


<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:- qaahmedabad2@gmail.com</p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. V.87/15-27/OA/2010-Pt-I

DIN :

आदेश की तारीख

/ Date of Order : 28.12.2023

जारी करने की तारीख

/ Date of Issue : 11.01.2024

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव

/ UPENDRA SINGH YADAV

आयुक्त

/ COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 05/2023-24

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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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)

3. 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 संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित 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 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 1.00 रूपया 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- Denovo Proceedings initiated vide the Hon'ble CESTAT vide it's Order No. A/12516-12520/2021 dated 18.11.2021, arising OIO No. 08 to 10/COMMR/RAJU/AHD-II/2012 dated 06.06.2012 issued by the then Commissioner, Central Excise, Ahmedabad-II (Show Cause Notice No. (i) F. No. DGCEI/AZU/36-166/2009 dated 27.03.2010 (ii) DGCEI/AZU/36-94/10-11 dated 01.10.2010 (iii) V.87/15-32/OA/2011 dated 13.09.2011 issued to M/s Vaibhav Auto Industries, 41, New Ahmedabad Industrial Estate, Behind Nova Petrochem, Moraiya, Tal: Sanand, Dist. Ahmedabad.

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- /2023-24

M/s Vaibhav Auto Industries, 41, New Ahmedabad Industrial Estate, Behind Nova Petrochem, Moraiya, Tal: Sanand, Dist. Ahmedabad (hereinafter referred to as "the 'assessee') were issued three Show Cause Notices vide (i) F. No. DGCEI/AZU/36-166/2009 dated 27.03.2010 for confiscation of a chhakkdo rikshaw valued at Rs. 61,000/- seized under panchnama dated 06.01.2010 (ii) DGCEI/AZU/36-94/10-11 dated 01.10.2010 for demand of Central Excise duty amounting to Rs. 3,13,22,497/- for the period from 01.01.2005 to 03.10.2009 (iii) V.87/15-32/OA/2011 dated 13.09.2011 for demand of differential of Central Excise duty of Rs. 23,63,493/- for subsequent period. The first 2 SCNs were issued by the then Additional Director General, DGCEI, AZU, Ahmedabad and the later SCN was issued by the then Joint Commissioner, Central Excise, Ahmedabad-II. The three SCNs were adjudicated by the then Commissioner, Central Excise, Ahmedabad-II vide Order-In-Original No. 08 to 10/COMMR/RAJU/AHD-II/2012 dated 06.06.2012. The demand of Central Excise duty total amounting to Rs. 3,36,85,990/- was confirmed alongwith interest and appropriate penalty was imposed as per aforesaid SCNs by the then adjudicating authority i.e. the then Commissioner, Central Excise, Ahmedabad-II vide the aforementioned OIO. Further, a personal penalty of Rs. 15,000/- under the provisions of Rule 26 of the Central Excise Rules, 2002 had also been imposed on (i) Shri Govindbhai Mytra proprietor of M/s Manish Auto (ii) Shri Nathubhai Gajera proprietor of M/s Parishram Marketing. On being aggrieved by the said OIO, M/s Vaibhav Auto Industries had preferred an appeal before the Hon'ble CESTAT, Ahmedabad seeking cross examination amongst other contraventions. The Hon'ble CESTAT vide it's Order No. A/12516-12520/2021 dated 18.11.2021 has set aside the said OIO and remanded the matter back to the adjudicating authority for passing afresh order after following the principles of natural justice in as much as allowing the cross examination which was not allowed by the then adjudicating authority.

It is pertinent to mention here that Shri Govindbhai Mytra proprietor of M/s Manish Auto & Shri Nathubhai Gajera proprietor of M/s Parishram Marketing (co-noticees) upon whom a personal penalty of Rs. 15,000/- was imposed under the Rule 26 of the Central Rules, 2002, had neither challenged the said OIO nor the same was considered by the Hon'ble Tribunal, hence, the order vis-à-vis then has attained finality and the undersigned is not adjudicating the same again.

BRIEF FACT OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S VAIBHAV AUTO INDUSTRIES ARE AS FOLLOWS

2. M/s Vaibhav Auto Industries, 41, New Ahmedabad Industrial Estate, Behind Nova Petrochem, Moraiya, Tal: Sanand, Dist. Ahmedabad (hereinafter referred to as the assessee), registered with Central Excise vide Registration No. ABXPA0887CXM001, were engaged in the manufacture of three wheeled motor vehicle (hereinafter referred to as the Chhakkdo rickshaw) falling sub-heading No.8704 2120 of the First Schedule to the Central Excise Tariff Act, 1985 used for transportation of goods.

2.1. Based on intelligence collected by the Directorate General of Central Excise Intelligence, AZU, Ahmedabad (for short, DGCEI, AZU, Ahmedabad) indicating that the manufacturers of 3 wheeled transport carrier were evading Central Excise duty, the Officer of DGCEI and Central Excise Commissionerate visited the factory and Office premises of the said assessee on 06.10.2009. Simultaneous searches were also conducted at the premises of M/s Manish Auto and M/s Parishram Marketing, both situated at Keshod. During the course of panchnama, it was noticed that the said assessee had started commercial production of Chhakkdo rickshaws since December, 2005; that they had cleared 250 chhakkdo rikshaw upto September, 2009 as per ER-1 details filed before the Department. Shri K.V. Ahir, Proprietor of M/s Vaibhav Auto, could not produce any documents in respect of one Chhakkdo rikshaw having Diesel Engine No. A9H0266919 and Chassis No.VAI/327/09 found in ready to dispatch condition. The said vehicle was found un accounted in the Daily Stock Register since 01.10.2009. On being asked about non-accountal of the said vehicle in Daily Stock Register, Shri Kanjibhai V Ahir could not give any plausible explanation. Therefore, the said chhakkdo rikshaw valued at Rs.61,000 found lying unaccounted was placed under detention under the reasonable belief that the same was not accounted for with an intent to clear the same clandestinely without payment of duty. Since the said assessee could not produce any duty paying documents of raw materials used in the manufacture of the said vehicle nor accounted for the same, the said detention was converted into seizure vide panchnama dated 06.01.2010. During the course of panchnama certain incriminating documents were also withdrawn for the purpose of investigation.

2.2 From the private diaries, listed at Sr.No.17 & 18 to Panchnama dated 06.10.2009, it appeared that the said assessee had manufactured and cleared 53 vehicles during 09.04.09 to 03.10.09. As against this, the said assessee had declared 07 vehicles in ER-1 returns filed from April-2009

to September-2009. On comparison of the details of vehicles, it was noticed that none of the dates except 24.07.2009 matched with the date of clearances shown in the said two registers; However, it was noticed that vehicle bearing Chassis No. 238/09 Engine No. A9H0208538 was taken to Ankleshwar whereas, as per Central Excise Invoice No. 05/24.07.09 the vehicle was cleared to Shri Dashrathbhai A. Makwana, Village Vataman, Dist. Ahmedabad. From this, it appeared that the vehicle mentioned in the inward/outward registers were manufactured and cleared by the said assessee illicitly without payment of duty.

2.3. Shri Kanjibhai V. Ahir, Proprietor of the said assessee, in his statement recorded on 06.10.2009, admitted that they had cleared 53 chhakkdo rikshaws without preparing Central Excise Invoices and without payment of duty. Thus, it appeared that chhakkdo rikshaw valued at Rs.61,000/- found unaccounted were manufactured with an intent to clear the same clandestinely. It was further noticed that the said assessee had issued Central Excise Invoices in respect of 7 chhakkdo rikshaw during the period 01.04.09 to 05.10.09 and as per the guidelines of the ARAI, Pune, Vehicles bearing Chassis No, VAI/01/09 to VAI/07/09 should have been cleared under Central Excise invoices. Therefore, it appeared that the 53 Chhakkdo rickshaws vehicle bearing Chassis No. VAI/26/09 onwards, as reproduced in the notice at para 5.2, have been cleared illicitly. On comparison of the entries appearing in the said withdrawn registers with the Central Excise invoices, it appeared that the details were not matched. Shri Kanjibhai V. Ahir, Proprietor of the said assessee in his statement dated 06.10.09, admitted that they had cleared these 53 vehicles illicitly and agreed to pay duty of Rs.32,33,000/- involved on these 53 vehicles.

2.4. The said assessee appeared to have contravened the provisions of Rule 10 of the Central Excise Rules, 2002 in as much as they had failed to account for the production of excisable goods and stored in registered premises in their finished goods register. It further appeared that the said chhakkdo rikshaw meant for clandestine clearance were liable to confiscation under Rule 25 of the Central Excise Rules, 2002. On being asked about the purchase bills for raw materials viz. diesel engine, gear box, iron, wood, tyre, etc., used in the manufacture of chhakkdo rikshaw, Shri Ahir stated that they had purchased the raw materials from the market in cash. The said assessee and Shri Kanjibliai V Ahir, Proprietor, were issued notice F.No. DGCEI/AZU/36-166/2009 dated 27.03.2010 calling upon them to reply as to why the chhakkdo rikshaw valued at Rs. 61,000/- seized at their factory should not be confiscated under Rule 25 of the said Rules

and penalty should not be imposed upon them under Rule 25 of the said Rules. The notice was also given to Shri Kanjibhai V. Ahir, Proprietor of the said assessee proposing personal penalty on him under Rule 26 of the Central Excise Rules, 2002.

3.1. During the course of investigation, it appeared that certain statutory requirements were required to be complied by the vehicle manufacturers. As stipulated under Section 39 of the Central Motor Vehicles Act, 1988, administered by the State Governments through RTOs, registration of vehicles is mandatory. For the purpose of registration, documents, such as -(i) Sales Certificate in Form-21 (ii) Valid Insurance certificate (iii) copy of proceedings of the State Transport Commissioner (iv) Original Sale certificate in Form-21 in case of ex-army vehicles (v) proof of address (vi) temporary registration (vii) road worthiness certificate in Form-22 from manufacturer [in Form 22A in case of body builders] (viii) Customs clearance in case of Importation (ix) appropriate fee, are required to be submitted.

3.2. With a view to ascertain the vehicles registered with RTOs, details of vehicles registered with marks/name "Vaibhav" was called from RTO at Ahmedabad and at Jamnagar. The RTO, Ahmedabad, vide letter dated 03.12.2009 submitted the details of registration of such vehicles, manufactured by various manufacturers, including M/s Vaibhav Auto Industries. In case of vehicles manufactured by the said assessee, the maker's name has been mentioned as "Vaibhav" or "Vaibhav Auto Industries". The scrutiny of details submitted by RTO, revealed that 2394 Chhakkdo rickshaws were registered with the RTO Ahmedabad and 250 were registered with the RTO Jamnagar during the period 01.12.2005 to 05.10.09 whereas, as per C. Ex. Invoices and ER-1 returns filed by the said assessee, they had shown total clearance of 250 chhakkdo rikshaw only. All the above chhakkdo rikshaws were manufactured and cleared by them and had been registered with RTO, Ahmedabad/Jamnagar. It further appeared that the said assessee had indulged in undervaluation of vehicles for the purpose of payment of Cenvat duty on 250 chhakkdo rikshaws cleared by them during the period Dec.05 to Sept.09. Therefore, differential duty appeared to be recoverable from them.

3.3 In terms of Rule 126 of the Central Motor Vehicles Rules, 1989, it is obligatory for the manufacturer of vehicle to supply base Model to Automotive Research Association of India [ARAI], Pune, for obtaining approval of design/compliance certificate. The manufacturer authorised in the compliance certificate only can manufacture such vehicles. The said

compliance certificate is not transferable, therefore, even if part of the work is done on Job-work basis, it is the compliance certificate holder who is the manufacturer and he is required to assess and make payment of Central Excise and other duties.

3.4 Perusal of certificate No. ARAI/CMVR/1251B (1365, 589) 2009-017 dated 12.02.2009 issued by ARAI to the said assessee indicated that it contained details of base Model supplied by manufacturer, Engine No. GL-400-II-A manufactured by Greaves Cotton Ltd. The said certificate further specified that it was the vehicle manufacturer's responsibility to ensure fitment of name components/parts/assembly before submission of vehicle for registration. Based upon the certificate issued by ARAI, the Commissioner of Transport, Government of Gujarat vide his letter No. R&D/approval of New Model/Vaibhav Diesel 3-Wheeler Goods Carrier & Variants dated 09.04.2009 had recommended the said vehicles to all RTOs/ARTOs for registration.

3.5 All manufacturers possessing the aforesaid certificate have 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. ARAI, vide letter No. ARAI/HMR/GOVT-Corr/09-10/11 dated 11.12.09, has intimated that in the statutory documentation filed by the said assessee for the period FY05-06 to FY08-09, no manufacture was declared by them. From this, it appeared that the said assessee had manipulated the figures to different authorities inasmuch as 2644 vehicles were registered with RTOs and 250 were shown in ER-1 returns filed with Central Excise authorities and Nil returns filed with ARAI.

3.6 On careful examination of page 46 of Register listed at Sr.No.17 of Annexure-A to the panchnama dated 06.10.2009, it appeared that the same contained the details such as inward of engines, iron, wheel plates. It was further noticed that the chhakdo rikshaw bearing Chassis No. VAI/327/09 and Engine No.A9H0266919 fitted with Engine Model G-1450 of Greaves make in place of ARAI approved Model G-400 was found unaccounted at the time of visit of the officers. Hence, the said vehicle was placed under seizure on the ground of non-accountal.

