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

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. V.73/15-23/OA/2012

आदेश की तारीख / Date of Order : 07.07.2020
जारी करने की तारीख / Date of Issue : 07.07.2020

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-11-12/2020-21

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

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

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

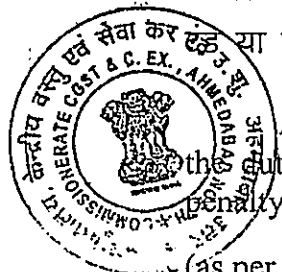
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax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

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं 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- Proceedings initiated vide Show-Cause-Notice F.No. V.73/15-23/OA/2012 dated 08.06.2012 & V.73/15-26/OA/2013 dated 15.03.2013 issued to M/s. Precision Infratech Ltd, 884-885, Opp. Jaystar Laminates, Bavla-Bagodra NH-8A, Bavla-382220, Taluka-Dholka, Dist: Ahmedabad.



BRIEF FACTS OF THE CASE:

M/s Precision Infratech Ltd, 884-885, Opp. Jaystar Laminates, Bavla-Bagodra NH-8A, Bavla-382220, Taluka-Dholka, Dist: Ahmedabad (hereinafter referred to as "M/s Precision") was engaged in manufacturing and executing turnkey contracts of Hydro Mechanical works which involved fabrication comprising of parts of radial gates, Vertical gates, Stop-logs, Mechanical and Hydraulic Hoist with support structure and Gantry Cranes, Penstock steel liners etc.

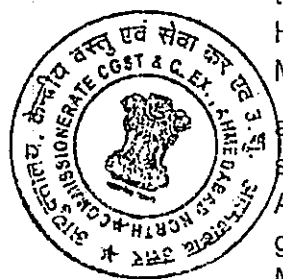
2.1 Based on information that the assessee had cleared the above excisable goods without discharging Central Excise duty, officers of the Central Excise (Preventive), HQ., Ahmedabad-II, searched the factory premises as well as Office premises on 14.10.2010.

2.2 During the panchnama proceedings carried out in the factory premises of M/s Precision on 14/10/10 in the presence of Shri Mayurbhai J Prajapati, Store-In-Charge cum authorized person, it was observed that all machineries necessary for fabrication of structures of Dam parts were installed and in working condition. It was also observed that parts like "processed Trunnion hub" were being worked upon on one of the many Lathe machines. Machineries like Crane/hoist, Drilling, Hobbing, Shapping, Cutting, welding etc were installed in various sheds of the premises of M/s Precision. Shri Mayurbhai J Prajapati, stated *inter alia* in presence of the panchas that they were engaged in manufacture of Spill way Radial Gate, Gantry Crane and fabrication activities such as cutting, fitting welding etc were carried out, and that all machines lying in the factory premises were used for manufacture of Spill way Radial Gate, Gantry Crane etc. Fabrication activities such as cutting, fitting, welding etc. being undertaken on MS Plates, were also witnessed. Spares and metal scrap were noticed lying in the sheds. During the search, the officers segregated and withdrew certain documents as per Annexure-A to the Panchnama for further investigation.

2.3 Search under panchnama proceedings was also carried out at the office premises of M/s Precision situated at 7/C-D, Suryarath Complex, Panchvati, Ellisbridge, Ahmedabad, on 14/10/10 in the presence of Shri Dinesh Charanmal Logar, Manager (Accounts), who inter alia, stated in the presence of panchas that M/s Precision was engaged in the manufacture of Gates, Stoplog, Vertical gates, Hoist supporting structure, Radial Arm, Horizontal Girder, Gantry Cranes, Trash rack, Lifting beam Penstock etc; that their major raw materials are MS Sheets, MS Angles, MS Channels, SS Plates, MS Flats, MS Round Bars and paints; that their company had undertaken various Government projects viz (1) Meghalaya State Electricity Board, (2) Tehri Hydro Development Corporation Ltd., (3) Nasik Dam Project (Akalpada), Nasik, (4) Nasik Dam Project, Wadisevadi, Nasik, & (5) Alaknanda Hydro Power Project Company Ltd., through tenders; that they were not registered with Central Excise department and did not pay any Central Excise duty on the clearance of goods from their factory premises; that being a limited company, the Board of Directors consisted of (1) Shri Bhaskar Vibhakar (2) Shri Nalin Vibhakar and (3) Smt. Minaxi Vibhakar. During the search, certain documents as mentioned in Annexure-A to the panchnama were also withdrawn.

3.1 Statement of Shri Mayurbhai Jagdishbhai Prajapati, Store-in-charge of M/s. Precision Infratech Ltd., 884-885, Opp. Jaystar Laminarts, N H 8A, Bavla-Bagodara Highway, Bavla, was recorded under section 14 of the Central Excise Act, 1944 on 14.10.2010, wherein he affirmed the facts as mentioned in the panchnama dtd 14/10/10 drawn at M/s Precision and inter alia stated that:

- they were engaged in manufacturing of Spillway Radial Gates and Gantry Cranes / Hoists at that premises and their major raw materials for manufacture of goods/items are MS Plates, MS Sheets, MS Angle, MS Channel, SS Plates, MS Flats, MS Round Bars
- at Fabrication stage, they carry out process of cutting, fitting and welding; at Machining stage, they carry out process of turning, boring, teeth cutting and milling followed by Assembly i.e. Motors, brakes, gear box, couplings etc. and lastly painting is done on the goods to be dispatched and their major suppliers of raw materials were M/s. SAIL and M/s Jindal Steels Ltd.
- during the said panchnama, goods for M/s Shrinagar Hydro-electric Project were being fabricated by them
- scrap/waste generated during the manufacturing activity at their factory premises were sold and cleared by them under invoices to local buyers.



3.2 A Statement of Shri Nalin Pranlal Vibhakar, Director of M/s Precision Infratech Ltd., 7/C-D, Suryarath, Panchwati, Ellisbridge, Ahmedabad, was recorded on 14.10.2010 under section 14 of Central Excise Act, 1944 wherein he, inter alia, stated that :

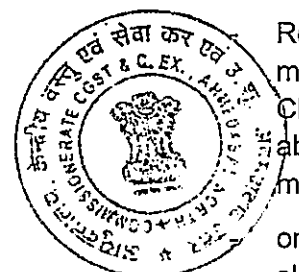
- they prepared Retail invoices to accompany the goods dispatched from their premises, and the scrap/waste/by-products/residues generated during the manufacturing of their finished goods at the factory premises of M/s Precision were sold as per the market rate from their factory premises
- since the products cleared from their Bavla plant were sent in knocked down condition no Central Excise duty would be leviable on such dispatches.
- With regard to receipt of payments for the invoices raised by them for the goods dispatched, he stated that the invoices raised in the name of their branch/site were debited in their Head Office's records. On receiving payment from the project authority, the same was credited to the same Branch account and ultimately transferred to the account of the unit at Ahmedabad.

3.3 Statements of Shri Bhupendra K Rajput, B. E. (Mech) Production Engineer of M/s Precision, was recorded under section 14 of the Central Excise Act, 1944 on 15.10.2010 and on 15/04/11, wherein he deposed that :

- he looked after raw material inspection, supervision of entire production activity and preparation of related reports for the past four years and his total work experience in the line of Engineering was around ten years;
- the names of items/products/goods dispatched from their factory premises and described as "material sent for Hydro Project" and "Dam items" in their sales Invoice for Hydro Project include: (i) For Radial Gates:-Still Beam, Wall Plates, Arm, Horizontal Girder, Trunnion Bracket and (ii) For Gantry Cranes:-Column, Wheel Bogie, Tie Beam, Rail Girder;
- all these were parts and not components and all these parts were manufactured in the factory premises with the help of machineries installed in the factory premises;
- major raw materials used were MS Flats, SS Plates, MS Sheets, MS Angles, MS Channels, MS Beam and MS Round Bars;
- in fabrication process cutting, fit up, welding, straightening was included; in machining process turning, boring, teeth-cutting, milling, shaping/planning and drilling was included;
- according to design all the activities were carried out within the factory premises; and the size and weight of above products/items dispatched from PIL depended on capacity and design;
- normally, those goods were sent in "Ready to assemble condition at site" and if required by the party, the same was assembled in-house and tested and then dis-assembled and sent.
- **Mechanical Hoist** drum was manufactured in the factory at Bavla. Likewise shaft made from round bars, raw casting for gear, wheel, pulley etc were purchased and necessary machining and other processes were carried out, then all the parts for Hoist were painted and dispatched to the site workshop where the Hoist was assembled. So far as **Trunnion** was concerned the **bracket** and **Hub** was manufactured from plates; **Pin** was made from round bars, **Thrust washer/spacer** also was manufactured of aluminum bronze); **Beam or Girders, Arms, stiffeners, embedded parts for radial gates and Stop-log gates** and parts of gantry cranes were also fabricated in the Bavla unit.

Regarding the raw-materials procured in their factory premises situated at Bavla for the manufacture of the above goods he stated that SS Plates, MS Flats, sheets, angles, Channels, Beams, round bars, castings formed integral parts of the inputs. Over and above the commodities manufactured in the factory, bought-out items were used in the manufacture of radial gate etc. at site.

on being asked in the event of break-down of the radial gates, can the parts, be it be skin plate, Trunnion, hoist or any other part or the radial gate as a whole, be replaced or removed from its frame, he stated that he did not know about re-placement but repairs



were possible. On being asked about the function or purpose of a stop-gate he stated that stop-gate also served the function of a valve controlling the flow and was normally used to control the water when the radial gate needed some maintenance or repairs which could be considered as a stop-gap arrangement.

3.4 Shri Vishal Shantilal Jain, Accountant, in his statement dated 07.05.11 recorded under Section 14 of the Central Excise Act 1944 inter alia, accepted that they were clearing materials on which manufacturing processes had taken place in their factory premises as well as inputs as such were removed to their branches as transfer under Form "F" where no VAT was paid by them. He also stated that invoices in the name of customers were direct sales where VAT was paid as applicable whereas invoices in the name of Branch were Branch transfers.

