately 200 - 300 kms away would come all the way to Ahmedabad to register the vehicle temporarily just to implicate the noticee. If really this was the case, the main noticee should have taken necessary civil action against such manufacturers. RTO is a statutory authority, who is required to register vehicles after inspection and submission of requisite documents. He has forwarded the information relating to vehicles registered with him. mala-fide has been or can be attributed to the said authority. Moreover, the said information as detailed in Annexure-A1 and A2 tallies with the information appearing on the records seized from the brokers/job-workers. It may be stated that registration of a vehicle is mandatory under Section 39 of the CMV Act. In terms of Section 2(8) of the CMV Act 'dealer' includes a person who is engaged (i) in building bodies for attachment to chassis; (ii) or in the repair of motor vehicles; or (iii) in the business of hypothecation, leasing or hire-purchase of motor vehicle. Till the vehicle is sold or transferred to a broker on proper documents or is being sent for job-work, the ownership of the vehicles remains with the manufacturer. Therefore, in terms of Section 43

of the CMV Act, the manufacturer is required to obtain temporary registration certificate. This is the reason that proviso to Section 43 prescribes renewal of registration in a case where a motor vehicle is a chassis to which a body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or any unforeseen circumstances beyond the control of the owner, the period may, on payment of such fees, if any, as may be prescribed, be extended by such further period.

37.4 Rule 33 of the CMV Rules grants exemption to trade certificate holders from registration. Rule 41 of the CMV Rules, stipulates the purposes for which motor vehicle with trade certificate may be used. The stipulations are reproduced hereunder.

The holder of a trade certificate shall not use any vehicle in a public place under that certificate for any purpose other than the following:—

- (a) for test, by or on behalf of the holder of a trade certificate during the course of, or after completion of, construction or repair; or
- (b) for proceeding to or returning from a weigh bridge for or after weighing, or to and from any place for its registration; or
- (c) for a reasonable trial or demonstration by or for the benefit of a prospective purchaser and for proceeding to or returning from the place where such person intends to keep it; or
- (d) for proceeding to or returning from the premises of the dealer or of the purchaser or of any other dealer for the purpose of delivery; or
- (e) for proceeding to or returning from a workshop with the objective of fitting a body to the vehicle or painting or for repairs; or
- (f) for proceeding to and returning from airport, railway station, wharf for or after being transported; or
- (g) for proceeding to or returning from an exhibition of motor vehicles or any place at which the vehicle is to be or has been offered for sale; or
- (h) for removing the vehicle after it has been taken possession of by or on behalf of the financier due to any default on the part of the other party under the provisions of an agreement of hire-purchase, lease or hypothecation.

37.5 From this, it is clear that the exemption from temporary registration is not available to a manufacturer. It may be noted that the RTO is a statutory authority. Based on the documents submitted at the time of temporary registration, his Office maintains records. Accordingly, his Office has furnished the information based on such records. In light of the aforesaid, I hold that cross-examination of the RTO is not called for and hence I deny the same.

37.6 It may be stated that in the present case, it is not material as to who, at the end of the brokers/job-workers, had maintained the daily records. These records tally with the information called from the RTO Ahmedabad. Similarly, the suppliers have confirmed having supplied the raw material and the fact that assembled diesel engines were available locally. All the brokers/job-workers/suppliers have affirmed the veracity of these records and having dealt with the vehicles manufactured and cleared by the noticee clandestinely. It is not case of the main noticee that the records at all places were manipulated. It may be noted that Shri Dinesh B. Bharwad, partner of the main noticee, had affirmed the statements of the brokers/job-workers and suppliers of Diesel Engines/Gear Boxes and had confirmed the same. He has neither objected to any of the averments made by the brokers/job-workers and suppliers of Diesel Engines/Gear Boxes nor retracted his own statements.

37.7 The main noticee has contended that the charge of clandestine manufacture and removal solely based on private records and registers was not sustainable in absence of corroborative evidence; and that no document has been recovered from their place to show that they had undertaken manufacturing of vehicles clandestinely. It may be stated that in terms of the said certificate granted by ARAI, it is specified that "it is the vehicle manufacturer's responsibility to ensure fitment of same components/parts/assembly etc before submission of vehicle for registration". The Diesel Engine prescribed to be fitted in the vehicle to be manufactured by the main noticee, was GL-400-II-A, manufactured by M/s Greaves Cotton Ltd. Therefore, the manufacturers had to use only those parts which had been specified by the ARAI. Information culled out in Annexure-A1 and A2 to the notice, based on the information furnished by the Commissionerate of Transport, Gujarat, reveals that 3241 vehicles [3134 during the period from Oct.05 to Sep.09 + 107 during Oct.09 to June,2010] manufactured by the main noticee bearing maker's name as "Atithi" or "Atithi Gokul" were registered with them. As against this, the main

notice had declared only 64 vehicles in their monthly return ER-1 during the period Oct'05 to April 2008. On being requested, ARAI, vide letter No.ARM/HMR/GOVT-Corr/09-10/11 dated 11.12.09 has intimated that noticee has filed NIL production report with them for the period F.Y. 05-06 to F.Y. 08-09. From this, it is clear that the main noticee had suppressed manufacture of 3177[3241 - 64] vehicles to the statutory authorities with intent to evade payment of Cenvat and other duties.