3.7 From the details pertaining to chhakdo rikshaws, as provided by the Transport Department of Govt. of Gujarat and registered temporarily with the RTOs [as detailed in Annexure-A to the show cause notice F.No. DGCEI/AZU- 3694/2010-11 dated 01.10.2010], it appeared that vehicle with Chassis No.071/09 was mentioned at Sr.no. 2077 and vehicle with

Chassis No. VAI/072/09 was mentioned at Sr.No.2088 of the said Annexure. Scrutiny of Central Excise Invoice book revealed that no invoice was issued on 22.05.2009 and they had issued only one Invoice during entire May, 2009 i.e. on 15.05.2009. Similarly, Chassis No.VAI/318/09 Engine No.268277 removed from the factory premises on 10.09.09 appeared at Sr. No. 2386 of said Annexure. Scrutiny of Central Excise Invoice book, revealed that no Invoice was issued on 10.09.09 and they had issued only one Invoice on 16.09.2009. Therefore, it appeared that the said vehicles were cleared illicitly.

3.8. On scrutiny of the records viz. 36 original RC books and 3 photocopies withdrawn from their office premises, it was noticed that 19 original RC books were of the said assessee, 03 were of M/s Rajshakti Automobiles Works, 13 of M/s Raj Auto Inds and 01 of Kismat Auto and all 4 Xerox copies of RC book belonged to the said assessee. It appeared that total 23 RC books [19 original+4 xerox] belonged to the said assessee. The details of such RC books were enumerated in para 5.8 of the SCN dated 01.10.2010 and details (containing Engine No., Chassis No., Name of the buyers) were given in Annexure-C to the said notice. Comparison of the details revealed that details at Sr.No.1, 2, 6, 7, 9, 11 & 12 were verifiable with the Central Excise Invoices and the said assessee did not issue any Central Excise documents in respect of remaining chhakkdo rikshaws. It appeared that the documents relating to clandestine removal of 53 chhakkdo rikshaws in the year 2009 were recovered from the factory premises of the said assessee and records showing illicit clearance of 23 chhakkdo rikshaws during the period FY05-06 to FY08-09 were recovered from the office premises of the said assessee.

4.1. During the course of panchnama on 06.10.09 at M/s Manish Auto, Keshod, certain records were withdrawn. Scrutiny of 31 RC books recovered from them, revealed that 14 RC books, as detailed in para 6.2.1 of the notice, belonged to the said assessee. Upon verification of these details, it was noticed that No Central Excise invoice was issued in the names of the owners (buyers) mentioned in these RC books. It was noticed that vehicle with Chassis No.VAI/991/07 was registered with RTO Junagadh on 24.01.08. However, no Central Excise Invoice was issued in the name of the buyer (Shri A.C. Balas). It was further noticed that vehicle bearing Chassis No.VAI/361/09 and VAI/287/09 mentioned at Sr.No.2325 and 2292 respectively in the said Annexure A to the notice, were temporarily registered with RTO Ahmedabad on 29.08.09 and 06.08.09. These vehicles were registered at Junagadh. It was noticed that no Central Excise invoice

was issued on these two dates and hence it appeared that these vehicles were cleared illicitly.

4.2 From the register appearing at Sr. No.4, 5, 6 & 7 recovered from the premises of Manish Auto (containing the details of Chassis No., Engine No., Name of some of the buyers), it appeared that vehicles mentioned in the Table were received by Manish Auto from the said assessee during the year 2006 and 2007. The clearance of vehicles shown in ER-1 return by the said assessee during the corresponding year in tabulated hereunder.

Year	Chhakdo rikshaw cleared by the said assessee to M/s Manish Auto	Clearance of vehicles declared in the ER-I returns
2006	318	102
2007	592	94
TOTAL	910	196

4.3. Shri Govind Hirabhal Mytra, Proprietor of Manish Auto, in his statement dated 19.02.10, inter alia, stated that the manufacturers sent chhakkdo rickshaws to them after getting temporary registration alongwith relevant documents viz. Form-21 & 22, Sales invoices; that for obtaining permanent registration, besides these documents, ID proof of the buyers, insurance policy, CRTEM Form were submitted to the RTO authorities; that they had collected the price of the vehicle and handed over the same to the manufacturers, for which they had received commission; that the details shown in withdrawn Register at Sr.No.4, 5, 6 & 7 [of Annexure-A to the panchnama dated 06.10.09] from their premises contained details of chhakkdo rickshaw received from different manufacturers; that they did not manufacture new chhakkdo rickshaw; that for manufacture of chhakkdo rikshaw, registration with ARAI was required, which they did not possess; that the abbreviation VAI mentioned on Chassis stood for the said assessee. He, however, expressed inability to produce the duty paying documents. Hence, it appeared that the said assessee in connivance with Manish Auto was indulging in evasion of Central Excise and other duties by clearing chhakkdo rickshaws illicitly.

4.4. The premises of M/s Parishram Marketing, Keshod, was also searched on 06.10.09. On scrutiny of records mentioned at Sr. No. 4 of Annexure-A to the panchnama, it was noticed that out of 15 chhakkdo rickshaws received by them from different manufacturers, 01 chhakkdo rickshaw bearing Chassis No. VAI/622/06 (appearing at Sr.No 453 of Annexure-A to the notice dated 01.10.2010) was received from the said assessee. Examination of register withdrawn at Sr.No.06 showed that M/s

Parishram Marketing had received 21 vehicles from different manufacturers. It was noticed that 02 vehicles bearing Chassis No. VAI/109/09 and VAI/113/09 mentioned at Sr.No.2134 and 2142 of Annexure A to the notice, However, it was noticed that no Central Excise Invoices were issued on 18.06.09 and 19.06.09. it, therefore, appeared that the vehicles were removed clandestinely.

4.5 Shri Nathubhai Gajera, Proprietor of M/s Parishram Marketing. Keshod, in his statement dated 20.11.2009, inter alia, stated that they were RTO/Insurance agents and undertake the work relating to passing of new chhakkdo rikshaw and insurance thereof; that they act as a financier and give Loans to purchaser of chhakkdo rikshaw; that at the time of registration with the RTO, they had submitted 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 06.10.09 drawn at their premises, contained the details such as names of the buyers, village, Taluka, district, engine No., chassis No., Temporary registration No; that out of total 578 during the period Jan.05 to Sept.09, they had received 08 vehicles from the said assessee.

5.1. It was also noticed from the information gathered from the dealers of Greaves Cotton during the investigation, that the apart from Engine No.GL- 400, the said assessee had also purchased and used other models of Greaves make diesel engines viz. Model Nos. G-1080, G-1450, G-1510, G-5520, G-5530 etc., to manufacture Chhakkdo rickshaw. It was gathered that apart from fitting approved Diesel Engine No.GL-400, the said assessee had also fitted the Engine of other Models. Investigation had revealed that out of total 1275 Diesel Engines utilized by them during the period from 01.12.05 to 30.09.09, they had used 773 of Model GL-400 approved by ARAI and remaining 502 Engines [unapproved] were of other models. Shri Kanjibhai V. Ahir, in his statement dated 01.10.10, furnished the data relating to purchase of Diesel Engines from the dealers of Greaves Cotton during the period 01.12.05 to 30.09.09, as detailed hereunder.

Sr. No.	Name of the manufacturers	Model No							Total No. of Engines other than GL-400	Grand total
		GL 400	1450	G-1080	G-1510	G-5530	G-5520			
1	Deepak Automobiles, Junagadh	240	98	40	10	2	3	153	393	
2	Jain Auto, Rajkot	27	74	44	22	0	2	142	169	
3	Electro Trading, Ahmedabad	21	23	9	20	13	1	66	87	

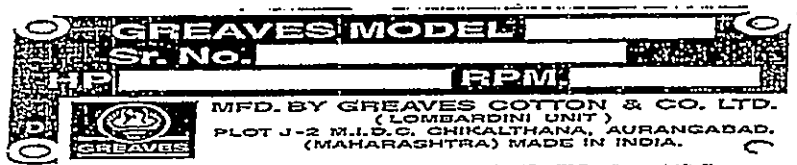
4	Shah & Sons, Ahmedabad	12	1	2	1	0	13	17	29
5	New Chandra Motorcycle, Jamnagar	63	6	3	2	1	0	12	75
6	Swastik electric corp.	209	0	0	0	0	1	1	210
7	Swastik Engg. Store, Sihor	201	13	72	13	0	2	100	301
8	JK Agency, Upleta	0	1	0	0	0	2	3	3
9	Gujarat Machinery Co., Ahmedabad	0	0	0	2	0	6	8	8
10	Total	773	216	170	70	16	30	502	1275

5.2 It was further stated by him that the remaining 1371 Diesel Engines were either purchased by them from Greaves Cotton as buyers or some fictitious names or locally assembled ones on which label of Greaves Cotton was affixed.

5.3 Statement of Shri Kishor Gordhanbhai Chendra, Partner of M/s New Chandra Motor Cycle House, Authorised Distributor of M/s Greaves Cotton Ltd and M/s Royal Enfield, situated near Town Hall, Jamnagar, was recorded under Section 14 of Central Excise Act, 1944, on 23.07.2010 wherein he, inter alia, submitted the details of sale of engines of different Models to various manufacturers of chhakkdo rickshaw including the said assessee. The details of purchase by the said assessee are reproduced hereunder:

Name of the manufacturers	Model No.						Total
	GL-400	5520	5530	1450	1510	1080	
Vaibhav Auto Inds.	63	0	1	6	2	3	75

5.4 During the search, the officers found one set comprising of name plate and monogram of M/s Greaves Cotton & Co. Limited, this was placed under seizure. The scanned image of the said plate and monogram is produced below



5.5 The premises of M/s Dattatrey Auto Centre, Rajkot were searched by the officers of DGCEI, AZU, Ahmedabad under panchnama dated 22.07.2010. It was noticed that they were engaged in selling parts of diesel engines monograms of trading activity of spare parts of 3 wheeled vehicles, commonly known as chhakkdo rikshaw & 2 wheeler bullets. Shri Mansukh Patel, Proprietor of M/s Dattatrey Auto Centre, in his statement dated 22.07.10, inter alia, stated that the price of GL-400 Model Engine was Rs. 35,000; that the cost of locally assembled engine was Rs.20,000-22,000; that the local mechanics assemble some parts of viz. Crank of Greaves Cotton and some parts Viz. Crank shaft, cylinder head, connecting rod, cylinder housing, piston, etc. procured from local manufacturers in Rajkot. It, therefore, appeared that the chhakkdo rickshaw manufacturer were also fitting Diesel Engines assembled by local technicians by embossing the Engine Sr.No. and other details before sending the vehicle for RTO registration. With regard to recovery of monograms of Greaves, Shri Mansukh Patel stated that earlier they used to sell and that now they had discontinued to stock and sell such monograms.

5.6 The Investigation further extended to mechanics, who were engaged in the assembly and repairing work of diesel engine. In this regard, a statement of Shri Kasambhai Umartshni Kaida, Proprietor of M/s. Kamal Auto Centre, 11. Rajkot, was recorded on 12.05.2010. He, inter alia, stated that he was known as 'Kalubhai'; that he carried on the business in the name of 'Kamala Auto Garage'; that he undertook work relating to diesel rikshaw, diesel engine and gear box at his workshop; that diesel engines which were fitted in chhakkdo rikshaw were assembled and repaired at his workshop; that they purchased old machine and assembled it with new parts and sold the same as new one; that customer also came to him for repair of diesel engine fitted in old chhakkdo rikshaw; that he was getting around Rs.750 for assembly of all parts to make diesel engine; that the parts fitted in diesel engine were locally manufactured; that they had assembled around 10-12 diesel engines; that they did not prepare any bill and took the money in cash; that the monograms were easily available in the market; that such monograms were affixed by the manufacturers/ customers.

5.7. It was observed that even though only GL-400 engines manufactured by Greaves Cotton Ltd were approved by ARAI for fitting in the chhakkdo rikshaw, the manufactures were also using diesel engines of other models in chhakkdo rikshaw; that such vehicles were also fitted with diesel engines assembled from local parts and affixing the monogram of Greaves Cotton to show it as if manufactured by Greaves Cotton. It,

therefore, appeared that out of total 2644 chhakdo rikshaw registered with the brand name 'Vaibhav' with RTO and 02 vehicles yet to be registered, the said assessee had fitted only 773 GL- 400 diesel engines, 502 diesel engines of other models manufactured by Greaves Cotton and 1371 diesel engines assembled by local technicians.

5.8 As per approval given by ARAI, the manufacturers are required to fit the gear box manufactured by Royal Enfield India Ltd in chhakdo rikshaw. Data collected with regard to sale of Gear Boxes, it was noticed that the said assessee had purchased the following gear boxes during Dec.05 to Sept.09 from different dealers of M/s Royal Enfield.