3.5 Shri Bhaskar Pranal Vibhakar, Chairman-cum-Managing Director of M/s Precision Infratech Ltd, in his statements dated 27/10/10, 05/06/12 and 06/06/12 besides reiterating the above facts, inter alia, stated that :

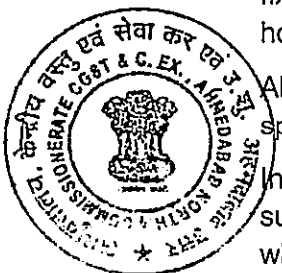
- they were a Limited company with unlisted shares in existence since 21.06.1995 and were engaged in executing turnkey contracts of Hydro Mechanical works involving Installations comprising Radial gates, Vertical gates, Stop-logs, Mechanical and Hydraulic Hoist with support structure and Gantry Cranes, Penstock steel liners etc. from the stage of design, manufacture, supply and installation and commissioning with performance warranty for designated period;
- mechanical works of these installations in parts were carried out at their factory in addition to fabrication activities carried out at respective Site establishment of the company;
- all activities such as purchase, production, sales, marketing, administration etc. were looked after by him alongwith all Directors since inception of the said unit; he was the full time Director looking after purchase, production, sales, marketing, administration etc. of their unit;
- earlier, the name of the company was Precision Technofab & Engg. P. Ltd / Precision Technofab P Ltd. which was operating from the same premises; the facts mentioned in the two panchnamas drawn at their factory and Office premises on 14.10.2010 were agreeable to him;
- he had gone through the statement of Shri Mayurbhai Jagdishbhai Prajapati, Store-in-charge and statement of Shri Nalin P. Vibhakar, Director, both recorded on 14-10-2010 and the statement of Shri Bhupendra Karampalsingh Rajput, Production Engineer recorded on 15-10-2010 and he agreed with the contents mentioned therein.

3.5.1 With regard to manufacturing activities at Bavla unit, he stated in his various depositions that

- activities at the Bavla unit correspond to partial fabrication of parts for structures for Dams as per the approved design and drawing which involved Radial gates, comprising of Trunion brackets, trunion hubs, horizontal girders in parts, radial arms in partial forms, bearing plates, connecting plates, ties, stiffeners, plates (only duly cut) wall plates, sill beam elements etc.
- in case of vertical gates and stop-logs the partially fabricated parts correspond to end verticals, horizontal girders, stiffeners, rollers, pins, seal base with clamps etc.
- In case of operational arrangements like for gates and stop-logs, the parts comprised of Rope drums, end reduction elements, shafts, wheels etc involved in electromechanical fixed and travelling hoisting arrangements which were planned to be incorporated into hoisting and gantry crane arrangements at respective sites.

All castings, forgings and required steel materials of required grades and applicable specifications were procured and used as input materials at the Bavla unit.

In case of hydraulic hoisting arrangements the elements partially worked upon relate to suspension arrangement of hydraulic cylinders to be embedded into concrete structure whereas the hydraulic hoist cylinders and their power packs were sourced from the manufacturer. He also mentioned that the processes involved at Bavla were of cutting, fitting welding and machining to the extent required on such parts.



3.5.2 Vide his statement dated 06/06/12 Shri Bhaskar Vibhakar, CMD, was asked to give a detailed representative account of one of the products used in the Dam – for example 'the Radial Arm'. i.e. right from the time the inputs are sourced, to the final assembly and integration on site and incorporating the same in the radial gate facility. He explained as under

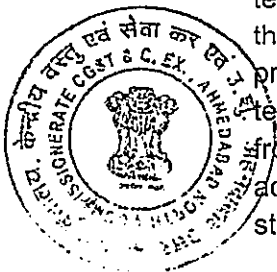
- Radial arms were important constituent members of radial gate facility depending upon the water load to be resisted which was governed by the vent size and design head over sill as per conceptual design in specification and principal design parameters either 2X2, 3X2, 4X2, or 5X2 were provided with radius as per specification. The inclinations of the arms in the horizontal and vertical planes are decided during the course of detailed design. Correspondingly the overall length and section of each set of two arms one LH and RH differ from one another. All arms are normally made from plate sections but the capacity and sectional size of each set off arms is different.
- Fabrication of this arm when carried out at Bavla involved cutting of plates in required sizes by means of profile cutting machines at Bavla, for incorporating the same as flange plate, web plates, splice plates for flanges and webs terminal plates inter-connecting plates for trunnion hubs and horizontal girders etc. The radial arms elements were fabricated in parts keeping in mind the joint locations as per design and corresponding overlapping provisions to be incorporated with necessary edge preparation for welding at site in partial form with over all extended length such that the radial arm in exact required size could be fabricated with partially elements received from Bavla factory at site on specially prepared jigs and fixtures which also enable accurate geometrical profile at either terminals. Once this was achieved, the terminal plates were connected including fitting and welding of elements to elements joints and providing splice plates. Further integration arm-to-arm, arm-to-trunnion, arm-to-horizontal griders, providing gusset plates on arms on single or either side as per approved drawing was carried out at site. The terminal plates and connecting plates which were cut at Bavla were also drilled ensuring accurate spacing of drill holes and keeping the hole sizes smaller than required allowing the final accurate sizes to be achieved through process of reaming at site because those were main load bearing connection involving tight fit joints. On being asked to further explain the activities undertaken distinctly at Bavla and at site he explained as under

At Bavla:-

- Cutting of plates, flanges and webs for arms, splice plates, termination plates, connecting plates by means of profile cutting machines. Fitting and welding of the arm section in partial elements allowing overlapping for filed connections both in flange as well as web or the box section as may be applicable as per approved design. The constituent elements added together should necessarily afford allowance for final fabrication of the element on specially prepared jigs and fixtures to ensure geometrical accuracy in close tolerance necessary as per design. The splice plates, termination plates and connecting plates were all drilled maintaining accurate spacing of the holes and to a size smaller than required to allow final size to be achieved at site through process of reaming. These works carried out at Bavla also included edge preparations for connections with works carried out in parts as well as at site independently. These partially fabricated elements were applied anti corrosive paint after surface preparation to ensure safety prior to final painting on completion. These elements in the stated form were dispatched to respective site establishments of the notice.

At Site:-

- Complete fabrication of radial arms as per required size and geometrical configuration out of partially fabricated elements received from Bavla unit. Once the fabrication in terms of exact size was achieved the geometrical configuration was carried out as per the full scale lay out on the jigs and fixtures. The elements were then welded and then provided splice plates which were received from Bavla . Following the completion in terms of size for LH and RH comprising each set the termination plates also received from Bavla were provided and prior to their integration, the hole sizes were reamed to accurate size during assembly and before welding at site and provided along with stiffeners fabricated at site from plates. The Gusset plates were also fabricated at site and



provided on the arms as per approved design and drawing. Further work comprises of integration of arms in terms of arm to arm, arm to Trunnion, and arm to Horizontal girders. For this one set of connecting plates fabricated and received from Bavla were reamed to accurate dimensions and the other set fabricated at site were all integrated to constitute arm assembly during the course of erection.

3.5.3 During his statement dated 05/06/12, Shri Bhaskar Vibhakar was shown the following

- a) Inv No 34/PTEL dtd 29/06/07 issued to M/s Meghalaya Electricity Board, Meghalaya
- b) Inv No 185 dtd 10/01/11 issued to M/s Larsen & Toubro Ltd Bhutan
- c) Inv No 001 dtd 02/04/10 addressed to M/s Jaypee Kacham Hydro Corp Ltd Himachal Pradesh

and was asked to detail the nature / particulars of the products dispatched in the above mentioned invoices. In reply he stated that no sale was involved in any of the above three invoices. On being asked to be more specific, he clarified that

- 1) The invoice in the name of MeSEB was to facilitate transit permit for movement of material to Myntudu Hydro Electric project for which EPC contract was awarded to their firm. The procedure of raising invoices was prescribed by the authorities where the clearance by the Commercial Tax authorities had been granted expressly stating that the goods were not for sale. In the said invoice the material was partially fabricated elements of Anchor and Yoke
- 2) The invoice in the name of L & T Ltd corresponds to partially fabricated elements for embedded parts for Diversion Tunnel gates and the invoice is raised to facilitate entry into Bhutan as M/s Precision is not registered in Bhutan
- 3) The dispatch to Jaypee Kacham Hydro Corp Ltd (Project authority) Himachal Pradesh in the above invoice was in respect of elements required to be incorporated in 90 Ton Rope Drum hoist. The spares comprised of bought out items like bearings, motors brakes etc.

3.5.4 On being asked regarding the difference in mentioning the detailed particulars in the above invoices, and the invoices issued by them for Branch transfers, where the description was mentioned only as "Dam Parts" he stated that the invoices were primarily addressed to their site establishments and they had not faced any difficulty with respect to clarification

3.5.5 In his statement dated 06/06/12 he affirmed that the goods fabricated at Bavla that were sent to independent buyers like M/s L & T Ltd, Meghalaya State Electricity Board, Jaypee K Hydro Corp Ltd etc. were of broadly the similar applications and uses to those goods which were cleared under Branch Transfer retail invoices to sites.

3.5.6 Thus it appeared that though they knew the detailed specifications of the goods cleared from their Bavla unit, a deliberate attempt was made by them not to disclose the description, thereby facilitating themselves to camouflage the identity of the exact nature of goods, and thus circumventing their obligation to arrive at a value where the Central Excise duty could be calculated.

3.5.7 During the recording of his statement Shri Bhaskar Vibhakar was questioned a number of times regarding the cost of production or the value of each individual part of structure used in dams cleared from the Bavla unit. However he evaded giving a clear reply. He also went to the extent of stating that cost analysis was done informally by the Directors of the firm, and hence no records were maintained by them. The extract of the statement dated 06/06/12 highlighted his incorrigible replies:

If the "Dam Items" comprises of large number of miscellaneous elements, do you maintain any records, that which misc items have been dispatched in a given invoice? If No, how do you arrive at the

The value of partially fabricated elements is not and cannot be determined individually. As per accepted norms and practice the value for such engineering works are to be determined on weight basis. Accordingly the per MT value is arrived at comprising of direct cost, and indirect cost.

Q 10 This would mean that you are aware of the cost of production in terms of the unit of dispatch e.g say per MT.?

Ans : The unit cost per MT is basically governed by the cost of basic input raw material. There are different grades of material involved in constituent elements of the same facility and in these cases an overall mean or average rate of input cost apply in respective cases.

Q 11 If your invoice value differs from invoice to invoice, in terms of rate per MT, what kind of internal documents are maintained to arrive at the constituent elements of " Dam items" in a given invoice, because without any such mechanism you cannot rationally arrive at different rates per MT ?

Ans : As stated in answer to que. No. 10 above the value is primarily governed by the cost of basic input raw-materials and corresponding average P.M.T. cost for the given facility or the contract as a whole. In addition the high value bought out items at times are also first received at Bavla and then dispatched to project sites. The average per MT cost difference and corresponding value addition thereon is reflected by way of difference in PMT value.

Ques 12 How do you arrive at different per MT rates for goods cleared without maintaining some kind of internal records which reveal that which constituent elements are being sent in the name of "Dam items" in a given invoice. Kindly be specific.

Ans As already replied earlier, the value in the invoices correspond to average cost and value apportioned to the total quantity of work to arrive at unit per MT rate. The said rates differ from project to project or facility to facility depending upon the average PMT cost of input materials followed by the proportionate value addition. The estimated cost and corresponding value become clear only when the design and drawings are cleared and approved by the competent authorities and material grades with respective quantities required to be procured are known. A cost analysis is then made informally by our Directors mainly looking after the execution of works and since the said cost analysis is not required to be approved by any one or to be furnished to anyone, formal records are not maintained.