38. It has been argued on behalf of the main noticee that no inquiry with the owner of the vehicle No.GJ-II-X-5547, Shri Rathod Pravin Parbatbhai [details appearing on Page 77 of seized diary A/4 withdrawn vide panchnama a dated 06.10.09 drawn at the premises of M/s Manish Auto, Keshod] had been conducted and that the said details do not tally with Annexure-A to the notice dated 04.11.10. It may be stated that that the said vehicle bore Chassis No.AGAW/232/07, from which it is clear that the noticee had manufactured the said vehicle. Since the vehicles are financed by the brokers, who undertake various other works on behalf of ultimate buyers, inquiry with them is of no relevance. The fact of purchase from the main noticee has been confirmed by Shri Govindbhai Hirabhai Myatra, karta of M/s Manish Auto. It is incorrect on the part of the main noticee to say that these details do not tally with the Annexure-A to the notice dated 04.11.10. It may be stated that the aforesaid vehicle appears at Sr.No.1657 of the said Annexure. With regard to extension of inquiry with other ultimate buyers, it may be stated that ultimate buyer and the manufacturer do not come into contact as all dealings are done through brokers only. Therefore, investigation with the ultimate buyers would not have served any purpose.

38.1 It may be stated that scrutiny of documents appearing in Annexure-A to panchnama dated 06.10.2009 at the premises of M/s Manish Auto, and recovery of Bill of No.37/13.05.08 [appearing at page 13 of the notice] issued by M/s Swastik Electric Corporation, Keshod, revealed that even after surrendering its Central Excise Registration on 02.05.2008, the main noticee continued to clandestinely manufacture and remove the vehicles.

38.2 Further, Annexure-B to the notice dated 04.11.10, prepared on the basis of seized documents [Sr.No.7 of Annex-A drawn at the premises of M/s Manish Auto] makes it clear that they had dealt with 80 vehicles manufactured by the noticee. Shri Govindbhai Hirabhai Mytra, inter alia, stated that new vehicles were not being manufactured by M/s Manish Auto since they did not have requisite certification from ARAI; that details appearing in the Annexure prepared on the basis of seized records A/4, A/5, A/6 & A/7; that he had purchased and sold the vehicles manufactured by various manufacturers, including the main noticee herein; that the payment received from his customers was always in cash because they did not have bank accounts; that English alphabet 'AGAW' mentioned in the column of Chassis No., indicated the name of the manufacturer viz M/s Atithi Gokul Automobile Works;

38.3 The fact that the vehicles were being undervalued so as to evade payment of duties and other taxes is apparent from the confirmation by Shri Govindbhai Hirabhai Myatra, karta of M/s Manish Auto, in his statement dated 19.02.10, that as against the value of Rs.45,000 to Rs.65,000 shown in the Central Excise Invoices, the vehicles were being sold at the rates ranging from Rs.57,000 to Rs. 1,36,000, from which it is clear that besides indulging in illicit clearance of the goods manufactured by the main noticee, they also indulged in undervaluation of the goods.

39. From Annexure-C to the notice dated 04.11.10 prepared on the basis of documents appearing at Sr.No.4 & 6 of Annexure -A to the panchnama dated 06.10.09 drawn at the premises of M/s Parishram Marketing, Keshod, it is clear that both the main notice and co-noticee had dealt with 64 vehicles. From the fact that "Atithi Gokul" vehicle bearing Chassis No.AGAW/64/05, appearing in the seized record A/4 find mention at Sr.No.59 of the list furnished by the RTO, further goes to establish correlation and veracity of the information. Shri Nathubhai Gajera, Proprietor of M/s Parishram Marketing, Keshod, in his statement dated 20.11.2009, inter alia, stated that before removal of vehicles, the manufacturer, abbreviated name of manufacturer and Chassis No; that abbreviation 'AGAW' stood for M/s Atithi Gokul Automobile Works, Ahmedabad; that at the time of registration with the RTO, they submit Form 21 & Form 22 and Sales Invoice, Insurance slip and ID proof of the buyers; that the registers at Sr.No.4 & 6 of Annexure-A to the panchnama dated drawn at their premises, contain the details such as names of the buyers, village, taluka, district, engine No., chassis No., Temporary registration No, date, permanent No. of the vehicles; that as per the statement prepared on the basis of registered appearing at Sr.No.4 & 6 of Annexure-A to the panchnama dated 06.10.09 drawn at their premises, they had received 578 chhakda risksaw from different manufacturers during the period Jan.05 to Sept.09; that out of the said 578, 64 vehicles were received from the



main noticee.