Sr No	Name of the dealer of M/s Royal Enfield	No. of Gear Box purchased
01	PAE Ltd	695
02	New Chandra Motor Motor Cycle, Jamnagar	77
03	Jain Automobiles, Rajkot	11
04	JK Agency, Upleta	166
05	Swastik Electric Corpn	06
06	Swastik Engg Store, Sihor	18
07	Vijay Automobiles, Ahmedabad	02
Total		975

5.9 From the aforesaid data, it appeared that the said assessee had purchased 975 Royal Enfield Gear Boxes from various dealers, which also had not been accounted for in their books of accounts and they had cleared the vehicles manufactured by them illicitly. Thus, apart from using 250 gear boxes cleared by the said assessee on payment of duty, they had manufactured and cleared 725 vehicles illicitly. It further appeared that they had purchased remaining 1671 gear boxes in the names of individual buyers or some fictitious name or got it assembled by local technicians. As per the statement of Shri Kanjibhai V. Ahir, proprietor of the said assessee, he confirmed having purchased remaining 1671 gear boxes in the names of the individual buyers or having got them assembled from local technicians.

6.1 As against the above from the ER-1 returns relating to monthly data of production and clearance of excisable goods for the period from Dec.05 to Sep.09, it was observed that the noticee had shown 250 chhakdo rikshaws having been cleared on payment of duty. It was observed that the noticee had registered 2394 vehicles with the RTO Ahmedabad and 250 with RTO Jamnagar under 'Vaibhav' brand during Dec.05 to Sept.09. It was further observed that 02 vehicles were yet to be registered. It, therefore, appeared that the noticee had manufactured and

cleared 2396 vehicles clandestinely. To the question as to whether they had discharged Motor Vehicle Cess on the vehicles manufactured by them, Shri Kanjibhai V Ahir in his statement dated 24.02.2010, replied in the negative.

6.2. Shri Ahir confirmed that they had sold 53 chhakkdo rikshaws illicitly without preparing Central Excise invoices and without payment of duty during the period from 09.04.09 to 05.10.09, as mentioned in the registers appearing at Sr.No. 17 & 18 of the panchnama dated 06.10.09 drawn at their factory, that entries in the said registers were made by their Watchman Shri Ram Prasad Yadav, that the records for the past periods were destroyed by them; that as per the information provided by RTOs, they had manufactured 2644 chhakkdo rikshaws during the period Dec.05 to Sept.09; that they had paid duty only on 250 vehicles; that the remaining 2394 vehicles were manufactured and cleared by them illicitly, that they would also pay duty on the 02 vehicles cleared by them and yet to be registered; that they would pay duty on the 2396 vehicles manufactured and cleared illicitly.

6.3 With regard to recovery of 36 RC books during the course of panchnama dated 06.10.09 drawn at their office, Shri Ahir stated that the chhakkdo rikshaws were manufactured by the manufacturers whose names appeared in the RC Books; that out of 36 vehicles, 23 were manufactured by them. With regard to recovery of Form-21 and Form-22 pertaining to M/S Atithi Gakul, he stated that the same were left by the customers who had come for finance/loan.

6.4 Shri Kanjibhai V. Ahir, proprietor of the said assessee, in his statements dated 06.10.2009, 24.10.09 and 24.02.10, inter alia, stated that they sold three wheeled chhakkdo rikshaw under the brand name of Vaibhav that their firm had obtained ARAI certificate during the year 2000-01, 2005-06 and 2009-10, that for the purpose of obtaining certificate, Base Model accompanied by application is submitted to ARAI alongwith dimension/measurement of engine, tyre, gear box, light etc; that after expiry of ARAI certificate for the year 2002 to 2004 and 2006 to 2008, they had undertaken repair work; that RTO registers the vehicles manufactured by only those manufacturers who possess requisite certificate of ARAI; that since RTO registration was must for plying on the road, chhakkdo rikshaw cannot be manufactured by all. However, Shri Ahir, in his subsequent statement dated 24.02.10, clarified that they were holding certificate of ARAI continuously from 2005 onwards; that they had got their approval renewed periodically that for a brief period of around one month from 2006 to 2008, they had not have been holding licence from ARAI due to expiry of

time limit through oversight; that they allotted Chassis Nos randomly without following the pattern of giving Chassis Nos. as required in terms of Rule 122 of the Central Motor Vehicle Rules, 1989.

6.5 That they had utilized the abbreviation of their Company name- Vaibhav Auto Inds. viz. "VAI" on the Chassis alongwith running serial number of vehicles manufactured/year manufacture e.g., VAI/079/09 stood for abbreviated name of their company, running Sr.No.79 and 2009 as the year of manufacture;

6.6 That since he did not remember as to how many Form-21 & Form-22 were issued by them, he would produced the same later, that they used to register the vehicles after manufacture with RTO Ahmedabad and Jamnagar: that they had not issued any Sale Letter (Form-20 Form-21) to any manufacturer since the same was not permissible and the certificate issue by ARAI was not transferable; that the vehicles temporarily registered with the RTO Ahmedabad and Jamnagar under brand "Vaibhav were manufactured by them; that for registration of vehicles cleared by them illicitly, they had issued fake Central Excise Invoice; that they prepared only one of copy of such fake Invoice; that, therefore, no other copy is available;

6.7 That the total cost of raw material required for manufacture of chhakkdo rikshaw was Rs.67,275; that since 2001, they had not changed the assessable value of 1 chhakkdo rikshaw which was Rs.61,000; that apart from the assessable value of Rs.61,000, they charged Rs. 12,500 to 14,000 for body work, Rs.8,000 for accessories; that the amount towards body work and accessories were not included in the value for the purpose of payment of duty, that, in addition to the above, they had also collected Rs. 8,500/- towards RTO/Insurance; that though in his statement dated 06.10.09, he had stated that they had sold raw material, he reiterated that they did not clear any raw material viz Diesel Engine or any other parts to any person;

6.8 On being asked about the source of purchase of diesel engines, gear box, tyres, etc, he stated that they had purchased diesel engine of Graves from Its dealers viz Shah & Sons, Ahmedabad, Deepak Sales Agency, Junagadh, Chandra Motorcycle, Jamnagar, that they had purchased Royal Engine Gear Box /clutch from dealer viz Premiar Auto, Ahmedabad; that they had purchased tyres from Ambica Tyre, Gandhinagar, Alkesh Tyre, Ahmedabad, and from other dealers; that these purchases were made both in cash and through cheques;

6.9 That, as noticed from records appearing at Sr.No.05 and 06 of the panchnama dated 06.10.09 drawn at M/s Manish Auto, Keshod, during the year 2006 and 2007, they had sold 318 and 592 chhakkdo rikshaw respectively to Manish Auto bearing "VAI" brand on Chassis; that he had gone through the statement of Shri Govindbhai H. Mytra recorded on 19.02.10;

6.10 That he had gone through the statement of Shri Nathubai Gajera, proprietor of M/s Parishram Marketing, Keshod, recorded on 20.11.09; that the chhakkdo rikshaw sold to them were manufactured by the said assessee; that after getting temporary RTO registration at Ahmedabad, the vehicles were sold for onwards sale to the ultimate customer; that in rare cases, the vehicles were sold in dismantled condition after temporary registration for ease of transportation; that in cases where the vehicles were cleared in dismantled condition, the vehicle was assembled by the intermediary and delivered to ultimate customer.

6.11 With regard to sale of chhakkdo rikshaw sold through intermediaries viz Manish Auto and M/s Parishram Marketing, Shri Ahir had stated that these vehicles were manufactured by them; that after getting temporary RTO registration at Ahmedabad, the said vehicles were cleared for onwards sale to the ultimate customer, that in rare cases, the vehicles were sold in dismantled condition after temporary registration for ease of transportation; that in cases where the vehicles were cleared in dismantled condition, the vehicle was assembled by the Intermediary and delivered to ultimate customer; that RTO passing and insurance work was handled by the intermediaries. In case where the Chassis, Engine, Gear Box, etc. were sent by them to M/s Manish Auto, assembly was undertaken by Manish Auto as per their instructions: that after final body work and inspection by the noticee as per the ARAI norms, the same were cleared to the customers;

6.12 On being asked to produce the challans/documents under which, raw material/inputs were cleared for job work to M/s Manish Auto, Shri Ahir stated that no such documents were prepared.

6.13 With regard to value of the vehicles, Shri Kanjibhai V. Ahir, proprietor of the said assessee, in his statement dated 01.10.10, inter alia, stated that selling price of the vehicles was Rs.80,000; that at the prevailing rates taxes, the cost of the vehicles would be Rs.99,695; that they had suppressed the value of vehicles in the invoices raised by them and declared the value as Rs.61,000/- for the purpose of payment of central Excise duty;

that the remaining amount of Rs.19,000 was collected by them in cash at the time of booking, for which no bill/invoice was issued; that in respect of vehicles sold through Manish Auto, the booking amount of Rs.19,000 per vehicle was collected through Manish Auto. It, therefore, appeared that apart from illicit clearance, the noticee also indulged in undervaluation thereby evading payment of central excise duty.

7. That during the year 2007-08, they had manufactured around 30 to 31 chhakkdo rikshaw on behalf of M/s Gokul Automobiles, Gota, Ahmedabad; that a case was booked by the Department and they had paid Rs.3,08,611/- towards illicit clearance of 31 chhakkdo rikshaw valued at Re.18,91,000/- during the period 2006-07; that since at the relevant time, they did not have valid approval from ARAI, they had manufactured 31 chhakkdo rikshaw on behalf of M/s Atithi Gokul Automobiles Works, Ahmedabad; that the said 31 vehicles were in addition to 2646 vehicles manufactured and cleared by them during Dec.05 to 05.10.09; that though duty was required to be paid by M/a Atithi Gokul, they had paid the same on their behalf.

8. During the course of investigation, it was noticed that there was a substantial increase in clearance of chhakkdo rikshaws inasmuch as during the period from Oct.09 to Jun. 10 (09 months), they had shown clearance of 500 vehicles in the ER-1 returns filed with the Department. As against this, clearance of mere 250 vehicles were shown during the period from Dec.05 to Sep.09 (47 months). In view of the aforesaid, it appeared that the said assessee had suppressed the clearance on a large scale prior to 06.10.09 and had cleared the vehicles manufactured by them illicitly. It further appeared that they continued to pay duty on the value of Rs.61,000/- and duty on differential amount was required to be recovered from them. It, therefore, appeared that the said assessee had evaded payment of Central excise and other duties by way of illicit clearance and by way of undervaluation. The modus operandi has been brought out during the course of investigation.

9.1 In light of the investigation, it appeared that the said assessee had contravened the provisions of

- (i) Section 3 of the Central Excise Act, 1944, inasmuch as they had cleared excisable goods without payment of Central Excise duty,
- (ii) Section 4 of the said Act, inasmuch as they had manufactured and cleared finished goods but did not declare the correct transaction value on the invoices;

- (iii) Rule 4 and Rule 8 of the Central Excise Rules, 2002, Inasmuch as they removed excisable goods without discharging Central Excise duty in the manner prescribed;
- (iv) Rule 6 of the said Rules inasmuch as they failed to assess the duty payable on the finished goods;
- (v) Rule 10 of the said Rules inasmuch as they failed to maintain true and correct account of the manufacture and clearance of finished goods;
- (vi) Rule 11 of the said Rules inasmuch as they failed to issue proper Invoice in respect of finished goods cleared from their factory;
- (vii) Rule 12 of the said Rules inasmuch as they failed to correctly file the monthly ERI returns regarding manufacture and clearance of finished goods.

9.2 It further appeared that they had procured and consumed raw material required for manufacture chhakkdo rikshaws but did not account for the same in the statutory records and thereby they had contravened the provisions of Central Excise law and Supplementary Instructions issued thereunder.

10.1 All these acts of contravention on the part of the said assessee, appeared to have been committed with the sole intention to evade payment of Central Excise and other duties/taxes. They had suppressed the facts of manufacture and clearance of excisable goods from the department and cleared their finished goods illicitly and also short-paid duty by way of undervaluation by reasons of fraud, willful mis-statement and by suppressing material facts and, therefore, Central Excise duty totally amounting to Rs.3,13,22,497/- as detailed in Annexure- D to the notice F.No. DGCEI/AZU/36-94/10-11 dated 01.10.2010 is required to be demanded and recovered from them under proviso to Section 11A(1) of the said Act by Invoking extended period of limitation of 5 years alongwith interest under Section 11AB *ibid*. The said assessee appeared to have rendered itself liable for penalty under Section 11AC *ibid* and Rule 25 *ibid* for acts of omissions as described hereinabove.

10.2 Shri Kanjibhai V. Ahir, proprietor of the said assessee, was concerned in transporting, removing, depositing, keeping, selling, or purchasing, etc, the excisable goods which he knew or had reasons to believe were liable for confiscation and thereby he had rendered himself liable for personal penalty under Rule 26 *ibid*.

engines etc; that the charge that the said assessee had obtained these from the local manufacturers or taken in the name of fake persons, did not serve any purpose. That the said notice had been issued on the basis of report from the RTO without proving the viability, that the charge of clandestine removal should have been corroborated with evidences, as held in the various cases, the onus to establish the entries and clandestine removal lies on the department.