Ques 13 If whatever you have stated above is true that would mean that the rates charged for each dispatch to a particular project site should remain constant Reply in yes or no.

Ans : No.

Ques 14 Why ?

Ans : The works in respect of individual projects are executed over a fairly long period of time. The prices of inputs do not remain constant. In addition there are amendments to the contracted requirements attracting altered or substituted specifications which may have impact on the cost and corresponding value.

Q 14 So it implies that you do maintain internal records to arrive at the different PMT value for dispatches to the same project : Yes or No – why?

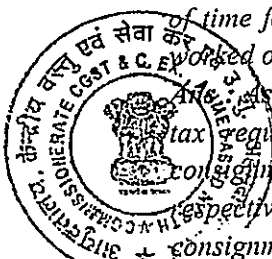
Ans : No. As already replied the PMT average rate or cost is determined through informal analysis / working sheets which are rendered useless once the average rate or cost are finalized and decided because there is no need or requirement of maintaining these records. Rate analysis records are not available because these are estimates. Actual cost details for the gross work are always available.

Q 15 Now you are being shown photocopies of the following representative retail invoices raised by PIL Bavla to PIL Shrinagar Hydro Electric Project, Uttaranchal, all of which mention the goods dispatched as Dam items. The details are tabulated below :]

| Sl No | Inv No | Date | Qty in MT | Inv Amt | Rate / MT |
|-------|--------|----------|-----------|---------|-----------|
| 1 | 41 | 16/07/11 | 24.00 0 | 2427000 | 101125 |
| 2 | 43 | 18/07/11 | 30.840 | 4626000 | 150000 |
| 3 | 44 | 18/07/11 | 31.910 | 4786500 | 150000 |
| 4 | 61 | 28/09/11 | 15.090 | 1000000 | 66269 |

After going through the above, it is apparent that rates PMT differ substantially during the same period of time for the same project. As per your replies above, how were the rates / values mentioned above worked out ?

Ans: As replied earlier the retail invoices are raised on branch establishment to comply to commercial tax requirements and facilitate transport. These invoices should also reflect true value for the consignment. The dispatch includes bought out items received from vendors to be directly used at respective project site and elements partially fabricated at Bavla. Correspondingly the PMT value of such consignments shall be high and the same is reflected in the above invoices. All these invoices do not state any rate PMT but only gross value of the consignment and gross tonnage.



Q 16 Your reply is not specific to the question asked, you are requested to please specify how the above amounts were worked out, when you have mentioned in your earlier replies that records for such cost calculations are not maintained.

Ans : The PMT rate stated in the above table is derived based on gross value and gross tonnage whereas none of the invoice state any rate. Valuation of the consignment when comprising of bought out items received from the vendors either as full or partial consignment does not involve maintaining any records as the invoice value of such bought out items is to be considered in gross value of the consignment.

Q.17 What were the bought out items in the above dispatches and on what basis can you say that the above invoices covered bought out items ?

Ans I have not personally effected the dispatches. Correspondingly without recourse of reference to my concerned staff members, I am unable to specifically name the exact invoice wise details of bought out items dispatched. The value and corresponding average PMT rate derived by you and the invoice wise difference make it clear that the consignments include bought out items in varying proportion by value in each consignment.

Q.18 If they were bought out items why weren't they mentioned as such in the invoices ?

Ans The retail invoice being a document from workshop to site establishment the important parameters to be covered in the invoice are gross tonnage and gross value for commercial tax purpose. Such details or absence thereof has not affected our operations so far but reference to such details can be covered in the invoices hereafter.

Q.19 This would mean that the person preparing the invoice knew or had knowledge or informed about the particulars of the goods to be dispatched and also the value however only the words dam items were mentioned in the retail invoices, Yes or No ?

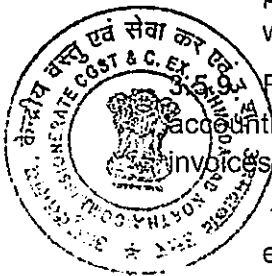
Ans Not necessarily yes or no but his act of dispatch relate to instructions that he receives often on telecon from the corporate office to include the consignment received from the vendors to be included in the dispatches with corresponding value addition in the invoice value. The bought out item consignments also relate to the facilities being created in the respective project where they are to be incorporated by the site establishment and fall under our adopted terms of classification of dam items.

3.5.8 Regarding goods cleared under Branch Transfer invoices, Shri Bhaskar P. Vibhakar interalia stated that:

- in the Sales Invoice (Retail Invoice) of the said unit, the name of the buyer/consignee was stamped/written as "M/s. Precision Infratech Ltd., x-y-z project" referred to Site establishment at each project and a remark of "Material against "F" form" indicate Branch Transfer of goods in VAT terms.
- payment for the goods cleared under Branch Transfer invoices was debited in their Head Office records Account of the Site/Branch and on receipt of payment from the clients, the same was credited to same Site A/c and periodically, amount from Site's A/c was transferred to the A/c of the said unit at Ahmedabad.
- they did not raise any further invoice from their Branch to the client in respect of their goods cleared from their Branch
- the client maintained progressive updates of work carried out and they inform/request for record of measurements in Measurement Book with progressive running account bills jointly signed as per terms of payment in respective contracts
- their clients made payment on the basis of record of up-to-date progressive measurements of the work as a whole in progress after deductions of payment previously made in accordance with terms of payment in respective contracts for stage-wise progressive payments.

Further vide his statement dated 05/06/12, Shri Bhaskar on being asked about the accounting of the retail invoices issued for Branch transfers and the entries of such sales invoices as reflected in books of accounts, he interalia stated that:

the retail invoices of Branch invoices issued by M/s Precision to various site establishments were booked under the head of sale of goods and the same was mentioned in schedule 13 – Income from Operations in the P & L Account for the year 2010-11 under the head Sale of goods. The same value was then shown as a consolidated corresponding purchase of Material by the destination site establishment of



M/s Precision and booked as Purchase during the year in Cost of Material under Schedule 16. Therefore the value of Branch sales was equivalent to the branch purchases. The same had been also mentioned in Notes to the accounts at "B" Inter – divisional sales.

- regarding the components of "Contractual revenue" and "sale of goods" as shown in the final accounts, Contractual Revenue was the actual money proceeds received from the respective project authorities, during the financial year. The payments were received as per the progressive Running account bill, measured by the respective project authority. This also included the value of Retail invoices issued to project authorities other than the Branch Sales. So far as the head "sale of goods" was concerned, it included retail invoices issued for Branch Sales, dispatched by the Bavla unit, and also trading sales like SS Patta Pattis, MS Plates, and other Ferrous and non ferrous items.

During his statement recorded on 08.06.2012 Shri Bhaskar P. Vibhakar very cryptically stated that the trading activity was undertaken by them to inflate their turnover so as to qualify as per requirements of the bids made by them.

4. Four phases of comprehensive end-to-end approach adopted by M/s Precision as mentioned on web Site were as under.

Phase I : Designing & Engineering :

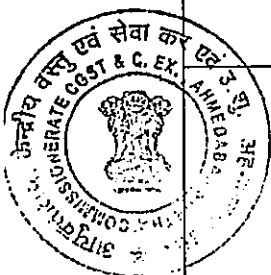
Design & Engineering for Hydro Mechanical Projects is crucial, as setting up the project "right" from the start is a key for a successful outcome.

Phase II : Manufacture & Supply :

- A. Prepare sketches for individual components & sub-assembly
- B. Prepare cutting diagrams / program machining load
- C. Perform construction / Machining operation on job
- D. Conduct quality checks as per standard

Supply of machining and constructed items as per exacting accuracy levels and stringent quality standards is critical to the success of a hydro mechanical project.

| Pre Requisite | Methods and Tools | Outcomes |
|--|---|---|
| <ul style="list-style-type: none"> ➤ Approved design and drawings ➤ Material grade specifications and manufacturing requirement ➤ Material grade wise estimation of quantities ➤ Planning of manufacturing schedule. | <p>Methods and Tools:</p> <ul style="list-style-type: none"> ➤ Various Machining Activities – including turning, planning, gear hobbing, boring, drilling, slotting, shaping, milling, grinding etc. ➤ Drawings preparation – As per design calculations prepared in AUTO CAD 2006. | <ul style="list-style-type: none"> ➤ Design Calculations – As per Scope of Work prepared in MS Excel Templates. ➤ Finished components and sub assemblies as per desired quality standards ➤ Accurate estimation of quantity of work ➤ Complete procurement of raw material as per project schedule. |
| | <p>Fabrication Methods</p> <ul style="list-style-type: none"> ➤ Cutting methods such as oxy cutting, plasma cutting. ➤ Preparation of jigs and fixtures, ➤ Welding sequences & methods such as submerged arc, shielded metal arc welding, MIG welding, etc ➤ Surface Preparation, Sand/Shot Blasting and Painting. | |
| | <p>Quality Assurance Methods</p> <ul style="list-style-type: none"> ➤ Material testing – chemical & mechanical ➤ Stage wise inspection & dimensional check ➤ Non Destructive Tests ➤ Load Tests, DFT measurement | |



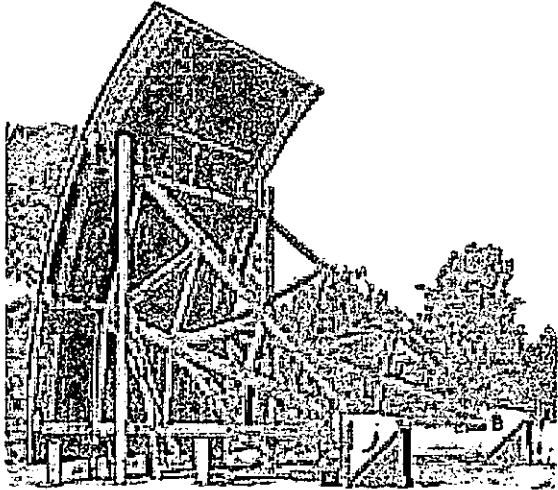
Phase III : Installation :

Adoption of scientific installation procedure coupled with efficient project management techniques is necessary to ensure high levels of accuracy and timely completion.

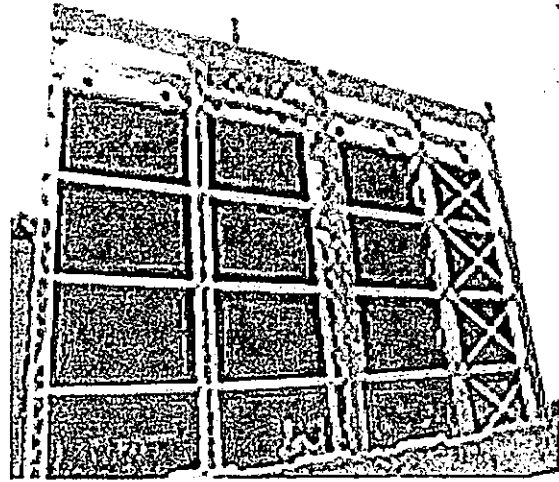
Phase IV : Commissioning :

Finally, rigorous testing procedures will guarantee a robust and proven solution that comply requirements of all owners.