40. From Annexure-D to the notice dated 04.11.10, prepared on the basis of seized record Sr.No.01, 02, 03 and 07 under panchnama dated 06.10.09 drawn at the premises of M/s Chirag Auto, Jamnagar, a job-worker, it is clear that they had undertaken job-work on 312 vehicles. Shri Sabirbhai Yusufbhai Ghatkai, proprietor of co-noticee, in his stated dated 07.10.2010, has confirmed that the said record contained the details of chhakda rickshaws such as name of the owner, village, taluka, dist., date, engine no., Chassis No., temporary No., and Permanent No., Engine No., etc. M/s Chirag Auto Inds.

40.1 Shri Ghatkai stated that vehicle manufacturers allot Chassis No. to the vehicle manufactured by them; that the abbreviation 'AGAW' stood for M/s Atithi Gokul Automobile Works; that since the vehicles were received from the manufacturers after temporary passing, all duty paying documents i.e. Central Excise Invoices would be available with such manufacturers.

40.2 With regard to documents for movement of excisable goods for job-work, Shri Ghatkai stated that they do not receive job work challans instead they receive details on a piece of paper; that they had assembled the vehicles which were sent to them for delivery to the ultimate buyers; that they had fitted additional accessories as per the requirement of the customers; and that the vehicles mentioned therein, were manufactured by various chhakda manufacturers; that out of 713 vehicles, they had received 312 from the main noticee herein.

41. As regard the contention of the main noticee that third party evidence needs to be corroborated, I find that information appearing in the incriminating documents seized from various places match with the information furnished by the RTO. Hence, this argument has no basis.

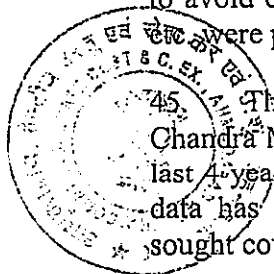
42. With regard to evidence relating to procurement of raw material viz. Diesel Engines/Gear Boxes, it may be stated that the recovery of monogram of 'Greaves Cotton' from the premises of M/s Dattatrey Auto Centre, goes to show that monogram on assembled goods was being affixed. Further, it is relevant to note that Dealers of M/s Greaves Cotton viz. Shri Mansukh Patel, of M/s Dattatrey Auto Centre, Shri Pankaj C Panara of M/s Deepak Sales Agency, Shri Kishor G-Chandra, partner of M/s New Chandra Motor Cycle House, Jamnagar, have clearly stated that local technicians viz S/Shri Kalubhai, Shivabhai, Musabhai, Hulabhai, Abbas, etc, were engaged in the assembly of Diesel Engines.

43. It is relevant to note that besides Diesel Engines of GL-400 approved by ARAI, the noticee had used other models viz G-1080, G-1450, G-1510, G-5520, G-5530, which were meant for water handling, agriculture and other purposes. Further with a view to avoid detection and show less quantity of purchase of raw materials viz diesel engines, the main noticee got the bills prepared in the name of individual buyers and made the payments in cash. It has further been contended that the entire chain right from the procurement of the raw material to its consumption, manufacture of the goods and ultimate transportation was required to be established. I find that the demand is based on the documents seized from the premises of the brokers/job-workers and dealers of Greaves Cotton corroborated by the information furnished by the RTO. These cannot be linked with the documents maintained by the main noticee because the same were destroyed in fire.

44. This explains the gap between 940 Greaves GL-400 make Diesel Engines procured from various dealers and 3241 [3134+107] vehicles registered with the RTO as detailed in Annexure-A1 and A2 to the notice dated 04.11.2010, that remaining 2301 Diesel Engines were either procured from other sources or were of different models. It is relevant to mention here that so as to avoid detection an arrangement was made that raw materials viz diesel engines/ gear boxes, were purchased in the name of the buyers and the payment was made in cash.

45. The contention of the main notice as to how Shri Kishor G. Chandra, partner of M/s New Chandra Motor Cycle House, could furnish the information relating to sale of diesel engines for last 4 years on same day [23.07.10] on which he was given summons, is of no relevance as the data has not been disputed or controverted and in today's fast communication, information sought could be conveyed faster over other means.