12.2 It had been stated that the said assessee had purchased 975 gear boxes from the dealers of M/s. Royal Enfield India Ltd and 1671 gearboxes were either purchased from dealer of M/s Royal in buyers name of some fictitious name or locally assembled ones; Similarly it had been stated that 1275 Diesel Engines were purchased from dealers of M/s Greaves Cotton Ltd and other 1371 Diesel Engines were purchased from M/s Greaves Cotton in buyers' name or some fictitious name or locally assembled one; that merely a statement that these were purchased in some others' name was not sufficient and the department was supposed to verify the manufacturer's Invoices; that only after verification, it could be ascertained that these engines and gear boxes were purchased by the noticee.

12.3 With regard to charge of illicit clearance, the said assessee had submitted that demand, cannot be sustained unless clandestine removal was proved; that mere shortage cannot be basis of alleging clandestine removal unless proved with the help of corroborative evidence; that if the contention of clandestine removal is to be accepted, removing of 53 chhakkdo rikshaws to M/s Manish Auto, the same were required to be tallied with register seized from them; that as affirmed by Shri Kanjibhai V. Ahir, the reply to Question No. 4 & 5 of his statement dated 24.02.10 (Pg. 53 of SCN), the chhakkdo rikshaws were removed in dismantled condition after taking temporary registration; that as the manufacture takes place at the place where these inputs/parts are assembled, they cannot be held liable for duty; that in the event duty was to be demanded from them, Cenvat credit on prime inputs viz., Diesel Engine and Gear box will also be available to them.

12.4 With regard to value of chhakkdo rikshaw, they stated that value of Rikshaws per vehicle had been taken for the period from 2005 to 09/2009; that the cost of Rs.81,000/- cannot remain same for whole period; that there is no sense in taking Rs.19,000/- in cash and not showing as income; that there is no evidence that money has changed hands by personal means, angadia, hawala etc.

12.5 That assessable value of excisable goods is determined in accordance of Section 4 which includes duty of excise and VAT, that amount towards these elements was required to be deducted. It was submitted that duty demanded should be treated as cum-duty as the same includes value and duty.

12.6 With regard to extended period of limitation for the purpose of demand of duty, it was submitted that ingredients viz., willful suppression, mis- declaration, intention to evade payment of duty are required; that the noticee was also under the bonafide belief that as the manufacturing was not done by them, they were not liable to duty.

12.7 That the proprietor Shri Kanjibhai V. Ahir had studied only upto 3rd standard, he had no idea as to what was going on and where he had signed; that the goods in question were manufactured by some others on his behalf; that as done in the past, the demand should have been raised against such manufacturers only; that the department had found only one chhakkdo in ready to dispatch condition; that mere non entry of the goods in packed condition cannot be treated as clandestine removal; that it was held by the appellate authorities that goods not accounted for in RG-1 cannot be charged with the allegation of clandestine removal unless it is proved that these goods were kept with the intent to evade duty.

12.8 They had requested for cross examination of Departmental Officers as well as their employees and sales agents (M/s Manish Auto and M/s Parishram Marketing) and dealers of M/s Greaves Cotton.

12.9 With regard to proposal for imposition of personal penalty on the Proprietor under Rule 26, no specific commission or omission has been brought out.

12.10 It was also requested that they had requested for hard copies, which were provided to them in CDs. The reply is based on the basis of contents of notice.

13.1 Personal hearings at the time of initial adjudication of the case were fixed on 11.01.12, 16.01.12, 03.02.12, 10.02.12, 06.03.12 and 14.03.12. The said assessee had not appeared for personal hearing and sought adjournment on the pretext of ill health of the Counsel and providing of physical copies of the documents or cross examination. When the case was posted for hearing on 14.03.2012, the noticee vide letter dated 12.03.2012 sought for adjournment on the ground that they had changed their Counsel. It may be stated that Section 33A of the Central Excise Act, 1944, prescribes that adjournments shall not be granted more than three times. It may further be stated that in terms of Section 36B of the said Act,

10.3 Shri Govindbhai Mytra, proprietor of M/s Manish Auto and Shri Nathubhai Gajera, proprietor of M/s Parishram Marketing, appeared to have connived, aided, and abetted the noticee in evasion of duty of excise and were instrumental in commission of offence by the noticee. They were aware that the goods were removed from the factory of the said assessee without discharging appropriate duty of excise leviable thereon. They purchased, acquired possession of, kept and sold goods, which they knew or had reasons to believe were liable for confiscation under the Central Excise law. These acts on their part have rendered both of them liable for personal penalty under Rule 26 *ibid*.

11.1 Therefore, vide show cause notice bearing F. No. DGCEI/AZU/36-94/10-11 dated 01.10.10, M/s Vaibhav Auto Industries, 41, New Ahmedabad Industrial Estate, Behind Nova Petrochem, Moraiya, Tal: Sanand, Dist. Ahmedabad, was called upon to show cause as to why:-

- (i) Total duty of Rs.3,13,22,497/- (including Education Cesses +Motor Vehicle Cess-as detailed in Annexure-D) should not be recovered from them under proviso to Section 11A(1) of the Central Excise Act, 1944;
- (ii) Interest at the appropriate rate under Section 11AB *ibid* should not be recovered from them; and
- (iii) Penalty under Section 11AC *ibid* read with Rule 25 of the Central Excise Rules, 2002, should not be imposed upon them.

11.2 Shri Kanjibhai V. Ahir, proprietor of M/s Vaibhav Auto Industries, Shri Govindbhai H. Mytra, proprietor of M/s Manish Auto, Keshod, and Shri Nathubhai Gajera, proprietor of M/s Parishram Marketing, Keshod, were also called upon to show cause as to why personal penalty should not be imposed upon them under Rule 26 of the Central Excise Rules, 2002.

11.3 It may be stated that 3rd show cause notice bearing F.No. V.87/15- 32/OA/2011 dated 13.09.2011 was issued to M/s Vaibhav Auto Industries calling them upon to show cause as to why duty amounting to Rs.23,63,493 should not be recovered from them representing the differential duty on the undervalued goods. Shri Kanjibhai V Ahir was also called upon to show Cause as to why personal penalty under Rule 26 of the said Rules should not be imposed upon him.

11.4. It is worthwhile to note that following three show cause notices were Issued to the said assessee and co-noticees, as detailed hereunder-

Sr No	Show cause notice No./date	Duty (Rs)	Remarks
01	F.No. DGCEI/AZU/36-166/2009-11 dated 27.03.2010	0	Proposed confiscation of seized vehicle valued at Rs.61,000
02	F.No. DGCEI/AZU/36- 94/10-11 dated 1.10.10	31322497	--
03	F.No. V.87/15- 32/OA/2011 dated 13.09.2011	2363493	--
Total		33685990	

DEFENCE REPLY FILED BEFORE THE THEN ADJUDICATING AUTHORITY

12.1. The said assessee, vide their letter dated 06.01.2012, inter-alia, submitted that in December, 2006 when proceedings were initiated against them, they were not having certificate from ARAI, Pune as well as from RTO; that they were simply manufacturing chhakkdo rikshaw on behalf of actual manufacturers who were holding valid licence/approval from ARAI and registration from RTO; that in a earlier case where they were not having certificate from ARAI and actual manufacturers were M/s Manish Auto, M/s Parishram Marketing, etc., demand was confirmed vide OIO No. 79/D/07 dated 28.03.2008 by the Assistant Commissioner. Central Excise Div-IV, Ahmedabad, against the actual manufacturers; on the other hand, this time, the demand has been raised against the said assessee where the manufacturer were some other people (supplier for job work); that M/s Manish Auto and M/s Parishram have also manufactured chhakkdo rikshaw on behalf of the said assessee; that, therefore, the demand should be raised against them, as done in past; that in the present case also, demands should have been raised against the manufacturers; that the department could not take two different stands on the same issue; that under the circumstances the said assessee was under the impression that they were not required to pay duty; that since the proprietor of the said assessee has studied only upto 3rd standard, he was following the decision; that the entire notice was based on the fact that the noticees had given confessional statements; that as held in the case of M/s Krishna & Co. Vs CCE [1998 (97) ELT 74] and Gopalchand Khandelwal Vs DRI [2009 TIOL 535 (HC)] even the confessional statements have to be proved by the department with the help of corroborative evidences; that presuming that the said assessee had manufactured the chhakkdo rikshaw, the said vehicles could not be manufactured without raw materials like gearbox,

the information in Compact Disk is admissible evidence. With regard to their complaint about non-accessibility of the data in the CD, the noticee was given an opportunity to bring the CDs on 13.03.2012 for inspection. However, they did not come for getting the CDs inspected. Therefore, this ground appeared to be only an excuse to delay the proceedings. Moreover, the as enough time had been provided to the noticee for personal hearing and in light of the prescription, the then adjudicating authority had proceeded to decide the cases.

13.2 Shri Paresh Sheth of M/s VB Seth & Co., appeared for personal hearing on 06.03.2012 on behalf of M/s Nathubhai Gajera, proprietor of M/s Parishram Marketing and Shri Govindbhai H. Mytra, proprietor of Manish Auto, and requested for time to submit the written reply. In the written submission, vide letter dated 09.03.2012, it was, inter alia, stated that they undertook work relating to RTO and traded in old chhakdo rikshaw; that they purchased new chhakdo rikshaws from the manufacturers, including main noticee; that they were getting temporary registration and also Form-21 & 22[as required under the CMVR 1989] accompanied by Sales Invoices; that they had bought the vehicles under legitimate documents; that penalty under Rule 26 was not imposable on them as they did not have personal knowledge or reason to believe that the goods were liable for confiscation.

ORDER PASSED BY THE THEN ADJUDICATING AUTHORITY

14. The then adjudicating authority (i.e. the Commissioner of Central Excise, Ahmedabad-II) vide the OIO No. 08 to 10/COMMR/RAJU/AHD-II/2012 dated 06.06.2012, had decided the SCNs bearing F.No. DGCEI/AZU/36-94/2010, dated 27.03.2009 (2) F.No. DGCEI/AZU/36-94/2010 dated 01.10.2010 and (3) F.No. V.87/15-32/OA/2011 dated 15.09.2011 and had passed order as under:

(i) Confirmed the demand of Central Excise duty [including Motor Vehicle Cess] amounting to Rs.3,36,85,990/- [Rs. 3,13,22,4+97/- as demanded in notice F.No. DGCEI/AZU/26-94/10-11 dated 01.10.2010 + Rs. 23,63,493/- differential duty as demanded vide F.No. V.87/15-32/OA/2011 dated 13.09.2011 against M/s Vaibhav Auto Industries, 41, New Ahmedabad Industrial Estate, Behind Nova Petrochem, Moraiya, Tal: Sanand, Dist. Ahmedabad, under Section 11A(10) of the Central Excise Act.

(ii) Imposed a penalty of Rs. Rs.3,36,85,990/- on M/s Vaibhav Auto Industries, Tal: Sanand, Dist. Ahmedabad, under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

(iii) Ordered for recovery of interest at the appropriate rate on the amount confirmed under sub-par (i) above, under the provisions of erstwhile Section 11AB/11AA of Central Excise Act, 1944.

(iv) Ordered for confiscation of seized chhakkdo rikshaw value at Rs. 61,000/- under Rule 25 of the Central Excise Act, 1944 and given option to the said assessee to pay a redemption fine of Rs. 25,000/- in lieu of confiscation in respect of SCN No. DGCEI/AZU/36-166/2009 dated 27.03.2010.

(v) Imposed a penalty of Rs. 15,000 on each (a) Shri Govindbhai Mytra proprietor of M/s Manish Auto and (b) Shri Nathubhai Gajera proprietor of M/s Parishram Marketing under Rule 26 of the Central Excise Rules, 2002.

15. On being aggrieved with the aforementioned OIO, the said assessee had filed an appeal before the Hon'ble CESTAT, Ahmedabad and the Hon'ble CESTAT vide its Final Order No. A/12516-12520/2021, dated 18.11.2021 remanded the matter to the adjudicating authority for passing afresh order after allowing the cross examination as well as following the principal of natural justice.

DEFENSE SUBMISSION OF THE SAID ASSESSEE. :- The said assessee have not filed their written submission after the order of Hon'ble Tribunal.

PERSONAL HEARING

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

DISCUSSION AND FINDINGS:

16. I have carefully gone through the facts of the case, material on record and I have also gone through three Show Cause Notices vide (i) F. No. DGCEI/AZU/36-166/2009 dated 27.03.2010 for confiscation of a chhakkdo rikshaw valued Rs. 61,000/- seized under panchnama dated 06.01.2010 (ii) F.No. DGCEI/AZU/36-94/10-11 dated 01.10.2010 for demand of Central Excise duty amounting to Rs. 3,13,22,497/- for the period from 01.01.2005 to 03.10.2009 (iii) F.No. V.87/15-32/OA/2011 dated 13.09.2011 for demand of differential of Central Excise duty of Rs. 23,63,493/- for subsequent period and the Order-in-Original No. 08 to 10/COMMR/RAJU/AHD-II/2012 dated 06.06.2012, which has been remanded back to the adjudicating authority vide CESTAT order No. A/12516-12520/2021, dated 18.11.2021.