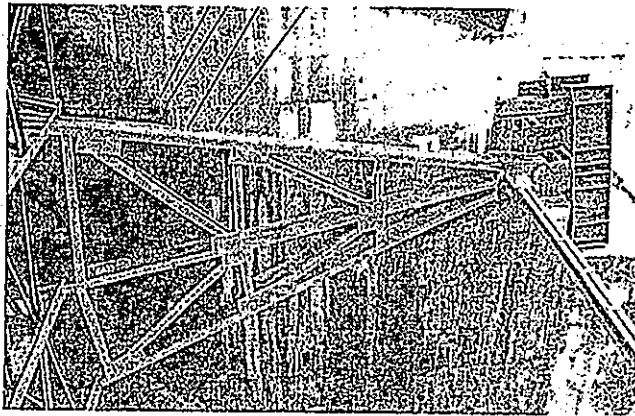
The pictures below could give idea about the product.



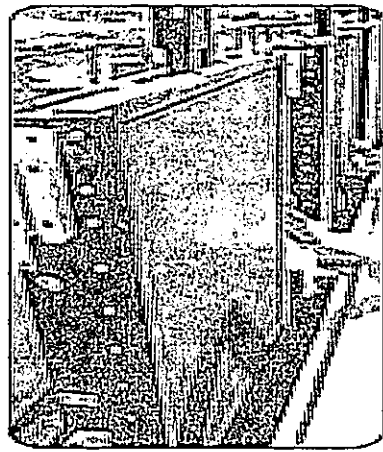
Radial Gate



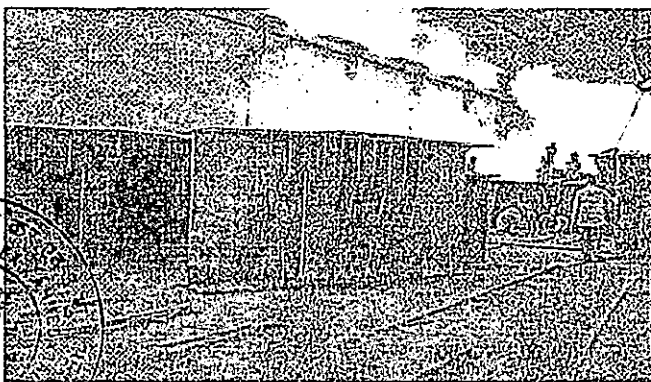
Vertical Gate



Radial Arm



Stop log gate



Anchorage System



4.1 A flowchart showing manufacturing / assembly / fabrication activities carried out by the said unit at Bavla and then incrementally carried out at their respective sites for their products like Radial Gate, Vertical gate, stop-logs, and operational arrangements for these installations comprising of Electromechanical Rope Drum or hydraulics and travelling Gantry / overhead hoisting arrangements were produced by M/s Precision, which when shown to Shri Bhaskar Vibhakar CMD,. They were signed along with the corresponding photographs as being true, correct and acceptable to him. This flowchart and the corresponding photographs had been separately annexed to the notice as Annexure C. The parts / elements as depicted in the photos could distinctly be identified and correlated to where the specific part will be integrated in the larger assembly of parts of Dam.

4.2 From the above it appeared that M/s Precision was engaged in manufacture and fabrication of identifiable specific parts of structures used in Dams like flanges and webs for arms, splice plates, termination plates, connecting plates each of which had a specific function in the integration of the larger assembly.

5. As per excise law, there were four basic conditions for levy of Central Excise Duty

- (1) The duty is on goods.
- (2) The goods must be excisable.
- (3) The goods must be manufactured or produced.
- (4) Such manufacture or production must be in India.

"Levy" includes both imposition as well as assessment of tax. Thus, duty is 'levied' as soon as taxable event occurs, but collection can take place any time- before, at the time or after the taxable event.

5.1 RAW MATERIALS FALLING UNDER CH.72 PROCURED IN FACTORY:

On going through all the facts of the case and the statements of the concerned persons of M/s Precision, It appeared that they were purchasing and procuring, in their factory premises, raw materials like M.S. Flats, S.S. Plates, M.S. Sheets, M.S. Angles, M.S. Channels, M.S. Beams and M.S. Round Bars falling under Chapter 72 of the Central Excise Tariff Act, 1944 which were essential for the fabrication of parts being manufactured by them.

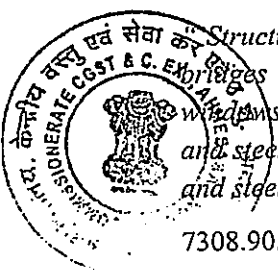
5.2 PRESENCE OF MACHINERY FOR MANUFACTURE IN THE FACTORY AND MANUFACTURE OF COMMODITY FALLING UNDER SPECIFIC CH. HEAD I.E., CH.73 OF CENTRAL EXCISE TARIFF ACT,1985, IN THE FACTORY REGISTERED UNDER FACTORY ACT:

After the search operation were conducted in the factory of M/s Precision, It appeared that more than one hundred machines as described and listed in the panchnama drawn in the factory premises, on 14-10-2010, were being used in the manufacture of excise duty leviable goods like Sill beam, wall plates, Radial Arm, Horizontal Girder, Trunnion Bracket etc used in Radial Gates, column, wheel bogie, Tie Beam, Rail Girder etc used in Gantry Cranes along with mechanical Hoist, Hydraulic Hoists, stoplog gate, trash rack, Penstock etc falling under Chapter 73 of the Central Excise Tariff Act, 1985. The above referred raw materials appeared to be covered under Ch.72 of Central Excise Tariff Act, 1985 and were being used in the factory registered under Factory Act. All the commodities were being subjected to certain specified processes like cutting, drilling, welding, fabrication, painting etc in their factory as accepted by Shri Bhaskar Vibhakar in his statements recorded on 27/10/10, 05/06/10 and 06/06/10.

5.3 Thus it appeared that each commodity manufactured and cleared from the factory premises were identifiable with the description of the commodity falling under chapter heading 7308 Central Excise Tariff Act, 1985, which reads as under-

Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron and steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron and steel "

7308.90.90 – Other



5.4 It appeared that conversion of raw materials to bring about a distinct commodity like plates, sheets, Flats, angles, channels, beams round bars etc. was taking place in their factory and the said process amounted to **manufacture**. It further appeared that the structures or parts mentioned in the parenthesis of heading 73.08 illustrating parts of structures namely bridges and bridges-sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns as well as parts of structures such as trusses, purlins, columns, beams, rafters, glazing frames, crane girders, hoppers, bracings, gable runners, platforms, hand-rails, grating rails, walkways, stairs, gutters, supports, ladders, gantries, railings, portals, pushings, round surged inserts, drop boxes, wind-ties, frame work partitions, north light glazing, sliding frames and like articles in their movable state would be liable for excise duty under heading 73.08

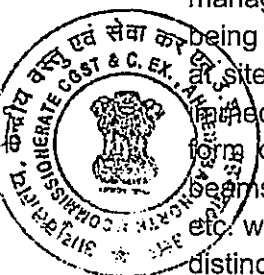
6. CLEARANCE FROM FACTORY MADE UNDER RETAIL INVOICES (VAT) PRESCRIBED BY COMMERCIAL TAX DEPT. BUT MAJORITY OF THE CLEARANCE SHOWN AS CLEARANCE TO THEIR OWN BRANCH WITH OUT REVEALING THE ACTUAL MANUFACTURED COMMODITY BEING SENT, IN THE GUISE OF STOCK TRANSFER

It appeared that the raw-materials falling under Ch.72 were used in the manufacture of goods falling under Ch.73 in the factory situated at Bavla, Ahmedabad. The goods before being dispatched underwent necessary quality tests and inspection and were de-assembled and applied with red-oxide, paint etc. It appeared that the goods manufactured at M/s Precision, were dispatched under retail invoice (VAT invoice) prescribed by commercial tax dept., raising retail invoice in the name of their own branch like M/s. Precision Infratech, Uttarkhand, M/s. Precision Infratech, Maharashtra etc and also issuing invoices in the name of independent customers like M/s L & T Ltd, Meghalaya State Electricity Board, Jaypee K Hydro Corp Ltd etc. to accompany the goods cleared from their factory and transported to the site workshops, with details such as weight, quantity, value and amount of tax etc. Retail invoices were raised in the name of their own company at the site address for transportation of the manufactured articles, in the guise of stock transfer, without revealing the exact details of the articles or description of the commodity being dispatched and its value by mentioning it as 'Dam items' or 'material sent for Hydro Project' without adding the cost of manufacturing process undergone in their factory to the raw-materials. It also appeared that in exceptional cases invoices in the name of their customers also were prepared where the due VAT is paid where the particulars of the goods dispatched were clearly described and also have a packing list attached to the invoice.

7. BUILDING OF MACHINERY AT SITE

The Board vide its order No.58/1/2002-CX dated 15-1-2002 issued under Section 37B of the Central Excise Act, 1944, had issued clarification regarding the excisability of plant and machinery assembled at Site to bring in a uniformity and avoid the confusion created in view of the plethora of apex court judgments. It had been clarified that where processing of inputs results in a new product with a distinct commercial name, identity and use (prior to such product being assimilated in a structure which would render them as a part of immovable property), excise duty would be chargeable on such goods immediately upon their change of identity and prior to their assimilation in the structure or other immovable property. Since parts of various structures come into existence in their factory, these appeared liable to duty of excise as parts classifiable under sub-heading 73089090 of the Schedule to Central Excise Tariff Act, 1985.

8. Thus it appeared that specific commodities were being manufactured which were covered under Chapter 73 of the Central Excise Tariff Act, 1985, and the fact that the same were parts of Hydromechanical equipments used for Dams was accepted by the production manager as well as the Director of the Co. Thus it appeared that an excisable commodity was being manufactured by M/s Precision. The Board has held that plant and machinery assembled at site when assimilated as part of immovable property might not be liable for duty. However immediately before the machinery came in to existence, the goods manufactured were in the form of different components, inputs or parts like hoists, trunnion, rail, arm, column, wheel, beams, channels, pillars, frames, girders, lattice masts, cranes, shafts, pulleys, gates, seals etc. which were specified excisable products falling under Central Excise Tariff Heading 73 with distinct commercial names like Gate, Hoist and even the embedded parts like Trunnion etc. which when combined or erected at site as a functional machinery and had the function of



regulating the water-flow, becomes 'Radial gate' and immediately before that they were in distinct and moveable form, on which excise duty, appears to be chargeable. Similarly, the unit was also engaged in manufacturing trash rack, penstock, penstock valves etc which also appears to be liable for excise duty. Waste & Scrap accrued on the manufacture of these commodities are also manufactured product, which also attracted C. Ex. duty.