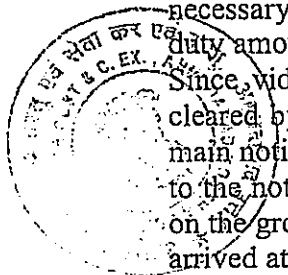
46. I find that the predecessor adjudicating authority vide the impugned OIO had held that the vehicle placed under detention/seizure during search on 24.03.2010 in the premises of M/s



Shree Rajshakti Automobiles, Ahmedabad, for non-accountal and non-production of documents, were liable for seizure and were confiscated. No document evidencing licit manufacture and payment of duty/taxes in respect of vehicle bearing maker's name as Gokul Shakti and registration No.GJ-I-XX-3303 has been produced. Looking to the fact that the seized vehicle bore the maker's name as "Gokul Shakti", it is unimaginable that the said vehicle might have been purchased from M/s Bhagyashree Auto Diesel Pvt. Ltd., Hyderabad, in the year 2003-04, and secondly no documents have been produced in this behalf. Therefore, it was held that the said vehicle was manufactured and cleared illicitly by M/s Atithi Gokul Automobile Works, Ahmedabad. This fact has also been corroborated by Shri Kalpesh Shah of M/s Shree Rajshakti Automobiles.

47. The 15 vehicles seized at the premises of M/s Vishwakarma Engg Works, on the ground of non-accountal and nonproduction of documents evidencing payment of duty/tax, were also confiscated under the impugned OIO. It was found that these vehicles were sent to him for body building by the main noticee in semifinished condition (chassis fitted with diesel engines). It was further found that though the diesel engines were purchased in the year 2007, the semi-finished vehicles were sent in September, 2009 by the main noticee after surrendering Central Excise Registration on 02.05.2008. Shri Navinbhai Maganbhai Umrania, in his statement, has clearly stated that they had received the vehicles without cover of other documents or documents prescribed under Central Excise law. It may be noted that SSI exemption to the goods falling under sub-heading No.8704 2120 of the First Schedule to the Central Excise Tariff Act, 1985, was not available to the assessee. Therefore, the manufacturer was required to/discharge duty from the very first clearance. Shri Dinesh B. Bharwad, partner of the main noticee, on being asked to produce the bills for purchase of iron and steel for making Chassis and Gear Boxes, etc, showed his inability to do so on the ground that all records were destroyed in fire that took place in their factory. From this, it is clear that the main noticee had indulged in manufacture of goods after surrendering the Central Excise Registration clandestinely and removal without accounting for and without cover of prescribed documents. Therefore, it was held that the main noticee has contravened the provisions of Rules 4, 8, 9, 10, 11 and 12 of the Central Excise Rules, 2002 and Section 3 of the Central Excise Act, 1944. Based on the request for release, the seized 15 vehicles were ordered to be provisionally released on execution of B-II bond for Rs. 12,08,400 with 25% security.

48. The contention of the assessee that no adverse inference can be drawn against them on the basis of such certificate of ARAI dated 12.02.2009 inasmuch as no investigation at Plot No.9, GIDC, Anjar, Kutch, had been carried out. Perhaps, the noticee desires to convey that they had manufactured vehicles at the said plant. It may be stated that all vehicles mentioned in Annexures-A1, Annexure- B, Annexure-C and Annexure-D pertain to the period prior to obtaining the certificate from ARAI. Only 4 and 1 vehicles mentioned in Annexure-A1 and Annexure-C respectively pertain to the period after the said compliance certificate of ARAI. It may be stated that firstly mere holding of ARAI certificate does not *ipso facto* prove that the goods were manufactured and cleared from that premises; and secondly, had that been the case, the main noticee should have corroborated the fact of licit manufacture and clearance from that premises with the help of documents evidencing payment of Cenvat duty and ER-1 returns. As already mentioned, SSI benefit is not available to the vehicles falling under Chapter 87 and, therefore, the manufacturer has to pay duty from the very first clearance. It may further be noted that the temporary registration of the vehicle is done by the RTO on the basis of ARAI certificate and sale letter issued by the manufacturer. Therefore, the RTO, Ahmedabad, has furnished the details on the basis of these documents. Moreover, had the vehicles been manufactured at Anjar [Kutch], the vehicles should have been registered with the regional transport authority at Kutch instead of bringing the same all the way to Ahmedabad. Therefore, this argument does not hold water. It may be stated that main noticee has requested that the duty element and other taxes may be abated from the total demand. I find that at para 13.5 of the notice dated 04.11.2010, the total amount has been treated as cum-duty and the price has been accordingly applied, I do not find it necessary that demand needs to be reworked. Accordingly, I hold that the main noticee shall pay duty amounting to Rs.3,82,85,626.00 as detailed in Annexure-E1 to the notice dated 04.11.2010. Since, vide Annexure- E2 demand of differential duty has been made on the basis of goods cleared by resorting to undervaluation and the cum-duty price has been worked, I hold that the main noticee shall pay differential duty amounting to Rs. 1,76,028.00 as detailed in Annexure-E2 to the notice. As regards the argument that the demand for differential duty was not sustainable on the ground that abatement had not been given to them. I find that the cum-duty price has been arrived at [para 13.5 of the notice dated 04.11.2010] after providing for abatement towards duties



and taxes payable on the finished goods. Therefore, this argument of the main noticee is not tenable.