17. Before addressing the main issue to be decided, it is imperative to understand and examine the reason why the Hon'ble CESTAT has remanded the impugned OIO to the adjudicating authority. The principal ground on which the appeal was filed before CESTAT against the impugned OIO by the said assessee, as understood from the CESTAT order itself, is that

- (i) Cross-examination of witnesses was not allowed to the said assessee at the material time by the then adjudicating authority, therefore, they had prayed for remand the case to the adjudicating authority for passing afresh order after allowing the cross-examination by relying upon the Hon'ble Tribunal's earlier order dated 01.05.2014 in case of Atithi Gokul Automobile Work wherein cross examination was allowed.
- (ii) Accordingly, the Hon'ble Tribunal following the decision of it's earlier order dated 01.05.2014 has set-aside the impugned OIO and has remanded the matter to the adjudicating authority for passing fresh order by allowing cross-examination.

On perusal of the Hon'ble Tribunal's Order, it is quite clear that the present case has been remanded to the adjudicating authority by the Hon'ble Tribunal for allowing the cross examination of the requisite persons and thereafter passing fresh order by following the principles of natural justice.

18. I, the undersigned, being the present adjudicating authority, am keen to comply with the directions of Hon'ble Tribunal. Accordingly, in order to allow the cross examination in the subject matter, the following actions have been taken up by me:-

Efforts were made out for processing of cross examination of witnesses in order to comply with the directions of Hon'ble Tribunal.

1st PH:- A personal hearing was fixed on 12.01.2023 in the subject matter and the said assessee has also been requested to provide the name of persons in advance whom they desired to cross-examine, who were not allowed at the material point of time by the then Adjudicating Authority so that necessary arrangements can be made for cross-examination.

(a) The said assessee through Shri N.K. Tiwari, their consultant's email dated 11.01.2023 had sought adjournment from hearing showing reason

that his consultant was out of station due to his personal commitment and requested to give any other date after 02.02.2023.

2nd PH:- The request of the said assessee had been accorded and next date of personal hearing in this matter had been fixed on 10.02.2023 and letter dated 31.01.2023 for personal hearing were issued with a request for seeking details of persons desired to be cross examined who were not allowed to be cross examined at the material point of time by the then Adjudicating Authority so that necessary arrangements can be made for cross-examination.

(a) On the scheduled date on 10.02.2023, Shri N. K. Tiwari, Consultant and authorized representative of the said assessee has appeared for hearing on behalf of the said assessee and he had contested that the noticee has not been provided the RUDs of the SCNs and requested for supply of the RUDs so that the said assessee can file their defense submission.

(b) Regards the grievance of non-supply of RUDs to the said assessee, the matter had been taken up with the DGGI, AZU, Ahmedabad (the then SCN issuing agency) vide DO letter F.No. V.STC/15-27/2010 dated 06.09.2023 issued, by the undersigned. In response to the said DO letter, a letter F.No. DGGI/INV/MISC/251/2023-Gr-B- O/o ADG-DGGI-ZU-Ahmedabad dated 14.09.2023 was issued by the Additional Director General, DGGI, AZU, Ahmedabad wherein it was intimated that as per documents available in the appeal papers filed by the said assessee before the Hon'ble CESTAT procured from O/o the Commissioner (AR), CESTAT, Ahmedabad, they have already provided all relied upon documents related to both the SCNs dated 27.03.2010 and 01.10.2010. Further, it was also informed under the said letter that the said assessee had requested for hard copies, which were provided to them in CDs and regarding their complaint about non-accessibility of the data in CD, they were given an opportunity to bring the CDs on 13.03.2012 for inspection. However, they did not come for getting the CDs inspected. Further, in terms of Section 36B of the Central Excise Act, 1994, the information in Compact Disk is admissible evidence. Therefore, this ground appears to be an excuse to delay the proceedings.

3rd PH:- Thereafter, a fresh date for personal hearing had been fixed on 12.10.2023 in the subject matter and letter dated 25.09.2023 for hearing were issued but the neither the said assessee have appeared for hearing in person nor did the department receive any request for adjournment of hearing.

4th PH:- A fresh date for personal hearing had been fixed on 27.10.2023 in the subject matter and letter dated 13.10.2023 for hearing were issued with a specific request to provide the name of persons in advance whom they

desire to cross-examine, who were not allowed to be cross examined at the material point of time by the then Adjudicating Authority so that necessary arrangements would be made for presence/availability of the cross examinees on the scheduled date and time for cross-examination.

(a) Shri N.K. Tiwari, consultant of the said assessee vide his email dated 26.10.2023 sought adjournment from hearing showing reason that he had undergone a major heart surgery and doctor had advised him complete bed rest and travel restrictions for a period of 12 weeks and he requested to fix another date for hearing in last week of January, 2024. However, no evidence supporting his medical emergency was submitted. Further, rather than providing the name of cross examinees whom they wished to cross examine, the said assessee had again requested for supply of copies of RUDs to the SCNs.

5th PH:- A new date for personal hearing was fixed on 13.11.2023 in the subject matter and letter dated 27.10.2023 for hearing were issued with a specific request to provide the name of persons in advance whom they desired to cross-examine, who were not allowed to be cross examined at the material point of time by the then Adjudicating Authority so that necessary arrangements could be made for presence/availability of the cross examinees on the scheduled date and time for cross-examination.

(a) Shri N.K. Tiwari, consultant of the said assessee vide his email dated 12.11.2023 again sought adjournment from hearing showing reason that he had undergone a major heart surgery and doctors had advised him complete bed rest and travel restrictions for a period of 12 weeks and requested to fix another date for hearing in last week of January, 2024. Further, rather than providing the name of witnesses whom they wished to cross examine, they have again intreated for supply of relied upon documents.

6th PH:- A new date for personal hearing had been fixed on 04.12.2023 and letter dated 14.11.2023 for hearing in personal presence as well as an option to attend the hearing in virtual mode were issued with a specific request to provide the name of persons in advance whom they desire to cross-examine, who were not allowed cross examination at the material point of time by the then Adjudicating Authority so that necessary arrangements could be made for cross-examination.

(a) Shri N.K. Tiwari, consultant of the said assessee vide his email dated 02.12.2023 sought adjournment from hearing and argued for supply of relied upon documents to the SCNs thereafter the requisite persons to be cross examined by them.

18.1. It is pertinent to mention here that the subject Show Cause Notices were issued to the said assessee in year 2010 which was adjudicated in year 2012 by the then adjudicating authority, the Hon'ble CESTAT had remanded the case to the adjudicating authority in the year 2021, clearly evidencing that even after a lapse of more than 13 years from the issuance of Show Cause Notices and a lapse of two years from the date of CESTAT order, the said assessee is still not prepared either with the cross-examination or filing their written submissions and also they have also not provided details/name of persons whom they want to cross examine in spite of calling for the same more than 6 times by issuing letters by this office. It is observed that specific details or name of cross examinees are required for cross examination which has not been provided by the said assessee in spite of repeated specific request through letters written to the said assessee. I, further, find that rather than providing the details of cross examinees, the said assessee has constantly harped on and has argued for supply of the relied upon documents.

18.2. It would not be out of place to mention here that the question of supply of RUDs had neither been disputed by the said assessee before the Hon'ble CESTAT nor any observation/direction has been given in the order of the Hon'ble Tribunal. Further, it is reiterated that the matter has been remanded to me being the present adjudicating authority by the Hon'ble Tribunal for passing afresh order after allowing the cross examination to the cross examinees which was not allowed by my predecessor adjudicating authority.

18.3. Further, it is also incumbent upon me to record it here that as far as demand of relied upon documents to the show cause notice is concerned, the same had already been provided to the said assessee at the material time in hard copy or CD form by the SCN issuing authority i.e. the DGCEI, AZU, Ahmedabad. It is better still relevant to mention here that in terms of provisions 36B of the Central Excise Act, 1944, the information in Compact Disk would be admissible evidence in any proceedings. The relevant text of Section 36B of the Central Excise Act, 1944 is reproduced as under:-

Section 36B. Admissibility of microfilms, facsimile copies of documents and computer printouts as documents and as evidence.—

(1) Notwithstanding anything contained in any other law for the time being in force,- a microfilm of a document or the reproduction of the image or images embodied in such microfilm (whether enlarged or not); or a facsimile copy of

a document; or (c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question, shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

18.4. I, further, find that regarding the complaint about non-accessibility of the data in the CDs provided alongwith SCN to the said assessee, they were given an opportunity to bring the CDs on 13.03.2012 for inspection by the then adjudicating authority before adjudication of the show cause notice but they did not come for getting the CDs inspected. At this juncture, the demand for relied upon documents clearly and quite unambiguously appears to be totally dilatory stratagem being adopted by the said assessee obstructing the adjudication proceedings so as escape from the serious charges levelled in the SCN pertaining to clandestine clearance and cheating the government exchequer.

18.5. From the above, it is evident that the said assessee are taking the Hon'ble Tribunal and the adjudicating authority for a ride in as much as in spite of the lapse of almost a period of thirteen years, they are still harping on seeking the relied upon documents which were nowhere disputed before the Hon'ble Tribunal. This clearly brings out the fact the assessee is simply trying to delay the adjudication process, for reasons best known to them and in misusing the reprieve given to them by the Hon'ble Tribunal.

18.6. In order to comply with directions of the Hon'ble Tribunal regards cross examination of witnesses/concerned persons as requested by the said assessee, letters dated 27.12.2022, 31.01.2023, 25.09.2023, 13.10.2023, 27.10.2023, 14.11.2023, seeking details/name of cross examinees for cross examination, were written to the said assessee in the course of adjudication proceeding of the present case by this office but rather than providing the name of cross examinees, the said assessee have only harped on non supply of relied upon documents of SCNs and have shown total non-cooperation or disregards with respect to directions of the Hon'ble Tribunal for cross examination.

18.7. I observe that non-producing/providing the specific details of cross examinees even after lapse more 13 years even though plenty of opportunities providing for arrangements of cross examination and constantly arguing for non-supply of relied upon documents of SCNs by the said assessee makes well-nigh impossible for me to comply with the direction of the Hon'ble Tribunal and also examine the facts with cross examinees. At this juncture, it is relevant here to draw attention 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....*

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.

18.8. 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 *Kanungo & 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 proceedees 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 proceedee 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 strait 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.*

18.9. I find that the Hon'ble CESTAT, has remanded the case for denovo adjudication, without expressing any opinion on the merits of the case. The Hon'ble CESTAT has ordered that the adjudicating authority will grant cross-examination and pass afresh order, considering the observations made by the Tribunal earlier order dated 01.05.2014 in case of Atithi Gokul Automobile Works wherein cross examination of persons as desired was allowed; and subsequently after receiving detailed reply, the adjudicating authority shall grant an opportunity of personal hearing and pass a reasoned order. I, being the present adjudicating authority, have offered ample opportunities to the said assessee for cross examination of witnesses but the said assessee has every time torpedoed and frustrated the efforts made for cross examination for which the Hon'ble Tribunal has remanded the case to me. **The reprieve given by the Hon'ble Tribunal has merely been exploited by the said assessee for deliberately delaying and prolonging the adjudication process**, the reason for which is best known to the said assessee.

18.10. 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 said assessee the legal right for cross-examination of the witnesses and that they need not file the reply to the Show Cause Notice, in the absence of the cross examination of witnesses. Even then, the case in hand is a case where the enough opportunities for cross examination of witnesses have been offered to the said assessee. As detailed in the above paras, ample opportunities for cross examination of witnesses have been accorded to the said assessee but they have deliberately scuttled and torpedoed all efforts by the undersigned to comply with the directions of Hon'ble Tribunal regarding cross examination with an intent to delay and sabotage the adjudication proceeding.

18.11. It becomes incumbent upon me to re-iterate and re-emphasize again here that letters dated 27.12.2022, 31.01.2023, 13.10.2023, 25.09.2023, 27.10.2023 and 14.11.2023 for conducting cross examination as per order of Hon'ble Tribunal and seeking details of cross examination of witnesses whom the said assessee desired to be cross examined in this matter were issued to the said assessee and personal hearing had been fixed on 12.01.2023, 10.02.2023, 12.10.2023, 27.10.2023, 13.11.2023 & 04.12.2023 and all these letters are well communicated to the said assessee in advance but they have neither bothered to attend the personal hearing or cross examination nor have they filed written defence reply and have only harped on and argued for supply of relied upon documents of SCNs. I would like to mention or rather record it here that proviso to Section 33A(2) of the Central Excise Act, 1944 provides that adjournment shall not be granted more than three times to a party during the proceeding. As I have recorded hereinabove, the said assessee have not bothered to fulfil the directions of the Hon'ble Tribunal regards cross examination of the witnesses whom they desired to cross examine. In light of the situation elaborated as above, I am left with no other option but to take up the case for afresh adjudication based on records available in file as the proceedings/show cause notices cannot be kept undecided just because of the unresponsive and recalcitrated behavior of the said assessee to the adjudication process inspite of very specific directions of the Hon'ble Tribunal.

18.12. Further, I do not find it appropriate to wait perennially to fulfill the incessant demands that are thrown 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 more than two years, since the case was remanded by the Hon'ble Tribunal. I find that ample time has lapsed for preparation of cross examination of witnesses by the said assessee. However, the matter remains *in limbo* even after remanding of the case for denovo, in as much as the assessee has not filed their final reply nor has the assessee given necessary details for enabling cross examination of the witnesses.