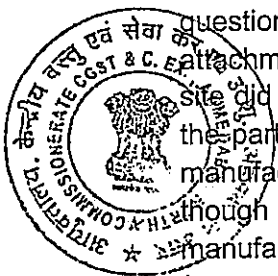
9. Thus M/s. Precision appeared to be engaged in the manufacture and clearance of parts of hydro mechanical projects (sill beam, wall plates, Arm, Horizontal Girder, Trunnion bracket for Radial Gates and Column, Wheel Bogie, Tie Beam, Rail Girder for Gantry Cranes and Hoists, Trash racks, stop log gates etc). It also appeared that all kinds of machining and fabrication were also carried out within their factory premises utilizing high precision machineries installed in their factory as listed in panchnama. Further it appeared that the raw materials falling under Ch.72 like MS Flat, SS Plates, MS Sheets, MS Angles, MS Channel, MS Beam and MS Round Bars and castings were used to manufacture the goods falling under Ch.73 of Central Excise Tariff Act, 1985. Also the goods before being dispatched undergo necessary quality tests and inspection and was dismantled and applied with red-oxide, paint etc. These goods were transported by issuing retail invoices in the name of their branch establishments at site like M/s. Precision Infratech, Uttarkhand, M/s.Precision Infratech, Maharashtra etc with details such as weight, quantity and value and sometimes the rate per metric tonne.

10. It appeared that the tenders were called by the concerned authorities giving standard measurements and required components like Radial gate with hydraulic hoist or mechanical hoist etc for which quotations were submitted by the parties concerned and then accepted. It also appeared that in the manufacturing of Radial gates etc the components/parts used had specific tariff heads and were individually identifiable and marketable and in the event of malfunctioning are replaceable as deposed by Shri Rajput in his statement dated 15/04/11. It appeared from his statement that the goods were sent in "Ready to assemble condition at site" after first assembling the same in-house i.e., (the factory) and tested and then dismantled.

11. It appeared that conversion of raw materials like angles, tubes, plates etc. to bring about a distinct commodity had taken place in their factory which amounted to manufacture. It appeared that the structures or parts mentioned in the parenthesis of heading 73.08 illustrating parts of structures namely bridges and bridges-sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns as well as parts of structures such as trusses, purlins, columns, beams, rafters, glazing frames, crane girders, hoppers, bracings, gable runners, platforms, hand-rails, grating rails, walkways, stairs, gutters, supports, ladders, gantries, railings, portals, pushings, round surged inserts, drop boxes, wind-ties, frame work partitions, north light glazing, sliding frames and like articles in their movable state appears to be liable for excise duty under the said heading, notwithstanding their final conversion into the machine attached to earth, like Radial gate.

12. Further, it appeared that they were engaged in manufacturing of parts of structures for Dams with the help of power operated machines installed in their factory premises. It appeared that the cost evaluation prior to submission of quotation against tender or prior to sale of an article or product, preparation of design and drawing was undertaken by them. The company was engaged in manufacturing the goods in the factory and then clearing the same to their own unit at site workshop where again the manufacturing was carried out and then erected at site where the work of erection is also being undertaken by their branch for various hydro mechanical works. Since the work was related to hydro-mechanical works being done by the branch of the same unit, there appeared to be no exemption without valid certificate.

13. Whereas, it appeared that embedded parts were separate and were for the machine in question like Radial gate to function without hindrance and to hold the machine with its attachments like hydraulic hoist etc., at the site. It also appeared that the connectivity to earth at the site did not seem to give them any immunity from payment of duty on all commodities including the parts meant to be embedded at the site. It appeared that in respect of orders placed for manufacture and supply of machines, drawings and designs were necessary as the machines although known by a particular name like "Radial Gate" in the market, it would vary from manufacturer to manufacturer in design. It appeared that the goods (components/elements/parts) manufactured by M/s Precision finds mention in the Central



Excise Tariff Act, 1985, in specific Chapter Headings. These goods [parts of structure (for example, log gates, pillar, beams, columns)] of iron and steel, plates, rods, angles, shapes, sections, and the like, manufactured for use in structures, of iron and steel were classifiable under sub-heading No. 73089090. Thus, they were excisable goods.

14. It appeared that the goods manufactured by M/s Precision were removed for a consideration/value mentioned in the invoice, which accompany the goods at the time of every delivery. The invoice clearly mentioned quantity, rate and value of the goods in rupee terms and name of the buyers. The goods manufactured were marketable as a specific buyer exists for the said goods e.g. Meghalaya State Electricity Board, Meghalaya, Tapi Irrigation Development Corporation, Jalgaon, Alaknanda Hydro Power Co. Ltd., Tehri Hydro Development Corporation Ltd., etc. Thus, their clients (buyers) were PSUs, Corporations, Power & irrigation Deptts., Electricity Boards, private players in power sectors etc.

15. Section 4(1) of the Central Excise Act, 1944, provided that where the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall – (a) in a case where the goods are sold by the assessee for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value, (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed. In respect of the goods cleared as Branch Transfer, it appeared that no sale of goods took place at factory gate to an independent buyer. Therefore, the valuation in terms of Rule 8 of the Central Excise Valuation [Determination of Price of Excisable Goods] Rules, 2000 appeared applicable. Rule 8 read as under:

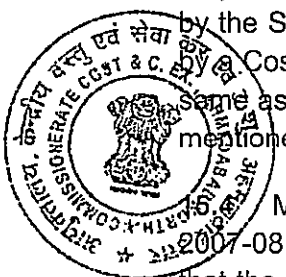
“Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods.”

15.1 Accordingly, value at 110% of the cost of production had to be adopted for the purpose of arriving at the transaction value in respect of the goods cleared to their Branch.

15.2 It further appeared that the value shown in the invoices described as ‘Dam items’ or ‘material sent for Hydro Project’ relating to Branch Transfer do not appear to represent the correct value of the manufactured goods. There had been **contradictory statements** made by the concerned persons of M/s Precision – In the statement dated 05/06/12, Shri Bhaskar Vibhakar blatantly stated that none of the retail invoices, whether for Branch transfer or for independent customers would tantamount to sale and were issued only to facilitate logistics – movement of their manufactured / fabricated identifiable parts of structures used in Dams and as per the requirements of the respective State Commercial Tax authorities. However Shri Vishal S Jain an employee of M/s Precision, looking after Commercial Tax matters had specifically mentioned in his statement dated 07/05/11, that invoices in the name of the Customers were direct sales, and invoices in the name of branches were branch transfers. It is further seen that though there was a controversy within the concerned persons of M/s Precision, the inter branch sales figures had been shown as Sale of goods in their financial accounts. That had been confirmed by Shri Bhaskar Vibhakar in his statement dated 06/06/12. Thus it appeared that the sale to an independent buyer did not take place at the factory gate of the assessee, hence value in terms of Rule 8 of the aforesaid Valuation Rules appeared applicable.

15.3 Accordingly to work out the correct value for the purpose of calculation of Central Excise duty, M/s Precision was first requested on 24/06/11 vide letter No MP/PI – I/15/PIL/10-11 issued by the Supdt (Prev) to furnish a certificate as per the format specified at Appendix – 1 certified by the Cost Accountant for the years 2006-07 to 2010-11. Since they did not reply nor submit the same as requested, they were again issued a reminder on 18/07/11 to provide the certificate as mentioned.

M/s Precision submitted Data Cost sheets certified by a Chartered Accountant for the FY 2007-08 on 11/10/11, for 2008-09, 2009-10, 2010-11 on 20/07/11. However on being informed that the cost sheets were incomplete, they submitted revised Cost Sheets for the above years, again certified by the Chartered Accountant on 10/05/12, incorporating certain overheads and



costs which increased the unit cost of dispatch in Metric Tonnes substantially. This lapse was accepted on their part by Shri Bhaskar Vibhakar in his statement dated 06/06/12. Since the veracity of the certificates could not be accepted as being inclusive of all the required costs as required by the accepted accounting principles of Cost Accountants, M/s Precision was requested to furnish the cost certificate in form CAS 4 vide letters dated 25/05/12, 11/05/12 and vide summons dated 10/05/12. However vide letters dated 18/05/12 and 15/05/12 they stated their inability to furnish the CAS 4 certificate reasoning that they were unable to identify the products fabricated at the Bavla workshop.

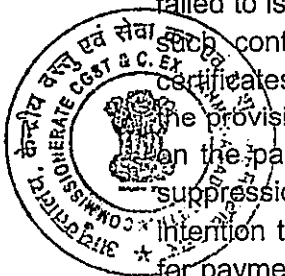
15.5 This stand taken by M/s Precision appeared to deliberately delay, undermine and derail the legitimate process of investigations being conducted. The fact is that they were in the knowledge of identifying which parts of structures of dams are fabricated, where these parts will be fitted / assembled at the site so as to make a complete structure. Also they knew about the value of such parts as mentioned in the invoices but attempted to be ignorant about their core business activity, thus leading to doubts regarding their intentions in evade Central excise duty.

15.6 M/s Precision blatantly deposed that the Retail sales invoices issued by them from their Bavla unit were not their sales, though they were specifying the VAT on them, though including them under the head "Sale of Goods", deliberately not mentioning the exact details and particulars of the goods dispatched, deliberately not mentioning the rates per unit in MT on some invoices of the goods dispatched and deliberately not providing the cost certificates in the prescribed proforma as required under Rule 8 of the Central Excise Valuation Rules 2000. Therefore the Department was unable to arrive at the correct value as required on which the Central Excise duty liability could be computed. In view of the stand taken by M/s Precision, willfully suppressing the facts of the value of the goods dispatched, and not paying duty on the clearances so made, the extended period appeared to be invokable under the proviso to Section 11A(1)/11A(4) of the Central Excise Act 1944.

16. Though it had been mentioned in the above paras that the goods dispatched from their Bavla unit were liable for Central Excise duty, the only recourse available was to consider the amounts shown as "Contractual Revenue" in their Balance Sheets submitted and as summarized vide their letter dated 07/06/12. The contractual revenue as explained by Shri Bhaskar Vibhakar was the actual money proceeds received by them progressively from the project authority and included the value of goods dispatched by M/s Precision from Bavla.

17. The advalorem rates of Central Excise duties have changed over the period and in absence of M/s Precision providing the actual value of the goods manufactured and sold by them at the given time where the excisable event occurs, the highest duty rate prevailing during the respective year has been considered for calculation of Central Excise duty.