49. The main notice has contended that in the event of confirmation of demand, benefit of Cenvat credit paid on inputs may be extended to them. It may be noted that in respect of goods cleared by resorting to undervaluation, the main noticee might already have availed Cenvat credit on the inputs. As regards the goods cleared illicitly by suppressing manufacture and removal, I find that no documents have been produced by the main noticee in support of their contention. Hence, the claim is without merit and cannot be considered.

50. The main notice has contended extended period was not available in respect of demand of differential MV Cess as shown in Annexure- E3 to the said notice on the ground that they had declared the vehicles in the ER-1s. I agree with this contention. The demand towards MV Cess on these 64 vehicles comes to Rs.4,651.00 [Rs.37,21,000/- assessable value declared in ER-1/Invoices as detailed in column 3 of Annexure E2 x MV Cess @.0.125%]. Accordingly, the liability towards MV Cess as worked out in Annexure-E3 comes to Rs.2,99,768.00. The extended period of five years would, however, be applicable in respect of remaining 3177 [3241 - 64] vehicles on the ground that these were cleared illicitly without accountal and without payment of Cenvat and other duties.

51. The main noticee has further contended that essential ingredient viz suppression, willful mis-statement and fraud with intent to evade payment of duty were absent in the notice; and that, therefore, extended period of limitation was not available for demand of duty. Proviso to Section 11A(1), as it was at the relevant time, provided that when duty of excise has not been levied or paid or has been short-levied or short-paid by reasons of fraud, collusion or any willful mis-statement or suppression of facts or contravention of any of the provisions of this Act or the rules made thereunder with the intent to evade payment of duty by such person or his agent, the provisions of this sub-section shall have effect as if for the words 'one year', the words 'five year' were substituted. From the contraventions enumerated hereunder, it goes to prove that not only the manufacture and removal was undertaken illicitly but goods, cleared under proper documents, were grossly undervalued so as to evade payment of Cenvat duty:

- (i) as against manufacture and removal of 3241 vehicles, duty was paid only on 64 vehicles;
- (ii) the goods were grossly undervalued inasmuch as the price of goods ranging from Rs.57,000 to Rs. 1,36,000, they had suppressed the value and discharged duty on the value of Rs.45,000 to Rs.65,000;
- (iii) raw material used in the manufacture of goods was not accounted for and all transaction were made in cash;
- (iv) Goods for job-work were cleared without prescribed documents;
- (v) Even after surrendering Central Excise Registration, they continued to manufacture and remove the goods;
- (vi) Different figures pertaining to manufacture of goods was reported to the Central Excise Deptt (64), NIL to ARAI as against actual manufacture of 3241 vehicles.

52. From the aforesaid, it is clear that the main noticee had contravened the provisions of Section 3 of the Central Excise Act, 1944 inasmuch as they cleared the excisable goods without appropriate payment of Cenvat and other duties; Rule 4 read with Rule 8 of the inasmuch as they cleared the excisable goods without discharging Cenvat duty in the manner prescribed; Rule 6 of the said Rules inasmuch as they failed to assess the Cenvat duty payable on the clearances; Rule 9 of the said Rules inasmuch as they failed to obtain Central Excise registration; Rule 10 of the said Rules inasmuch as they failed to maintain true and correct account of goods in the statutory stock register in the form of 'Daily Stock Account' and/or private stock account of finished goods, manufactured and cleared by them; Rule 11 of the said Rules inasmuch as they failed to issue proper invoices in respect of clearance of excisable goods made by them; Rule 12 of the said Rules inasmuch as they failed to file correct monthly returns regarding manufacture and clearance of excisable goods from their factory. They have also rendered themselves liable for penalty and the seized offending goods liable for confiscation inasmuch as they failed to observe proper procedure for movement of goods to and fro from the job workers. The aforesaid goes to establish that the main noticee had mis-stated and suppressed the fact of manufacture and removal of excisable goods with intent to evade payment of duty. Further, they had colluded with the brokers/traders/job-workers inasmuch as movement of goods was made without the cover of prescribed documents and payment of duty. Therefore, extended period of limitation

would apply in their case. Accordingly, I hold that the main notice is liable to pay duty. Therefore, I hold that the Cenvat duty alongwith MV Cess is recoverable from the main notice.

53. I have already held that extended period of limitation is applicable in the present case on the ground of mis-statement and suppression of fact, therefore, I hold that the main noticee has rendered itself liability for penalty under Section 11AC of the Central Excise Act, 1944.