In view of the facts and circumstances and the aforementioned detailed discussion, I am constrained to hold a view that any further claim of the assessee of denial of principals of natural justice does not hold much water and as such denial of cross-examination can not be held to be violative of principles of natural justice.

The issue involved in the present case is manufacture and removal of excisable goods clandestinely without accounting for the same in the records, without payment of Central Excise and other duties, undervaluation of the goods, and proposal for imposition of penalty for evasion of Central Excise and other duties or for abetting in the commission of offence.

19. 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, 1989 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 carries a registration mark displayed in the prescribed manner.

Rule 42: *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: *On and from the date of commencement of Central Motor Vehicles (Amendment) Rules, 1993, 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.*

19.1. 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 for specific person 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.

19.2. 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. the manufacturers are required to give Chassis Nos, name of the manufacturer in short and year of manufacture. Accordingly, in case of Chassis no. of the said assessee i.e. VAI//01/09, 'VAI' represents name of manufacturer M/s Vaibhav Auto Industries, '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.

19.3. 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. 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 it is inferred that the details provided by RTOs regarding the vehicles registered during a particular period, are accurate and are reliable in all respect.

19.4. 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 weighment, 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.

From the above, 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, RTO Office maintains records. Accordingly, RTO Office has furnished the information based on such records.

20. I find that to verify the genuineness of the fact regarding production and clandestine clearance of chhakkdo auto rickshaw by the said assessee details were called from RTO, Ahmedabad since the registration of chhakkdo rikshaws are mandatory with the RTO authorities before they start plying on road. The RTO, Ahmedabad, vide letter dated 03.12.2009 has submitted the details of registration of such vehicles, manufactured by various manufacturers, including the said assessee. In case of vehicles manufactured by the said assessee, I observe that the maker's name has been marked as "Vaibhav" or "VAI" during the period from Dec.2005 to March, 2011 as enumerated in the annexures to the show cause notices. As per the detailed submitted by the RTO, Ahmedabad, I find that 2646 chhakkdo rikshaws [including 2 chhakkdo rikshaws which were cleared but yet to be registered with RTO] manufactured and cleared by the

said assessee, however, as per Central Excise invoices and ER-1 returns filed by the said assessee during the period from Dec.- 2005 to Sep-2009, they had shown clearance of 250 Chhakkdo rikshaws only. Thus, I come to conclusion that the said assessee had cleared 2646 vehicles without payment of Central Excise duty and without cover of an invoice and even without taking them into books of account.

20.1. I, further, find the certificates were issued by ARAI, Pune, and the Jt. Director of Transport, Gujarat state to the said assessee to manufacture the chhakkdo rikshaw and to get the same registered with respective RTOs. I observe that the Commissioner of Transport Gujarat State, Gandhinagar, approves any new model of the vehicle to be registered with the Regional Transport Office only after getting compliance certificate required under provisions of the Central Motor Vehicle Act, 1988, and the Rules in respect of Goods Vehicles, from ARAI for manufacture of the said model. I also find that the certificate holders of ARAI, Pune, can only issue Form-21 and Form-22 which is required for registration of vehicles with the RTO.

20.2. On further perusal of the above certificate issued by ARAI, Pune, I, observe that it contains the base model and the details of diesel engine to be fitted in the Chhakkdo rickshaw. The certificate also makes it compulsory that the diesel engine fitted should be *"Greaves Cotton Ltd make GL-400-IT- A having power 5.51 XW @ 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. as prescribed in the certificate before submission of the vehicle for registration."* It is also mentioned 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, 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 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.

20.3. I find that Information culled out in Annexure-A and Annexure-B to the notice dated 01.10.2010, based on the information furnished by the RTO, Ahmedabad and Jamnagar, Gujarat from which it is revealed that 2646 chhakkdo rikshaws vehicles [2396 including 2 vehicles which were cleared but yet to be registered with RTO Ahmedabad & 250 registered with RTO, Jamnagar] during the period from Dec.05 to Sep.09 + 107 during Oct.09 to June,2010] manufactured by the said assessee bearing maker's name as "Vaibhav" or "Vaibhav Auto" were registered with RTO. As against this, the said assessee had declared only 250 vehicles in their monthly return ER-1 during the period Dec.-2005 to Sep.-2009. On being requested, ARAI, vide letter No. ARM/HMR/GOVT-Corr/09-10/11 dated 11.12.2009 has intimated that said assessee had filed NIL production report with them for the period F.Y. 05-06 to F.Y. 08-09. On compression of figures submitted to ARAI, Pune with figures of production mentioned in ER-1 returns and actual quantity of Chhakkdo rickshaws manufactured as per RTO details, I find that they have not disclosed correct figures of production and clearance to either the C. Ex. Department or to ARAI, Pune. I, further, find that 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 the said assessee had manipulated the figures of production and clearance and has submitted different figures to different agencies with malafide intent to suppress their actual clearance with intent to evade payment of Central Excise duty as applicable.

20.4. Further, Annexure-A to the notice dated 01.10.2010, prepared on the basis of seized documents [Sr.No.17 &18 of Annex-A drawn at the factory premises of M/s Vaibhav Auto] makes it clear that they had dealt with manufacturing and clearance of 53 three wheeled auto rikshaws (Chhakkdo rikshaws) during the period from 09.04.2009 to 03.10.2009 but the said assessee had shown clearance of only 07 Chhakkdo rikshaws as per ER-1 returns filed with the C.Ex. department for the period April-2009 to Sept. 09. Further, the date of seven invoices issued by the said assessee were also not matching with the date of clearance shown in the seized documents except invoice no. 05 dated 24.07.2009 which was issued for

Chhakkddo rikshaws taken out to Ankleshwar however the invoice was issued in the name of Shri Dashrathbhai Abhubhai Makwana, Village Vatnman, Dist. Ahmedabad. On comparison of the entries appealing in the said withdrawn registers with the Central Excise invoices, it is noticed that the details are not matching.

20.5. Further, I find that the Chhakkddo rikshaw bearing chassis no. VAI/071/09 and chassis No. VAI/072/09, temporary registered with RTO Ahmedabad and cleared on 22.05.2009 as per details of RTO, Ahmedabd whereas as per records, the said assessee had issued only one invoice during the entire month of May, 2009 i.e. on 15.05.2009 hence, it is evident that the both of these Chhakkdo rikshaws were cleared without issuing of C.Ex. invoice.

20.6. I find that Chhakkddo Rikshaw bearing chassis no. 318/09 temporarily registered with RTO, Ahmedabad on 24.04.2009 mentioned at Sr. No. 2386 in the details provided by RTO, Ahmedabad had been removed on 10.09.2009 from the factory premise of the said assessee as per the outward entry shown in the registers, however, on scrutiny of C.Ex., invoice book, it was noticed that no invoices were issued on 10.09.2009 with effect to clearance of Chhakkddo Rikshaw.

In view of the above, it is evident beyond doubt that all 53 Chhakkddo rikshaws had been cleared illicitly without payment of C.Ex. and other duties even without accounting for the same in the statutory records.

Materials corroborated with the dealers/brokers/supplies of the said assessee.

Investigation at premises of M/s Manish Auto, Nagarpalika Shopping Centre, Keshod. as detailed at para 6.2. of the notice dated 01.10.2010.

21.1. It is on record that 31 RC books [as detailed in Annexure-B to the said panchnama dated 06.10.2009 were recovered from the premises of M/s Manish Auto, Keshod. Out of said 31 RC books, 14 RC books, at detailed at para 6.2.1 of the notice dated 01.10.2010, belonged to the said assessee. Upon verification of these details, it was noticed that out of 14 RC Boks, 13 RC Books had bearing Chassis no. of year 2009. On comparison of the said RC Books with the seven C.Ex. invoices issued by the said assessee during April-2009 to Sep.- 2009, none of the Central Excise invoice were found to be issued either in name of M/s Manish Auto or in the names of the owners

(buyers) mentioned in the RC books. It was noticed that vehicle with Chassis No VAI/991/07 was registered with RTO Junagadh on 24.01.08. However, no Central Excise Invoice was issued in the name of the buyer (Shri Adinbhai Chinabhai Balas)]. It was further noticed that vehicle bearing Chassis No. 361/09 and VAI/287/09 mentioned at Sr. No 3325 and 2292 respectively in the said Annexure-A to the notice dated 01.10.10, were temporarily registered with RTO Ahmedabad on 29.08.09 and 06.08.09. After temporary passing by RTO, Ahmedabad, the said Chhakkdo rickshaws were sent to Junagadh where they were permanently registered. It was noticed that no Central Excise invoice was issued on these two dates. Therefore, these vehicles were cleared illicitly without preparing the C.Ex. invoices and without accounting the same in the statutory records with intent to evade payment of C.Ex. and other duties.

21.2. From the register appearing at Sr.No.4, 5, 6 & 7 recovered from the premises of Manish Auto (containing the details of Chassis No., Engine No, Name of some of the buyers), it is clearly established that 910 vehicles were received by M/s Manish Auto from M/s VAIBHAV during the year 2006 and 2007 as against clearance of total 197 vehicles shown in ER-1 return by them during the corresponding year.

21.3. I find from the statement of Shri Govindbhai Hirabhai Mytra, Karta of M/s Manish Auto, Keshod recorded under section 14 of the Central Excise Act, 1944 on 19.02.2010 that they deal with the work relating to RTO and are in the business of sale/purchase of chhakkdo rikshaw manufactured by various manufacturers, including the said assessee. I, further, find that after getting the temporary registration of chhakkdo rikshaw by the manufacturers, along with the documents such as Form-21 & 22, sales Invoices from the manufacturers to be given to the buyers, M/s. Manish Auto have undertaken the work relating to permanent registration with the RTO. Further, I find that they had recovered the price of the chhakkdo rikshaws from vehicle owners/buyers and the same was sent to Chhakkdo manufacturers and they in turn got commission.

21.4. From the records recovered from M/s Manish Auto, Keshod, and from the statement of Shri Govindbhai Hirabhai Mytra, Karta of Manish Auto, I find that the statement is corroborating the facts of records recovered as evidence and it is abundantly clear that they had dealt with the said assessee in purchase and sales of chhakkdo rikshaw manufactured and cleared clandestinely by the said assessee. Hence, it is established that

M/s Manish Auto, Keshod had received 910 chhakkdo rikshaws (318 + 592) from the said assessee during year 2006 & 2007 without cover of valid C.Ex. invoices and without payment of C.Ex. and other duties even without accounting for the same in their statutory records.

21.5. I find a scanned image of register from premises of M/s Manish Auto placed at para 6.2.9 of the notice dated 01.10.2010 showing details of sales of Chhakkdo rikshaw by the said assessee through M/s. Manish Auto wherein total value of Rs. 80,000/- of Chhakkdo rickshaw bearing chassis no. VAI/200/06 which manufactured and cleared by the said assessee were recorded. Whereas the said assessee had cleared Chhakkdo rikshaws manufactured by them at the assessable value of Rs. 61,000/- plus taxes. Further, Shri Kanjibhai Ahir, Proprietor of the said assessee had accepted that selling price of Chhakkdo rikshaws manufactured and cleared by them was Rs. 80,000/- plus taxes and at the prevailing tax rates, total cost would be Rs. 99,695/- and suppressed the value of Chhakkdo rikshaws in the invoices raised by them and declared only Rs. 61,000/- as assessable value for the purpose of payment of Central Excise and other duties. The remaining amount of Rs. 19,000/- on each Chhakkdo rikshaw was collected by them in cash at the time of booking of sales through M/s Manish Auto for which no bills/invoices were issued by them. From the above, it is evident that apart from clandestine clearance of their finished goods, the said assessee were also indulging in under valuation of their finished goods and there by evading the payment of C.Ex. and other duties.

Investigation at premises of M/s Parishram Marketing, 64-Mayur Market, Opp. Police Station, Keshod dealer of the said assessee. as detailed at para 7 of the notice dated 01.10.2010.

22.1. I find a scanned image of registers marked at Sr. 04 & 06 of Annexure "A" to panchnama dated 01.10.2009 drawn from the premises of Parishram Marketing (containing the details of Chassis No., Engine No, Name of some of the buyers), and observe that the said assessee had cleared vehicle bearing Chassis No. VAI/622/06 to M/s Parishram Marketing, which was temporarily registered with RTO Ahmedabad on 13.10.06 whereas the said assessee had shown clearance of 82 vehicles in ER-1 till Oct 2006. Therefore, the allotment of Chassis No. should have been from VAI/001/06 to VA1/082/06. Therefore, it is evident that the said assessee had violated the guidelines of the ARAI in issuing incorrect serial number to Chassis.

22.2. The chhakkdo rikshaws having Chassis Nos. VAI/109/09 and VAI/113/09 were also dealt with by M/s Parishram Marketing, Keshod. The said Chassis No. mentioned in the registers seized from the premises of M/s Parishram Marketing and matched with the vehicle registered with RTO, Ahmedabad appearing at Sr.No. 2134 and 2142 respectively of the list provided by RTO Ahmedabad.

22.3. I, further, find that details of invoices issued by the said assessee also does not match with the details recorded in registers available at factory premises of M/s Parishram Marketing and no Central Excise Invoice have been issued either in the name of the buyers or in the name of M/s Parishram Marketing and the chassis no. was also given randomly for clearance of Chhakkdo rickshaws from the RTO Authorities.