18. The said assessee had failed to file declaration for availing exemption, failed to obtain registration on crossing the SSI exemption limit and failed to determine/ assess /discharge the correct Central Excise duty on the finished goods on crossing the exemption limit of Rs.1 Crore /1.5 crore prescribed under notification no 8/2003 dated 1.3.2003, thereby failing to pay Central Excise duty to the tune of Rs. 42,39,55,410/- (Basic Rs.41,16,07,195, Education Cess Rs.82,32,144 and Higher Education Cess Rs.41,16,072). Therefore they had contravened the provisions of Rules 4, 5 and 6 of Central Excise Rules, 2002, in as much as they failed to pay the appropriate Central Excise duty in respect of the said goods removed from their factory and therefore contravened Rule 8 of Central Excise Rules, 2002. They had also failed to register their unit with Central Excise Department and therefore contravened Rule 9 of Central Excise Rules, 2002 and further failed to maintain proper records of the production/clearance of their finished stock and therefore contravened Rule 10 of Central Excise Rules, 2002. They had also failed to issue proper invoice in respect of the said goods cleared from their factory as above as contravened Rule 11 of Central Excise Rules, 2002. By not submitting the CAS 4 certificates as required to arrive at the correct value for duty calculations, they had contravened the provisions of Rule 8 of Central Excise Valuation Rules 2000. All these acts of contravention on the part of M/s Precision clearly appears to be committed by way of willful mis-statement, suppression of facts deliberately contravening the provisions of Central Excise Rules with an intention to evade the Central Excise duty. These contraventions have also made them liable for payment of duty invoking the extended period of five years and, therefore, the duty involved in the said clearances is recoverable from them under the proviso to Section 11 A (1)/11A(4) of



the Central Excise Act, 1944. along with Interest at the applicable rate under section 11AB of the Central Excise Act, 1944. In view of the above penalty was also required to be imposed as applicable under the provisions of Section 11 AC of Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 , read with Section 38A CEA 1944.

19. In light of the above facts and circumstances of the case narrated above, the assessee was engaged in manufacture and clearance of dutiable goods without payment of duty from their factory situated at 884-885, Opp. Jaystar Laminates, Bavla-Bagodra NH-8A, Bavla-382220, Taluka-Dholka, Dist: Ahmedabad

20. It appeared that all the above activities were carried out at the behest of Shri Bhaskar Pranlal Vibhakar, Chairman-cum-Managing Director of M/s. Precision Infratech Ltd. He had categorically stated in his submissions that depositions of his employees should not be given due cognizance as it was only he looked after the entire functioning of the unit, and that his employees did not have adequate knowledge or exposure in their specified field of work. Thus Shri Bhaskar Vibhakar was the person responsible for purchase, Sales, accounting and production including Central Excise matters, was aware and responsible for or had reasons to believe that he was responsible for the removal of the said excisable goods shown in forgoing para, removed without payment of Central Excise duty by the said assessee as discussed above. Thus, it appeared that Shri Bhaskar Pranlal Vibhakar, was fully concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or in any other manner dealing with the excisable goods which he knew or had reason to believe were liable to confiscation under the Central Excise Act, 1944 or Rules made there under. Therefore, he was liable for penalty under the provisions of Rule 26(1) of Central Excise Rules, 2002.

21. Therefore, M/s. Precision Infratech Ltd, 884-885, Opp. Jaystar Laminates, Bavla-Bagodra NH-8A, Bavla-382220, Taluka-Dholka, Dist: Ahmedabad was issued a show cause No.V.73/15-23/OA/2012 dated 08.06.2012 by the Commissioner, Central Excise, Ahmedabad-II seeking as to why :-

- a) Central Excise duty including Education Cess and Higher Education cess amounting to Rs. 42,39,55,410/- involved on contractual revenue of Rs.338,27,57,576/- during the period from 1-5-2007 to 31-3-2012, as summarized under Annexure B to the notice should not be demanded / recovered under the proviso to Section 11A(1)/11A(4) of the Central Excise Act, 1944 of the Central Excise Rules, 2002.
- b) Penalty in terms of the provisions of Section 11 AC of Central Excise Act, 1944, should not be imposed on them.
- c) Interest at the prescribed rate should not be recovered from them under Section 11AB/11AA of C. Ex. Act 1944.
- d) Penalty in terms of Rule 25 of Central Excise Rules 2002 should not be imposed on them.

22. Shri Bhaskar Pranlal Vibhakar, Chairman-cum-Managing Director of M/s. Precision Infratech Ltd, 884-885, Opp. Jaystar Laminates, Bavla-Bagodra NH-8A, Bavla-382220, Taluka-Dholka, Dist: Ahmedabad was also called upon to show cause to the Commissioner, Central Excise, Ahmedabad-II as to why penalty should not be imposed on him under Rule 26(1) of Central Excise Rules, 2002.

23. Similar show cause notice F.No.V.73/15-26/OA/2013 dated 15.03.2013 was issued by the Commissioner, Central Excise, Ahmedabad-II demanding duty of Rs.99,19,275/-for the further period 01.04.2012 to 16.10.2012 .

SUBMISSIONS OF M/S PRECISION INFRATECH LTD:

By a letter Ref.No.PIL/EXCISE/2012-13/126 dated 09.07.1012 M/s Precision had drawn attention to the correspondences made with Superintendent of Central Excise (Prev), Ahmedabad-II under their letter dated 15.05.12, 18.5.12, 7.6.12 and 8.6.12. They briefly explained that their business activity was to undertake execution of turnkey EPC Contracts for various HM installations to be incorporated and integrated in the various water resources

projects (construction of dams/Barrages and water diversion/conductor system). They submitted that at Bavla they mainly fabricated elements/constituents to all project establishments of the Company besides being centre to receive and dispatch bought-out item requirements. It was further stated that these partially executed work, unless integrated in the respective installations of the designated projects along with the remaining works carried out at site as well as sourced at the site did not have any alternate application for use and hence lacked marketability and even were not commercially identifiable on its own and thus did not correspond to the definitions of goods under Central Excise Act 1944 or the rules made thereunder.

24.1 M/s Precision submitted the Cost Analysis Statement duly certified by Chartered Accountant in July 2011. But the department was insisting for the costing of each element or constituent originating from Bavla unit in CAS-4 proforma and the organization expressed their inability to provide costing of individual elements on the opinion received from their Cost Accountant. They submitted that for the first time only on 6th June 2012 they understood that department would be satisfied with the year wise average per MT costing of the products. Thereafter the process of valuing the clearance made from the Bavla unit was completed and they submitted copies of letter dated 06.07.2012 of M/s V.H. Savaliya & Associates, Cost Accountants along with CAS-4 certificate for the years 2007-08 to 2011-12. As per the CAS-4 certificate the value of clearances from Bavla unit worked out as under:

| Year | Amount in Rs. |
|---------|---------------|
| 2007-08 | 119609802 |
| 2008-09 | 173307812 |
| 2009-10 | 139937565 |
| 2010-11 | 203740976 |
| 2011-12 | 126310266 |
| Total | 762906421 |

Based on the said valuation, M/s Precision requested for re-quantification of the Central Excise duty demand in the show cause notice.

24.2 Vide letter No.PIL/EXCISE/2012-13/428 dated 15th February 2013 M/s Precision submitted that they have not contravened any provisions of Central Excise Act 1944 and Central Excise Rules 2002 and submitted that they were not liable for payment of Central Excise duty as demanded in the notice. Further it was not understood as to on what basis the figures of contractual revenue had been taken into account for demanding Central Excise duty. They argued that they had supplied the data as requested by the investigating team and the information in Appendix-I duly certified by their Chartered Accountant by their letter dated 20.7.11 and 11.10.2011. Revised certificate was given by letter dated 10.05.2012 in Appendix-I duly certified by Chartered accountant giving revised details which contained information pertaining to certain overheads resulting into increased unit cost.

24.3 It was also further submitted that products coming into existence at their unit were tailor made that to unfinished requiring further process to be carried as required for a particular project at a particular site. The said products were project specific and could not be used anywhere else and /or sold in open market for some other project and therefore could not be termed as 'goods' within the meaning of Section 2(d) of the Central Excise Act 1944. The assessee submitted that similar disputes had arisen from time to time and it consistently held that such products were not liable to Central Excise duty, the same having been made for EPC Turnkey projects. They relied upon the decisions in the case of **Thungabhadra Steel Products Ltd-1998(98)ELT.334 (Kar)** which had been confirmed by Hon'ble Supreme Court as reported **1998 (101) ELT.A139**. In light of settled legal position they were of the view that articles coming into existence at their unit were not goods and there was no duty liability on the activity undertaken by them. They have requested for cross examination of the officers who investigated the case.

The assessee also submitted that it came to their knowledge that with regard to the case of Bakem Infra Projects Ltd., Hyderabad, which was engaged in similar activity, the adjudicating authority had dropped the show cause notice.



24.5 The assessee has also relied on the judgment passed by the Hon'ble Supreme Court of India, in the case of M/s. Elecon Engg. Co. Ltd., reported in 2012 (277) E.L.T. A84 (S.C.), wherein the appeal filed by the Department against decision of CESTAT, has been dismissed.

CESTAT, Principal Bench, New Delhi, in the case of M/s. Elecon Engg. Co. Ltd., reported in 2005 (190) E.L.T. 195 (Tri. - Del.), has held as under:

Fabricated items - Excisability of - Columns, purlines etc. fabricated by cutting, drilling, punching and welding on duty paid channels and angles and thereafter assembled to be posted at work site and fixed in exact position - Not excisable goods - Sections 2(d) and 3 of Central Excise Act, 1944. [paras 5, 6, 8]

Manufacture - Fabrication of columns, beams, trusses, purlines etc. from duty paid angles, channels not amounts to manufacture - Section 2(f) of Central Excise Act, 1944. [paras 5, 8]

PERSONAL HEARING:

25. Personal hearing in the matter was held on 18.02.2020, wherein Shri Paresh M. Dave and Shri Amal P. Dave, Advocates appeared on behalf of the assessee. They reiterated the submission made by them vide their letter dated 28.11.2017.

DISCUSSION AND FINDINGS:

26. I have carefully gone through the facts of the case on record and the written submissions made by the assessee and their oral submission at the time of personal hearing. I find that the assessee was engaged in manufacture and clearance of parts of hydro mechanical projects (sill beam, wall plates, Arm, Horizontal Girder, Trunnion bracket for Radial Gates and Column, Wheel Bogie, Tie Beam, Rail Girder for Gantry Cranes and Hoists, Trash racks, stop log gates etc). All kinds of machining and fabrication were carried out within their factory premises utilizing the high precision machineries installed in their factory. The raw materials falling under Ch.72 like MS Flat, SS Plates, MS Sheets, MS Angles, MS Channel, MS Beam and MS Round Bars and castings were used to manufacture the goods. The assessee did not obtain Central Excise registration for the manufacturing activity carried out by them and did not pay Central Excise duty on such goods manufactured by them. Therefore the Show Cause Notices under consideration were issued demanding Central Excise duty on the goods manufactured and cleared from the factory premises without payment of duty. The demand of duty was computed based upon the contractual value mentioned in the books of account.

27. The contention of the assessee is that products were tailor made and required further processes to be carried as per the requirement of a particular project at a particular site. The said products were project specific and could not be used anywhere else and /or sold in open market for some other project and therefore could not be termed as 'goods' within the meaning of Section 2(d) of the Central Excise Act 1944. The assessee also challenged the value taken by the department for calculating the Central Excise duty.