54. In terms of Section 11AC of the Central Excise Act, 1944, where any duty of excise has not been levied or paid or short-levied or short-paid by reason of fraud or collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of the Central Excise Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty shall also be liable to pay a penalty equal to the duty determined. As I have already held that the main noticee had indulged in collusion with the brokers/ job workers and had mis-stated and suppressed the manufacture and removal of goods, I hold that the main noticee is liable for penalty under Section 11AC of the Central Excise Act, 1944.

55. There appears confusion in the mind of the main noticee that the notice has been issued to them for non-submission of production details to ARAI in terms of Rules 126 of the Central Motor Vehicle Rules, 1989. I do not have jurisdiction under the CMV Act or Rules to adjudicate or even call for explanation for non-compliance. However, Automobile Cess, Education Cess on Automobile Cess and Secondary and Higher Education Cess on Automobile Cess are being levied under section 9 of Industries (Development and Regulation) Act, 1951 read with Rule 3 of Automobile Cess Rules, 1984. Rule 3 of Automobile Cess Rules, 1984 very clearly provides that provisions of Central Excise Act, 1944 and the Rules made thereunder including those relating to refund of duty would apply to levy and collection of Automobile cess. The Hon'ble Karnataka High Court in the case of M/s TVS Motors Co. Ltd. held that the automobile cess leviable under the automobile cesses rules are governed by the provisions of central excise act and rules made under the act and are in the nature of excise duty. The fact of non-submission of details to ARAI has been pointed out to show as to how they have blatantly violated the provisions of different enactments so as to suppress the actual manufacture and clearance of goods. These, along with the records of RTO, are all corroborative evidence to prove beyond doubt that the assessee has manufactured and illicitly removed goods without payment of duty.

56. As regards proposal for imposition of personal penalty on Shri Dinesh B. Bharwad, partner of M/s. Atithi Gokul Automobile Works, Ahmedabad, under Rule 26 of the Central Excise Rules, 2002, I find that he was the active partner looking after all day-to-day affairs relating to purchase, production, sales, Accounts, etc. Therefore, he was solely responsible and was aware of all the activities related to the manufacture and clearance of goods without payment of duty. He was concerned with purchasing raw material for manufacture of goods, transporting, removing, concealing, and selling the manufactured goods clandestinely. Incriminating documents have also been seized from the premises of the brokers/dealers, job-workers, etc. Very specific charges have been levelled against him that he was concerned in transporting, removing, selling goods illicitly without accounting for, without preparing Central Excise invoices, and without payment of duties and receiving the sale proceeds in cash/DD. He not only suppressed the manufacture and removal of finished goods, but also resorted to a modus operandi of making the bills in the name of the ultimate customers and making the payment in cash so as to avoid detection. Since he was in the production for a long time, with his experience, he had knowledge of law and the knew the ways to contravene the laws and avoid payment of duty.

57. It may be stated that in the case of M/s Aditya Steel Inds, Madras [1996 (84) ELT 229, it was held that penalty was imposable taking into consideration the role played. The decision in the case of Brahma Vasudev [1988 (33) ELT 20 (P&H)] and Vidya Wati [1988 (37) ELT 341 (Del)], are not applicable inasmuch as in those cases complaints were held to be not maintainable in absence of the manner in which the petitioners were concerned with the commission of offence or manufacture of goods. The decision in the case of M/s ITC [1992 (59) ELT 163 (T)] is also not applicable inasmuch Shri Bharwad had pre-knowledge that the goods cleared illicitly were liable to confiscation. In this background, the case law in the case of M/s Steel Tubes of India [2007 (217) ELT 506 (Tri.LB)], holding that Rule 209A of the erstwhile Rules presupposed a knowledge as to the liability of the confiscation of the goods, is not applicable in view of the fact that all the parties to the commission of offence of supplying and receiving the goods cleared illicit had the pre-knowledge that the same were liable to confiscation. In the case of Liladhar Pasoo 2000 (122) ELT 737 (T), the importer in the B/E declared destination as

Indore and vide separate letter asked the CHA to send the goods to Daman. It was in this background that it was held that no penalty could be imposed on the appellant-CHA. The facts herein are altogether different inasmuch as these co-noticees had knowledge about duties being evaded and liability of the goods to confiscation. The ratio of the case of M/s Southern Steel [1979 BIT (1402) (AP)] does not appear to be applicable to the facts of the present case inasmuch as that case relates to seizure and confiscation and not to imposition of personal penalty.