22.4. I, further, find from the statement of Shri Nathubhai Gajera, Proprietor of M/s Parishram recorded on 20.11.2009 to the effect that they were RTO/Insurance agent and undertook the work relating to passing of new Chhakkdo rickshaws and insurance thereof and they acted as a financier and gave loan to purchasers of Chhakkdo/rickshaws. He confirmed the details mentioned in the registers drawn from their factory premises on 06.10.2009 where chassis no. mentioned as "VAI" was abbreviated for M/s Vaibhav Auto Industries, Ahmedabad. I also find from the confirmatory statement that they have dealt with 08 "VAI" M/s Vaibhav Auto Industries, Ahmedabad made chhakkdo rickshaws. It is also noticed that the said assessee had not issued any Central Excise invoice for sale of vehicles either in the name of M/ Parishram Marketing or in the name of the ultimate customer(s) during the period from January 2005 to Dept. 2009. The records recovered from M/s Parishram Marketing, Keshod and the statement of Shri Nathubhai Gajera, Proprietor of M/s Parishram Marketing, corroborated the fact of illicit clearance of vehicles manufactured by the said assessee.

Hence, it is established that these vehicles were cleared illicitly without issuing the central excise invoices and even without accounting in the statutory records with an intent to evade payment of Central Excise Duty.

Details of Diesel Engine Purchased from M/s. Greave Cotton Limited.

23.1. It is worthwhile to mention here that as per approval given by ARAI, Pune to the said assessee, Diesel Engines Model No. GL 400 manufactured by M/s Greaves Cotton Limited were required to be fitted in Chhakkdo rikshaws manufactured by the said assessee on the other side it

is on records from the data received from different dealers of Greaves Cotton that the said assessee had totally purchased 1275 Diesel Engines (773 Nos. 'Greaves' make GL-400 model & 502 other models) from various dealers of Greaves Cotton Limited during the period from 01.12.05 to 30.09.09 whereas they have manufactured and cleared 2646 chhakkdo rikshaws and got the same temporarily registered with RTO, Ahmedabad. This also included 02 vehicles cleared from the factory but yet to be registered with the RTO. Further, from the statement of Shri Kishore Gordhanbhai Chandra, Partner of M/s New Chandra Motor Cycle House, Jamnagar, an authorised distributor of M/s Greaves Cotton Ltd, I find that the said assessee had also dealt with other diesel engines via. Model Nos. G-1080, G-1450, G-1510, G-5520, G-5530 etc. to manufacture Chhakkdo rickshaw.

23.2. Further, the statements of various dealers of M/s Greaves Cotton Ltd. viz. Shri Kishor G. Chandra, partner of M/s New Chandra Motorcycle House, Jamnagar, Shri Mansukh Patel, proprietor of M/s Dattatrey Auto Centre, Rajkot, Shri Kasambhai U. Kaida, proprietor of M/s Kamal Auto Centre, Rajkot, recorded under section 14 of Central Excise Act, 1944 are clearly indicating that the said assessee had also used other models of Greaves Cotton besides locally assembled engines which were cheaper than the prescribed version of engine i.e. GL-400. The price of GL-400 varied between Rs.33,000/- to Rs.35,000/-, other models was around Rs. 23,000/- and the locally assembled engines varied between Rs. 20,000/- to Rs. 22,000/-. The outcome also effected that the payments were received by the said dealers through cheque and cash from the Chhakkdo manufacturers.

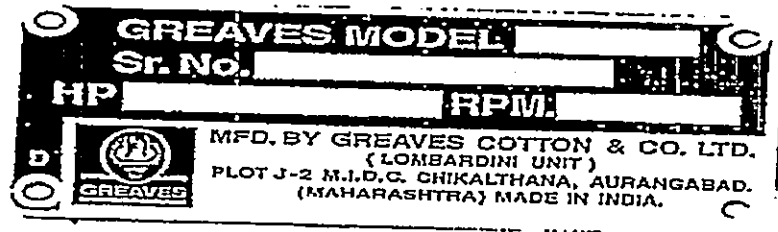
Investigation extended to local technician engaged in fitting of Diesel engines.

Search proceeding were extended to local technician who assembled Diesel Engines viz. (i) Shri Mansukh Patel Proprietor of Dattatrey Auto Centre, Rajkot (ii) Shri Kasmbhai Umarbhai Kaida, Proprietor of M/s Kamal Auto Centre, Rajkot.

24.1. I find from the version of above persons that the chhakkdo manufactures also used locally assembled engines and the plate required to affix on diesel engine for engine number and its manufacturers name & logo is easily available in local market and it is very easy for the chhakkdo manufacturers to buy the logo from local market for affixing on their own.

24.2. I, further, find that during the search under panchnama dated 22.07.2010 at M/s Dattatrey Auto Centre situated at 8, Rajput Para, Opp. Lodhawad Police Station, Rajkot, by the officers of DGCEI, Ahmedabad, one

set comprising of name plate and monogram of M/s. Greaves Cotton & Co. Limited, was placed under seizure. The scanned image of the said plate and monogram is produced below:



24.3. I find from the statement of Shri Mansukh Patel, Proprietor of M/s Dattatrey Auto Centre, Rajkot, recorded under section 14 of the Central Excise Act, 1944, on 22.07.2010 that they were selling the monograms to local Chhakkdo manufacturers. The seized monogram and the statement of Shri Mansukh Patel, goes to show that the logo/monogram of Greaves Cotton is easily available in local market and the chhakkdo manufacturers can buy and affix them on the assembled engines on their own in order to use cheaper version of diesel engines instead of prescribed version by ARAI, Pune.

Details of Gear Boxes purchased from M/s Royal Enfield India Ltd.

25. It is pertinent to mention that as per approval given by ARAI, Pune to manufacturers of Chhakkdo rickshaws, Gear Boxes manufactured by M/s Royal Enfield India Ltd. are to be fitted on the other opposite side, it is on record that the data received from different dealers of M/s Royal Enfield India Ltd within the state of Gujarat regarding sale of Gear Boxes, total 975 Gear Boxes were purchased by the said assessee from the various dealers of M/s Royal Enfield India Ltd in order to manufacture Chhakkdo rikshaws during the period from Dec. 2005 to Sept. 2009. It is not out of place to mention that total 2646 Gear Boxes were required for manufacturing of 2646 Chhakkdo rikshaws to the said assessee, only 975 Gear Boxes were purchased by the said assessee from different dealers of M/s Royal Enfield India Ltd and remaining 1671 Gear Boxes were purchased in the name of individual buyers or some fictitious name or got it assembled by local

technicians. The said fact has also been confirmed by Shri Kanjibhai V. Ahir, Proprietor of M/s VAIBHAV in his statement recorded on 01.10.2010.

Details of clearance of Chhakkdo rikshaws shown in ER-1 returns

26. As per ER-1 returns filed by the said assessee during the period from Dec. 2005 to Sept. 2009, the said assessee had declared clearance of 250 Chhakkdo rikshaws on payment of duty before the C. Ex. Department. There is no longer need to mention here it again but to confirm that the said assessee had manufactured and cleared total 2646 Chhakkdo rikshaws (2394 register with RTO, Ahmedabad & 250 registered with RTO, Jamnagar & 2 Chhakkdo rikshaws yet to be registered with RTO) during the period from Dec. 2005 to Sept. 2009. Out of the total 2646 Chhakkdo rikshaws, only 250 Chhakkdo rikshaws were cleared on payment of Central Excise duty and declared in ER-1 returns and remaining 2396 Chhakkdo rikshaws were clandestinely cleared without payment of C.Ex. duty and even without taking into account in their statutory records. I, further, find that apart from total Gear Boxes 975 purchased from dealers M/s. Royal Enfield India Ltd, 250 Gear Boxes used in manufacturing of Chhakkdo rikshaws on which C.Ex., duties have been paid by the said assessee and the remaining 725 Gear Boxes were used in manufacturing of Chhakkdo rikshaws which were cleared without payment of C.Ex. duties and even without accounting the same in their statutory records.

Statement of Shri Kanjibhai V. Ahir, Proprietor of M/s VAIBHAV

27.1. I find that Shri Kanjibhai V. Ahir, Proprietor of the noticee firm, in his statement recorded on 06.10.2009, admitted that they had cleared 53 Chhakkdo rikshaws without preparing Central Excise invoices and without payment of duty during 09.04.09 to 03.10.09. they were ready to pay duty of Rs. 32,33,000/- at value of Rs. 61,000/- per chhakkdo rikshaw. He explained the manner of giving chassis no. wherein first word of their factory name viz. "V" of Vaibhav "A" of Automobile and "I" of Industries and its comes as "VAI". Thereafter number of chhakkdo manufactured and at the end comes year of manufacture;

28.1. He had accepted the details of 2644 chhakkado rikshaws registered with RTO, Ahmedabad and RTO, Jamnagar with brand name of "Vaibhav" prepared based on information furnished by them during period from Dec. 2005 to Sept. 2009. They had cleared 250 chhakkdo rikshaws by preparing Central Excise invoices and remaining 2394 chhakkdas were cleared without preparing central excise invoices and without payment of

central excise duty, and that in all they had evaded payment of Central Excise and other duties on 2396 vehicles (including 2 vehicles cleared from the factory but were yet to be registered with the RTO on the date of visit). He promised to pay the C.Ex. and other duties on remaining 2396 chhakkdo rikshaws within a short period. Further, he admitted that the register at Sr. 05 & 06 shown details of 318 & 592 Chhakkdo rikshaws sold by them to M/s Manish Auto in 2006 and 2007, respectively.

28.2. I find that during statement recorded on 24.02.2010, shri Kanjibhai V. Ahir admitted that 53 chhakkdo rikshaws cleared by them illicitly without preparing of C.Ex. bills and without payment of duty during the period from 09.04.02009 to 03.10.2009 as per details mentioned in the registers seized under panchnama dated 06.10.2009 and further registers of such transactions for the past period had been destroyed by him since accounts of all buyers were settled; that he agreed the facts regards illicit clearance of Chhakkdo rikshaws uttered by Shri Govindbhai Hirabhai Mytra, proprietor of M/s Manish Auto, Keshod and Shri Nathubhai Gajera, Proprietor of M/s Parishram Marketing, Keshod; he received cash payment towards the sale of chhakkdo rikshaws cleared illicitly through M/s Manich Auto and M/s Parishram Marketing;

28.3. I, further, find that during statement recorded on 01.10.2010, shri Kanjibhai V. Ahir had admitted all facts narrated in various statements of concerned persons recorded during investigation proceeding and panchnamas drawn at their premises. In addition to assesses value of Rs. 61,000/- plus taxes, they have collected around Rs. 19,000/- in cash from their buyers.

Valuation of finished goods i.e. Chhakkdo Rikshaws

29. As regards the determination of the value of the excisable goods, Section 4(3)(d) defines "transaction value" as the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price. Shri K.V. Ahir proprietor of the said assessee had stated that the cost of raw material required for manufacture of chhakkdo rikshaw was Rs 67,275/-; that since 2001, they had charged the assessable value of a chhakkdo rikshaw which was Rs.61,000/-; that apart from the assessable value of Rs.61,000/-, they charged Rs. 12,500/- to 14,000/- for body work, Rs.8,000/- for accessories; that the amount towards body work and accessories were not included in the value for the purpose of payment of duty; that, in addition to the above, they also collected Rs.8,500/- towards RTO/Insurance. Further, Shri K.V. Ahir proprietor of the said

assessee had categorically stated in his statement recorded on 01.10.2010 that selling price of Chhakkdo rikshaw manufactured and cleared by them was Rs. 80,000/- plus taxes and at prevailing tax rates, total cost of a Chhakkdo rikshaw would be Rs. 99,695/-. Further, Shri K.V. Ahir proprietor of the said assessee had explained the entire channels of receipt of payment against sales of a Chhakkdo rikshaw and had accepted that they had suppressed the value of Chhakkdo rikshaws in the invoices raised by them and declared only Rs. 61,000/- as assessable value in the invoices for the purpose of payment of Central Excise and other duties. The remaining amount of Rs. 19,000/- on each chhakkdo rikshaws was collected by them in cash at the time of booking of chhakkdo rikshaw for which no bills/invoices were issued. Therefore, there exists clear admission by him to the effect of undervaluation of goods.

Quantification of duty not paid on clandestine removal and short paid by way of under valuation.

30.1. It is all time accepted fact that the details of Chhakkdo rikshaws viz. registration of vehicles provided by RTO, Ahmedabad & Jamnagar, were generated based on the requisite details submitted by the said assessee. It is also on records that the said assessee has submitted Form-21 and Form-22 in respect of vehicles manufactured by them in order to get registration number of a vehicle from the RTO and Shri K. V. Ahir proprietor of the said assessee had admitted that they had issued one copy of fake Central Excise Invoice for producing before RTO to get registration number for vehicles and no other copy of such Central Excise Invoices were available with them. Therefore, in order to establish the exact amount of evasion, the duty was demanded on the basis of details of total number of Chhakkdo rikshaws provided by the RTO, Ahmedabad & RTO, Jamnagar less duty already paid by them and shown in ER-1 returns.