28. Now the questions to be answered are (i) whether the products manufactured by the assessee are goods within the meaning of Section 2(d) of the Central Excise Act 1944 and (ii) whether value considered for computing the Central Excise duty was to be re-worked on the basis of cost of production.

29. In this regard I find that the assessee has manufactured parts of structures for Dams with the help of power operated machines installed in their factory premises. They have manufactured these structures out of raw materials like angles, tubes, plates etc. and the process carried out by the assessee brought into existence a distinct commodity viz. parts of structure and hence the process carried out by them amounted to manufacture. The Tariff Heading 7308 covered all structures of iron and steel,; plates, rods, angles, shapes, sections prepared for use in structures. The heading reads as under:-

Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron and steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron and steel "

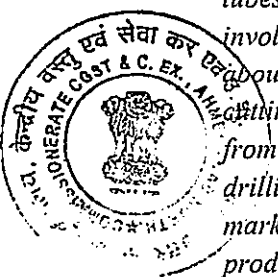
7308.90.90 – Other

30. The products were manufactured from raw materials like angles, tubes, plates etc. Admittedly the works carried out at the factory of the assessee are cutting of plates, flanges and webs for arms, splice plates, termination plates, connecting plates by means of profile cutting machines. Fitting and welding of the arm section in partial elements allowing overlapping for filed connections both in flange as well as web or the box section as may be applicable as per approved design. The splice plates, termination plates and connecting plates were all drilled maintaining accurate spacing of the holes and to a size smaller than required to allow final size to be achieved at site through process of reaming. These works carried out at Bavla also included edge preparations for connections with works carried out in parts as well as at site independently. These partially fabricated elements were applied anti corrosive paint after surface preparation to ensure safety prior to final painting on completion. These elements in the stated form were dispatched to respective site establishments/branches of the assessee.

31. From the above description of works carried out at the factory of the assessee it is evident that by the fabrication of angles, tubes, plates etc., a steel structure of specified design has taken place. These structures may be part of a larger structure i.e part of dam being constructed and assembled at site. The goods (components/elements/parts) manufactured by the assessee are, therefore, appropriately classifiable under sub-heading No. 73089090. Thus, they are excisable goods.

32. In the present case the structure of iron and steel has been fabricated in the factory of the assessee and not at the site of construction. The said fabricated structure came into existence before its assembling or further fabrication into specific products like Radial Gate, Vertical gate, stop-logs, and operational arrangements. These fabricated structures are movable and they were being transported to the site. Therefore I do not have an iota of doubt in holding that the goods are manufactured in the factory are excisable goods. I find support of decision a Larger Bench of Tribunal in the case of *Mahindra & Mahindra Ltd-2005 (190) ELT.301 (Tri.-L.B)* where the Hon'ble Tribunal held that;

Manufacture - Fabrication of iron/steel structures like roof frame of sheds or porta cabin at construction site or factory premises - In either case, fabrication amounts to manufacture as raw materials like angles, plates, tubes, etc. acquired a distinct shape to suit the structural design, though mere drilling of holes or cutting jobs in isolation may not by themselves amount to manufacture - Heading 73.08 of Central Excise Tariff - Sections 2(f) and 3 of Central Excise Act, 1944. - *In the making of an immovable structure or building are used a variety of movable. Raising iron and steel structures like sheds involves fabrication work and many of the articles used in raising the structure come into existence through fabrication as per the pre-determined design to be fitted into the structure that is to be raised. For example, roof frame may be fabricated for the roof structure of a shed. Such fabrication of frames may be done at the construction site or at some factory premises. The iron and steel frames fabricated at the factory premises away from the site of construction would be brought to the site for their use in erecting the structure. The frames pre-fabricated and brought at the site and frames fabricated the site of erection both are goods manufactured. There will be variety of parts of structures of iron and steel that can be fabricated either at the site or at some factory premises away from the site. The iron and steel raw material, such as angles, plates, tubes, etc., are used in making part of structures and they acquired a distinctly different shape to suit the structural design. For example, if iron or steel angles and plates are cut to make a steel table or chair which can be dismantled, it cannot be said that there are no goods manufactured because the iron and steel angles or plates remain such angles and plates though of different sizes, and merely holes are punched and screws fitted. Unlike in liquid mixtures, the raw material of iron and steel or wood will retain their identity, but it is precisely their being cut, and designed, punched and fitted to make an article commercially known that involves manufacture of an article distinct from the angles, sheets, tubes etc. used in it. Mere drilling holes or mere cutting jobs in isolation may not by themselves involve manufacture of an article, but, converting raw material like angles, tubes, plates etc. to bring about a distinct commodity will surely amount to manufacture as it is not "mere" drilling holes or cutting, but the activity is aimed at bringing about a distinct commodity. Thus, making of porta cabin from iron and steel angles with, roof framework i.e. trusses, doors, windows, ladders in it made by drilling holes and cutting the raw material, will be a movable structure having identity as a distinct marketable commodity. When the porta cabin is dismantled it nonetheless remains the manufactured products i.e. porta cabin dismantled or disassembled. The material such as angles, rods, shades,*



sections, plates, tubes, etc. of such designed structure in their pre-assembled or disassembled form are prepared for use in the said structure, namely porta cabin. One cannot, with any conviction or authority, say that these dismantled parts of the structures are raw material used in its original form and that mere cutting or drilling holes has made no difference. The items in the parenthesis of Heading 7308 described as excisable goods include roofs roofing framework, doors, windows and their frames, thresholds for doors, shutters, pillars, column, balustrades pillars, sheets of iron and steel, each one of these items has a complete distinct identity. The contractor undertaking the works contract for erecting a structure may not himself manufacture all such items used for structure. He may order the doors and windows to be made by a particular manufacturer and roof framework by the other, depending on the specialization and expertise of the manufacturer of different items. The contractor may supply designs and raw materials for various parts of structures and get the work done on job work basis. To save time and expenses he may get the fabrication done at the site of construction instead of getting it done at some distance in a factory. When the required parts are they will be fixed as per the designed structure and will continue to be movable object until made immovable by permanently fixing them in the designed immovable structure. To say that no parts of the structures came into existence as distinct commodities because ultimately they got permanently fixed into an immovable structure will run counter to the legislative intent to impose excise duty on such excisable goods at a stage when they have a separate identity as marketable goods anterior to their being permanently fixed in the immovable structure. The part of structures which were first fabricated on the ground and thereafter were used in the designed structure which was erected by permanently fixing them in such structures, all these had acquired their identity before they were so permanently fixed and as observed above, they are well known in the market as separate commodities. Their state of being movables, being parts of structures fabricated for the purpose of being used in the erection of a structure, came to an end only after they were permanently fixed in the structure. The liability to pay duty, that had arisen at the time when they were manufactured as parts of structures had however, crystallised, and it was possible to ascertain the same even after they got fixed by referring to the quantities of the raw material that went into making them for the purpose of ascertaining their value. Therefore, any enquiry into the raw material used was only for the purpose of ascertaining the value of the parts of the structures which were already fabricated at the site, and was not an enquiry for imposing excise duty on the raw material, i.e. members such as angles, plates, etc. It was an enquiry to ascertain the value of the parts of the structures which were fabricated such as trusses, ladders, doors, windows, columns, beams, rafters, glazing frames, crane girders, hoppers, bracings, gable runners, platform, hand-rails, gratings rails, walk-ways, stairs, gutter support, ladders, railings etc. As per the contractual terms and the relevant statements which clearly indicate that the parts of the structure were first fabricated on the ground and thereafter they were used for erecting the designed structures. All these parts of structures which were fabricated were distinct marketable commodities the existence of which was brought about by the process of manufacture as defined in Section 2(f) of the Act.

33. Now, coming to the issue of marketability of the goods raised by the assessee, I find that these items were fabricated as per requirement of their buyer viz. State Electricity Board or other agency who constructed the dams. It may be true that a particular structure fabricated as per specific design could not be sold to other party, but it has at least one buyer i.e., the person who ordered for it. Thus the marketability of the product is proved. Hon'ble Supreme Court in the case of *A.P. State Electricity Board-1994 (70) ELT.3 (SC)* held that "marketability" is essentially a question of fact to be decided in the facts of each case and there can be no generalisation. As per the facts of the case, the goods in question are sold to a particular buyer as it was manufactured as per their required design. Therefore the goods are to be treated as 'marketable' as it has at least one buyer. The Apex Court in the said order also held that the marketability is not depended on the number of buyers. In the said order it is held that;

10. It would be evident from the facts and ratio of the above decisions that the goods in each case were found to be not marketable. Whether it is refined oil (non-deodorised) concerned in *Delhi Cloth and General Mills*, or kiln gas in *South Bihar Sugar Mills*, or aluminium cans with rough uneven surface in *Union Carbide*, or PVC films in *Bhor Industries* or hydrolysate in *Ambalal Sarabhai*, the finding in each case on the basis of the material before the court was that the articles in question were not marketable and were not known to the market as such. The "marketability" is thus essentially a question of fact to be decided in the facts of each case. There can be no generalisation. The fact that



the goods are not in fact marketed is of no relevance. So long as the goods are marketable, they are goods for the purposes of Section 3. It is not also necessary that the goods in question should be generally available in the market. Even if the goods are available from only one source or from a specified market, it makes no difference so long as they are available for purchasers. Now, in the appeals before us, the fact that in Kerala these poles are manufactured by independent contractors who sell them to Kerala State Electricity Board itself shows that such poles do have a market. Even if there is only one purchaser of these articles, it must still be said that there is a market for these articles. The marketability of articles does not depend upon the number of purchasers nor is the market confined to the territorial limits of this country. (emphasis supplied).

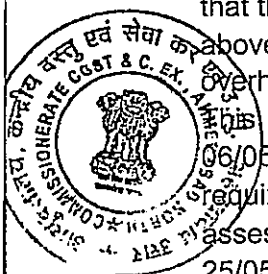
34. In view of the above decision of Hon'ble Supreme Court there remains no ambiguity in the marketability of the goods manufactured by the assessee and accordingly the goods manufactured and cleared by the assessee are liable to Central Excise duty under the heading 73089090.

35. Regarding the issue of valuation of the goods, I find that the department has demanded duty on the whole of contractual value. As per factual position of the case, the assessee had been removing majority of the goods under retail invoice (VAT invoice) prescribed by commercial tax dept., raising retail invoice in the name of their own branch like M/s. Precision Infratech, Uttarkhand, M/s.Precision Infratech, Maharashtra etc. In certain cases they were issuing invoices in the name of independent customers like M/s L & T Ltd, Meghalaya State Electricity Board, Jaypee K Hydro Corp Ltd etc. to accompany the goods cleared from their factory and transported to the site workshops, with details such as weight, quantity, value and amount of tax etc. Retail invoices were raised in the name of their own company at the site address for transportation of the manufactured articles, in the guise of stock transfer, without revealing the exact details of the articles or description of the commodity being dispatched and its value by mentioning it as 'Dam items' or 'material sent for Hydro Project' without adding the cost of manufacturing process undergone in their factory to the raw-materials.