58. Shri Dinesh Bharwad has further submitted that penalty could not be imposed on a partner. In this context, the Hon'ble Supreme Court, in the case of Prakash Metal Works [2007 (216) ELT 660 (SC)], observed that since the appellant therein, had violated the provisions of Rule 9 read with Rule 173Q of the erstwhile Central Excise Rules, 1944, and not maintained RG-1 [Daily Stock Account] not maintained, statutory records and accounts, imposition of penalties on the partner of the firm, on the partnership firm as well as on the supplier of raw material, was upheld. The decision has also been relied upon by the CESTAT in its decision in the case of Mohd Amin AS Lakha reported at 2012 (275) ELT 465 [Tri.Ahmd].

59. In view these findings, I hold that Shri Dinesh B. Bharwad, is liable for personal penalty under Rule 26 of the said Rules.

60. The preceding adjudicating authority vide the OIO NO. 30-31/COMMR/AKG/AHD-II/2012, dated 12.11.2012, had decided the SCN No. DGCEI/AZU/36-04/2010, dated 02.04.2010 and SCN No. DGCEI/AZU/36-109/2010-11, dated 4.11.2010. The then adjudicating authority vide the impugned OIO had imposed penalty under Rule 25 of the said Rules on M/s Manish Auto, M/s Parishram Marketing, M/s. Chirag Auto Industries, M/s Vishwakarma Engineering Works and M/s Shree Rajshakti Automobiles. The assessee M/s. Atithi Gokul Automobile Works and Shri Dinesh B. Bharwad, Partner of the assessee, on being aggrieved with the above OIO, had filed an appeal before CESTAT and CESTAT vide Final Order No. A/10885-10886/2014, dated 1.5.2014 remanded back the matter to the adjudicating authority with respect to these two noticees only. Therefore I find that there is no need to discuss the roles of the other noticees in this case again. Thus, I cannot and do not interfere with the impugned OIO No. 30-31/COMMR/AKG/AHD-II/2012, dated 12.11.2012, with respect to M/s Manish Auto, M/s Parishram Marketing, M/s. Chirag Auto Industries, M/s Vishwakarma Engineering Works and M/s Shree Rajshakti Automobiles and the decision of the predecessor adjudicating authority in the impugned OIO still stands with respect to these noticees.

61. It is reiterated that in the present case, the demand has been raised on the basis of the records maintained by the brokers and job-workers, seized under panchnamas and there is enough corroborative evidence inasmuch as that these records tally with the information called from the RTO Ahmedabad. It is definitely not the case that RTO has issued Registration No.s to vehicles that do not exist. Similarly, the suppliers have confirmed that they have supplied the raw materials and it is a fact that the assembled diesel engines were available locally. All the brokers/job-workers/supplies have affirmed the veracity of these records and having dealt with the vehicles manufactured and cleared by the assessee clandestinely. It is not the case of the assessee that the records at all the places, were manipulated all together. It may be noted that Shri Dinesh B. Bharwad, partner of the assessee, had affirmed the statements of the brokers/job-workers and suppliers of Diesel Engines/Gear Boxes and had confirmed the same. He has neither objected to any of the averments made by the brokers/job-workers and suppliers of Diesel Engines/Gear Boxes nor retracted his own statements.

62. I reiterate the discussion and findings of my predecessor adjudicating authority as discussed in OIO no. 30-31/COMMR/AKG/AHD-II/2012, dated 12.11.2012. I recap and reiterate the findings of my predecessor adjudicating authority on the demand of Central Excise duty, interest and imposition of penalty and all the other issues as per impugned OIO dated 12.11.2012, which is under de novo proceedings. I find there is no justifiable reason to take a different view in the matter which was decided vide the impugned OIO. I totally agree with the view taken up by the adjudicating authority vide the impugned OIO. I also reiterate that more than sufficient opportunities of cross examination of witnesses were accorded to the assessee as discussed in the foregoing paras. Further, the copies of all the Relied Upon Documents have been provided to the assessee again, even though they were provided at the time of service of the Show Cause Notices, itself.

63. In view of the above, I proceed to adjudicate the case on the basis of material evidence

available on record and pass the following order:

ORDER

- (i) I confirm the demand of Cenvat and other duties amounting to Rs.3,84,61,654.00 [Rupees Three crores, Eighty four lakhs sixty one thousand six hundred fifty four only] as detailed in Annexure-E1 and E2 to the show cause notice bearing F.No. DGCEI/AZU/36-109/2010-11 dated 04.11.2010 against M/s. Atithi Gokul Automobile Works, Survey No. 477, Sarkhej Gandhinagar Highway, Gota Chokdi, Chandlodia, Ahmedabad, under proviso to Section 11 A (1)/Section 11A(4) of the Central Excise Act.
- (ii) I confirm the demand of MV Cess amounting to Rs.2,99,768.00 [Rupees two lakhs ninety nine thousand seven hundred sixty eight only], as detailed in Annexure-E3 to the show cause notice bearing F.No.DGCEI/AZU/36-109/2010-11 dated 04.11.2010 against M/s Atithi Gokul Automohaite Works, Ahmedabad, and others, under proviso to Section 11A(1)/Section 11A(4) of the Central Excise Act. The remaining demand of Rs.4,651.00 is dropped.
- (iii) M/s Atithi Gokul Automobile Works, Ahmedabad, are ordered to pay interest under Section 11AB/11AA of the Central Excise Act, 1944, on the above confirmed demand at the prescribed rate.
- (iv) I impose a penalty of Rs. Rs.3,87,61,422.00 [Rupees Three crore eighty seven lakh sixty one thousand four hundred twenty two only] on M/s Atithi Gokul Automobile Works, Ahmedabad, under Section 11AC of the Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules, 2002.
- (v) I impose a penalty of Rs.50,00,000/- [Rupees fifty lakh only] on Shri Dinesh B. Bharwad, partner of M/s Atithi Gokul Automobile Works, Ahmedabad, under Rule 26 of the Central Excise Rules, 2002.
- (vi) I order confiscation of one vehicle placed under seizure vide panchnama dated 24.03.2010 drawn at the premises of M/s Shree Rajshakti Automobiles, Ahmedabad. I, however, give an option to M/s Atithi Gokul Automobile Works, Ahmedabad, to redeem the same on payment of redemption fine of Rs. 10,000.00 [Rupees ten thousand only].
- (vii) I order confiscation of fifteen vehicles placed under seizure vide panchnama dated 06.01.2010 drawn at the premises of M/s Vishwakarma Engineering Works, Rajkot. I, however, give an option to M/s Atithi Gokul Automobile Works, Ahmedabad, to redeem the same on payment of redemption fine of Rs.2,00,000.00 [Rupees two lakh only].
- (viii) The assessee vide dated 15.06.2012 had requested for provisional release of 15 vehicles seized under panchnama dated 06.01.2010 at the premises of M/s Vishwakarma Engg Works, Rajkot, which were ordered to be provisionally released vide letter dated 26.06.2012 on execution of Bond for Rs.12,08,400/- with security equal to 25% of the value of bond amount. Since the seized goods have been provisionally released, I order the appropriation of the security deposit amounting to 25 % of the Bond against the above confirmed demand. I also order the enforcement of the Bond amounting to Rs.12,08,400/- .

64. This Order disposes of both the show cause notices issued by the Additional Director General, DGCEI, AZU, Ahmedabad, vide Show Cause notice NoDGCEI/AZU/36-04/2010-11, dated 02.04.2010 and Show Cause Notice No.DGCEI/AZU/36-109/2010-11, dated 04.11.2010.



F.No.V.87/15-107/OA/2014-Denovo

(Amarjeet Singh)
Commissioner,
CGST & Central Excise,
Ahmedabad, North.
Date: 19.02.2021

By RPAD.

To

1. M/s Atithi Gokul Automdbile Works, Survey No. 477, Sarkhej Gandhinagar Highway, Gota Chokdi, Chandlodia, Ahmedabad.
2. Shri Dinesh B. Bharwad, Partner of M/s Atithi Gokul Automobile Works, Survey No. 477, Sarkhej Gandhinagar Highway, Gota Chokdi, Chandlodia, Ahmedabad.
3. M/s Shree Rajshakti Automobiles, Survey No. 477, Sarkhej Gandhinagar Highway, Gota Chokdi, Chandlodia, Ahmedabad.
4. M/s. Manish Auto, Nagarpalika Shopping Centre, Keshod.
5. M/s. Parishram Marketing, 64, Mayur Market, Keshod.
6. M/s Vishwakarma Engineering Works, Plot No.41/42, Bansidhar Weigh Bridge, GIDC, Kuvawada, National Highway N0.8-B, Rajkot.
7. M/s Chirag Auto Industries, Shop No.02, Plot No.71, Aman Society, Kalawad Road, Jamnagar.

Copy to:

- 1 The Chief Commissioner, C.G.S.T., Ahmedabad Zone.
- 2 The Additional Director, General, DGGSTI, AZU, Ahmedabad.
- 3 The Commissioner, C.G.S.T., Rajkot.
- 4 The Deputy Commissioner C.G.ST., Division-VI, Ahmedabad North.
- 5 The Superintendent, C.G.S.T., AR-V Division-VI, Ahmedabad North.
- 6 The Superintendent [Legal/Prosecution], CEx, HQ, Ahmedabad.
- 7 Guard File.

22/2/2021



प्राप्त किया	
वस्तु एवं सेवाकर, अहमदाबाद उत्तर	
दिनांक:	23.02.2021
हस्ताक्षर:	R.R. 97-1
नाम:	(12) Copy Receive