30.2. From the facts and circumstance as discussed herein above, It is very well established beyond doubt that the said assessee had manufactured and cleared their finished goods .i.e. Chhakkdo rikshaws 2396 chhakkdo rikshaws [including 2 chhakkdo rikshaws which were cleared but yet to be registered with RTO] illicitly without payment of Central Excise and other duties and even without accounting the same in their statutory records and 250 Chhakkdo rikshaws cleared with payment of tax to the effect of undervaluation. The said facts have also been corroborated with various records obtained from the premises of the said assessee/ it's dealers/sales agents and from details from provided by the RTO, Ahmedabad & Jamnagar and ARAI, Pune.

30.3. It is pertinent to note that in the present case, it is not material as to who, at the end of the dealers/job-workers, had maintained the daily/records. These records tally with the information called from the RTO Ahmedabad and Jamnagar. Similarly, the suppliers have confirmed having supplied the raw material and the fact that assembled diesel engines were available locally. All the dealers/job-workers/suppliers have affirmed the veracity of these records and having dealt with the vehicles manufactured and cleared by the said assessee clandestinely. It is not case of the said assessee that the records at all places were manipulated. It is also appropriate to mention here that Shri Kanjibhai V. Ahir, Proprietor of the said assessee, had affirmed the statements of his dealers/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 his dealers/job-workers and suppliers of Diesel Engines/Gear Boxes nor retracted his own statements.

In view of above, it is established beyond doubt that out of total 2646 Chhakkdo rikshaws manufactured and cleared by the said assessee, 250 Chhakkdo rikshaws were cleared on payment of duty and shown in ER-1 returns and remaining 2396 Chhakkdo rikshaws were cleared illicitly without payment of C. Ex duty. The differential duty is, therefore, required to be recovered from the said assessee.

Clearance of Chhakkdo rikshaws by M/s Vaibhav during the period from Oct. 2009 to June, 2010.

31.1. I find the month wise clearance of Chhakkdo rikshaws shown in ER-1 returns by the said assessee during the period from Oct. 2009 to June 2010 after initiation of action of DGCEI, AZU, Ahmedabad are as under:-

Sr. No	Month	Clearance during the month	Progressive total
01	Oct. 09	00	00
02	Nov. 09	24	24
03	Dec. 09	51	75
04	Jan. 10	62	137
05	Feb. 10	58	195
06	Mar. 10	29	224
07	Apr. 10	111	335
08	May 10	70	405
09	June, 10	95	500

31.2. From the above, it can be seen that during a short period of time of 09 months, the said assessee had shown clearance of 500 Chhakkdo rikshaws whereas during the period for Dec. 2005 to Sept. 2009 (**47 months**) they had shown clearance of 250 Chhakkdo rikshaws only. It is incumbent upon me to record it here that from such a substantial increase in clearance of Chhakkdo rikshaws only after initiation of action by DGCEI, it is evident that the said assessee had indulged in non-accountal of their finished goods i.e Chhakkdo rikshaws to evade payment of duty/taxes and willful suppressed the clearance on very large scale prior to 06/10/2009 by them and cleared their finished goods i.e Chhakkdo rikshaws without preparing the valid C.Ex., invoices, without payment of C.Ex. and other duties and even without accounting the same in their statutory records.

In view of all the facts and circumstances as narrated herein above, it is evident that the said assessee (M/s Vaibhav Auto Industries) were indulging in large scale evasion of Central Excise duty by resorting to illicit manufacture and clearance thereof, without the clearance being recorded in any of the statutory records, such as C.Ex. invoices, daily stock accounts etc. It is also established beyond doubt that the said assessee had neither prepared any duty paying documents nor have accounted for the quantity of excisable goods in their statutory records so manufactured and cleared by them and also indulging in under valuation of their finished goods cleared on payment of C.Ex. and other duties. This modus operandi has been brought out during the course of investigation.

32. As regards the applicability of extended period of limitation, it may be stated that the said assessee had willfully suppressed the facts of manufacture and clearance of excisable goods i.e. Chhakkdo rikshaws from the Department and cleared their goods illicitly and also short-paid duty by way of undervaluation by reasons of fraud, willful mis-statement and by suppressing material facts with an Intent to evade payment of duty, the extended period of five years will apply in case of notice F.No. DGCEI/AZU-36-94/10-11 dated 01.10.2010. It may, however, be stated that the Show cause notice F.No. V.87/15-32/OA/11 dated 13.09.2011 demand of duty has been made for a period of less than one year.

In view of the aforementioned detailed discussion and in view of the facts and circumstances pertaining to the subject case, the said assessee is liable to pay Central Excise duty (including MV Cess) on the goods cleared by them illicitly and differential duty on the goods cleared by

them by undervaluing the same. I also find that the said assessee was required to pay MV Cess 1/8% adv. on the Chhakkdo rikshaws manufactured and cleared by them as per Appendix-III of Central Excise Tariff Act, 1985 and notified by Ministry of Industry, Department of Industrial Development Notification S.O. No. 247(E) dated 22.3.1990 as amended by Notification S.O. 852(E) dated 26.5.1994. Since the said assessee had not paid the said MV Cess on their clearances made by them illicit or illicitly, they are required to pay MV Cess. Therefore, I hold that the said assessee is liable to pay Central Excise duty [including Motor Vehicle Cess] amounting to Rs. 3,36,85,990/- (Rs.3,15,22,497 as demanded in notice F.No. DGCEI/AZU/26- 94/10-11 dated 01.10.2010+ Rs.23,63,493/- differential duty as demanded vide F.No.V.87/15-32/OA/2011 dated 13.09.11 under proviso to Section 11A/Section 11A(1), along with interest under Section 11AB/11AA of the Central Excise Act, 1944.

Imposition of penalty on the said assessee under the provisions of Section 11AC of the Central Excise Act, 1944 readwith Rule 25 of the Central Excise Rules, 2002.

33.1. It is pertinent to mention that In view of my discussions and findings in foregoing paras, the said assessee had explicitly contravened the provisions of - (i) Section 3 of the Central Excise Act, 1944, inasmuch as they had cleared excisable goods without payment of Central Excise duty; (ii) Section 4 of the said Act, Inasmuch as they had manufactured and cleared finished goods but did not declare the correct transaction value on the invoices; (iii) Rule 4 and Rule 8 of the Central Excise Rules, 2002, inasmuch as they removed excisable goods without discharging Central Excise duty in the manner prescribed; (iv) Rule 6 of the said Rules Inasmuch as they failed to assessee the duty payable on the finished goods; (v) Rule 10 of the said Rules Inasmuch as they failed to maintain true and correct account of the manufacture and clearance of finished goods; (vi) Rule 11 of the said Rules inasmuch as they failed to issue proper invoice in respect of finished goods cleared from their factory; (vii) Rule 12 of the said Rules inasmuch as they failed to correctly filed the monthly ER1 returns regarding manufacture and clearance of finished goods. It may be stated that the said assessee had not only willful suppressed the fact of manufacture and clearance of vehicles illicitly from Central Excise authorities but also suppressed these facts from ARAI and transport authorities.

33.2. It is mentioned here that the applicability of extended period of limitation in the present case on the ground of mis-statement and willful suppression of fact and contraventions of various provisions of the Central Excise Act, 1944 as well the Central Excise Rules, 2002 with intent to evade payment of duty, has well-nigh been established beyond any doubt with the facts and circumstance of the case as per my detailed findings as above.

33.3. Further, 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 said assessee had indulged in collusion with their dealers/brokers and had willful mis-stated and suppressed quantities of the manufacture and removal of goods to evade payment of C. Ex. & other duties. Therefore, I am constrained to hold the view that the said assessee has rendered themselves liable for penalty under Section 11AC of the Central Excise Act, 1944.

34. As regards proposal for confiscation of vehicle valued at Rs.61,000/- made in the show cause notice No. DGCEI/AZU/36-166/09-10 dated 27.03.2010, I find that the said vehicle was placed under seizure under the reasonable belief that the same was liable for confiscation on the ground that the Same Was intended to be cleared illicitly. The ground for detention/seizure was that the said vehicle bearing Chassis No.VAI/327/09 and Greaves make Diesel Engine No A9H0266919 was found unaccounted. Since no plausible reason for non-accountal has been adduced by the said assessee, I hold that the same is liable for confiscation under Rule 25 of the Central Excise Rules, 2002. I rely upon the case of K. Selvaraj Vs. Commissioner of C.Ex., Coimbatore reported at 2009 (238) EL.T. 502 (Tri.-Chennai) wherein the Hon'ble Tribunal has held that -

After examining the records and hearing both sides, I have found hardly any case against the demand of duty inasmuch as the entire demand in on goods which was found to have been clandestinely removed from the factory. No duty was demanded on the fabrics found in the factory. The fabrics found in the factory without accountal were, however, confiscated. The learned consultant submits that only those goods which were found to have been cleared from the factory should have been confiscated and that any goods found within the factory was not liable to confiscation. This argument does not stand the test of Rule 25, whereunder any finished excisable goods kept without accountal in the factory of production is also liable to confiscation.

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

36. The preceding adjudicating authority vide the OIO NO. 08 to 10/COMMR/RAJU/AHD-II/2012 dated 06.06.2012, had decided the SCN No. DGCEI/AZU/36-166/2009-10 dated 27.03.2010, SCN No. DGCEI/AZU/36-94/10-11 dated 01.10.2010 and SCN No. V.87/15-32/OA/2011, dated 13.09.2011. The then adjudicating authority vide the impugned OIO had imposed penalty under Rule 25 of the said Rules on (a) Shri Govindbhai Mytra, proprietor of M/s Manish Auto and (b) Shri Nathubhai Gajera, Proprietor of M/s Parishram Marketing. I find that the said assessee M/s. Vaibhav Auto Industries, on being aggrieved with the above OIO, had filed an appeal before the Hon'ble CESTAT and the CESTAT vide Final Order No. A/12516-12520/2021 dated 18.11.2021, remanded back the matter to the adjudicating authority with respect to M/s Vaibhav Auto Industries 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. OIO NO. 08 to 10/COMMR/RAJU/AHD-II/2012 dated 06.06:2012, with respect to (a) Shri Govindbhai Mytra, proprietor of M/s Manish Auto and (b) Shri Nathubhai Gajera, Proprietor of M/s Parishram Marketing and the decision of the predecessor adjudicating authority in the impugned OIO still stands with respect to these noticees.

37. I reiterate the discussion and findings of my predecessor adjudicating authority as discussed in OIO NO. 08 to 10/COMMR/RAJU/AHD-II/2012 dated 06.06.2012. 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 06.06.2012, 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.

38. 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 Central Excise duty (including Motor Vehicle Cess) amounting to Rs. 3,36,85,990/- (Rs.3,13,22,497/- as demanded in Show Cause Notice No. DGCEI/AZU/26-94/10-11 dated 01.10.2010 + Rs.23,63,493/- differential duty as demanded vide Show Cause Notice F.No.V.87/15-32/OA/2011 dated 13.09.11 against M/s Vaibhav Auto Industries, 41, New Ahmedabad Industrial Estate, Behind Nova Petrochem, Moraiya, Tal: Sanand, Dist. Ahmedabad, under Section 11A(10) of the Central Excise Act, 1944.
- ii. I impose penalty of Rs.3,36,85,990/- on M/s Vaibhav Auto Industries, Tal: Sanand, Dist. Ahmedabad under the provisions of erstwhile Section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002.
- iii. I order recovery of interest at the appropriate rate on the amount confirmed under sub-para (i) above, under erstwhile Section 11AB/11AA of Central Excise Act, 1944.
- iv. I order for confiscation of the seized chhakdo rikshaw valued at Rs.61,000/- under Rule 25 of the Central Excise Rules, 2002. In terms of provisions of Section 34 of Central Excise Act, 1944, I give an option to the noticee to pay a redemption fine of Rs. 25,000/- in lieu of confiscation in respect of SCN No. DGCEI/AZU/36-166/2009 dated 27.03.2010.

39. All three-show cause bearing (1) F.No. DGCEI/AZU/36-166/2009 dated 27.03.2010; (2) DGCEI/AZU-36-94/2010 dated 01.10.2010 and (3) V.87/15-32/OA/2011 dated 13.09.2011 stand disposed of in consequence of the Hon'ble CESTAT, Ahmedabad Order No. A/12516-12520/2021 dated 18.11.2021 in the above manner.


(UPENDRA SINGH YADAV)
COMMISSIONER
Dated: 28.12.2023

F.No.V.87/15-27/OA/2010

BY REGD POST ACK DUE

To

M/s Vaibhav Auto Industries,
41, New Ahmedabad Industrial Estate,
Behind Nova Petrochem, Moraiya, Tal: Sanand,
Dist. Ahmedabad.

Copy to:-

- (i) The Principal Chief Commissioner, Central Excise & Central Goods and Service Tax, Ahmedabad Zone, Ahmedabad.
- (ii) The Addl. Director General, DGGI, AZU, Ahmedabad
- (iii) The Assistant Commissioner, Central Excise & CGST, Division-IV, Ahmedabad North
- (iv) The Superintendent, Central Excise & CGST, Range-III, Division-IV, Ahmedabad North for information and necessary action.
- ✓ (v) The Superintendent (HQ, System) Central Excise & CGST, , Ahmedabad North with a request to upload the OIO on official website.
- (vi) Guard File.

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