36. As per Section 4(1) of the Central Excise Act, 1944, in a case where the goods are sold by the assessee for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, the duty is to be discharged on the transaction value. And any other case, including the case where the goods are not sold, the duty is to be discharged on the value determined in such manner as may be prescribed. In respect of the goods cleared as Branch Transfer, no sale of goods took place at factory gate to an independent buyer. Therefore, the valuation in terms of Rule 8 of the Central Excise Valuation [Determination of Price of Excisable Goods] Rules, 2000 appeared applicable. Rule 8 read as under:

"Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods."

37. Accordingly, value at 110% of the cost of production had to be adopted for the purpose of arriving at the transaction value in respect of the goods cleared to their Branch. These facts are mentioned at paragraph 16 and 16.1 of the show cause notice. But in order to determine the cost of production, requisite details are to be provided by the manufacturer. The assessee, in the present case, was asked by the investigating officer to furnish a certificate as per the format specified at Appendix – 1 certified by a Cost Accountant for the years 2006-07 to 2010-11. The assessee instead submitted Data Cost sheets certified by a Chartered Accountant for the FY 2007-08 on 11/10/11, for 2008-09, 2009-10, 2010-11 on 20/07/11. However on being informed that the cost sheets were incomplete, the assessee again submitted revised Cost Sheets for the above years, again certified by the Chartered Accountant on 10/05/12, incorporating certain overheads and costs which increased the unit cost of dispatch in Metric Tonnes substantially. This lapse was accepted on their part by Shri Bhaskar Vibhakar in his statement dated 06/06/12. Since the veracity of the certificates could not be accepted as being inclusive of all the required costs as required by the accepted accounting principles of Cost Accountants, the assessee was requested to furnish the cost certificate in form CAS 4 vide letters dated 25/05/12, 11/05/12 and vide summons dated 10/05/12. However vide letters dated 18/05/12 and



15/05/12 they stated their inability to furnish the CAS 4 certificate reasoning that they were unable to identify the products fabricated at the Bavla workshop. The stand taken by the assessee appeared to deliberately delay undermine and derail the legitimate process of investigations being conducted. It was in the circumstances the department was constrained to demand duty on the 'contractual value' instead of 'transaction value' or the value determined as per rule 8 of the Central Excise Valuation [Determination of Price of Excisable Goods] Rules, 2000.

38. Thus it appeared that the said unit have failed to file declaration for availing exemption, failed to obtain registration on crossing the SSI exemption limit and failed to determine/ assess /discharge the correct Central Excise duty on the finished goods on crossing the exemption limit of Rs.1 Crore /1.5 crore prescribed under notification no 8/2003 dated 1.3.2003, thereby failing to pay Central Excise duty to the tune of Rs. 42,39,55,410/- (Basic Rs.41,16,07,195, Education Cess Rs.82,32,144 and Higher Education Cess Rs.41,16,072), during the period from 01.05.2007 to 31.03.2012. The assessee has also failed to pay Central Excise duty amounting to Rs.99,19,275/- (Basic Rs.96,30,364/-, Education Cess Rs.1,92,607/- and Higher Education Cess Rs.96,304/-) during the period from 01.04.2012 to 16.10.2012.

39. Therefore it appeared that they had contravened the provisions of Rules 4, 5 and 6 of Central Excise Rules, 2002, in as much as they failed to pay the appropriate Central Excise duty in respect of the said goods removed from their factory and therefore contravened Rule 8 of Central Excise Rules, 2002. It also appeared that they had also failed to register their unit with Central Excise Department and therefore contravened Rule 9 of Central Excise Rules, 2002 and further failed to maintain proper records of the production/clearance of their finished stock and therefore contravened Rule 10 of Central Excise Rules, 2002. They had also failed to issue proper invoice in respect of the said goods cleared from their factory as above as such contravened Rule 11 of Central Excise Rules, 2002. By not submitting the CAS 4 certificates as required to arrive at the correct value for duty calculations, it appeared that they had contravened the provisions of Rule 8 of Central Excise Valuation Rules 2000. All these acts of contravention on the part of M/s Precision appeared to be committed by way of willful mis-statement, suppression of facts deliberately contravening the provisions of Central Excise Rules with an intention to evade the Central Excise duty. These contraventions have also made them liable for payment of duty invoking the extended period of five years and, therefore, the duty involved in the said clearances were to be demanded and is recoverable from them under the proviso to Section 11 A (1)/11A(4) of the Central Excise Act, 1944. along with Interest at the applicable rate under section 11AB of the Central Excise Act, 1944. Penalty was also required to be imposed as applicable under the provisions of Section 11 AC of Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002, read with Section 38A CEA 1944.

40. From the facts and circumstances of the case narrated above, it emerges that the assessee was engaged in manufacture and clearance of dutiable goods without payment of duty from their factory situated at 884-885, Opp. Jaystar Laminates, Bavla-Bagodra NH-8A, Bavla-382220, Taluka-Dholka, Dist: Ahmedabad.

41. I find that the judgment of Hon'ble Supreme Court of India, in the case of M/s. Elecon Engg. Co. Ltd., reported in 2012 (277) E.L.T. A84 (S.C.), relied upon by the assessee, is not applicable in this case in as much as the said case pertains to levy of Central Excise on assembling/erection of goods, at the site of installation or erection, from duty paid parts, whereas, this case pertains to removal of goods/parts in "Ready to assemble condition", and no Central Excise duty has been paid on such parts/goods removed from the factory gate of the assessee. The Hon'ble Supreme Court has upheld the decision of CESTAT, wherein it was specifically held that Fabrication of columns, beams, trusses, purlines etc. *from duty paid angles, channels* does not amounts to manufacture

42. I hereby rely on the decision of CESTAT, Kolkata in the case of M/s. Tata Iron & Steel Co., Ltd., reported in 2016 (344) E.L.T. 994 (Tri. - Kolkata), wherein, it has been held as under:

Manufacture - Excisability - Fabrication of saddle at site by two contractors and grouted to earth by another - 'Saddle' known to market as such and used for carrying HR coils in railway wagons by appellants themselves and duty discharged thereon by them - Saddle grouted to earth through nuts

and bolts only and easily detachable from place of its installation - Saddle 'excisable goods' chargeable to duty - Sections 2(f) and 3 of Central Excise Act, 1944. [1994 (70) E.L.T. 3 (S.C.); 2015 (319) E.L.T. 406 (S.C.); 2010 (252) E.L.T. 481 (S.C.) relied on]. [paras 5.2, 5.6, 5.7, 5.8]

43. I rely on the decision of CESTAT, Ahmedabad, in the case of M/s. Prem Fabricators, reported in 2010 (250) ELT 260(Tri. Ahd.), wherein it has been held as under:

Manufacture - Steel sheets - Cut to size and holes drilled in them - ARE-1 and invoice describing goods supplied as columns, portal, canopy, truss etc. - Work order/contract with buyer stating that pre-fabricated goods were to be supplied and not that the fabrication was to be at site - HELD : It had to be assumed that description in ARE-1 and invoice was correct, rejecting assessee plea that it was only for ease of understanding further activity - Process amounted to manufacture - Section 2(f) of Central Excise Act, 1944. [paras 12, 15]

12. When we look at the work orders and ARE-1 and invoices, they are in harmony with each other. Nowhere, the work order or contract speaks of fabrication at site. The order is for supply and not for fabrication at site. The certificate issued by the CWC is also carefully worded and certificate says clearly that the appellants have completed the work as per the work order. It has to be noted that both the work orders include several items whereas certificate covers only two items. Therefore, the certificate issued by CWC is not of any help to the appellant in the face of document and records which are clearly against their claim.

44. I also rely on the decision of CESTAT, Principal Bench, New Delhi, in the case of M/s. Mahindra & Mahindra Ltd., reported in 2005 (190) E.L.T. 301 (Tri. - LB), wherein it has been held as:

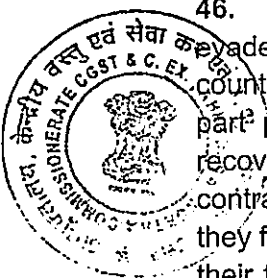
Excisability - Parts of iron/steel structures fixed on immovable property - Excise duty is liable to be paid on them - Plea that duty was charged on mere angles, rods, sections, tubes, etc. which were raw material and their cutting/drilling did not amount to manufacture, rejected - Heading 73.08 of Central Excise Tariff - Section 3 of Central Excise Act, 1944. [paras 9, 9.1, 15]

45. I find that the matter about the dutiability of the fabricated goods has been clarified by the Board under Section 37B of the Central Excise Act 1944. CBEC, vide their Circular No. 58/1/2002 - CX, dated 15.1.2002, issued from F.No. 154/26/99-CX4, regarding Excisability of plant and machinery assembled at site, has held as under:

Integrated plants/machines, as a whole, may or may not be 'goods'. For example, plants for transportation of material (such as handling plants) are actually a system or a net-work of machines. The system comes into being upon assembly of its component. In such a situation there is no manufacture of "goods" as it is only a case of assembly of manufactured goods into a system. This cannot be compared to a fabrication where a group of machines themselves may be combined to constitute a new machine which has its own identity/marketability and is dutiable (e.g. a paper making machine assembled at site and fixed to the earth only for the purpose of ensuring vibration free movement)

b. If any goods installed at site (example paper making machine) are capable of being sold or shifted as such after removal from the base and without dismantling into its components/parts, the goods would be considered to be movable and thus excisable. The mere fact that the goods, though being capable of being sold or shifted without dismantling, are actually dismantled into their components/parts for ease of transportation etc., they will not cease to be dutiable merely because they are transported in dismantled condition. Rule2(a) of the Rules for the Interpretation of Central Excise Tariff will be attracted as the guiding factor is capability of being marketed in the original form and not whether it is actually dismantled or not, into its components.

46. In spite of the above, the assessee had chosen not to follow the same and willfully evaded payment of Central Excise duty. It is the liability of a true citizen to follow the rules of the country. They failed to ascertain and assess the dutiability of the product. This inaction on their part proves their *mala fide* intention to evade Central Excise duty. Therefore the duty is recoverable by invoking extended period of limitation. It is also proved that they have contravened the provisions of Rules 4, 5 and 6 of Central Excise Rules, 2002, in as much as they failed to pay the appropriate Central Excise duty in respect of the said goods removed from their factory and therefore contravened Rule 8 of Central Excise Rules, 2002. They had also



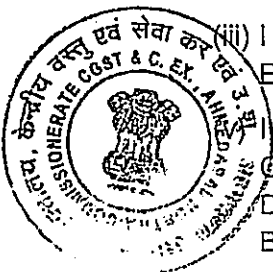
failed to register their unit with Central Excise Department and therefore contravened Rule 9 of Central Excise Rules, 2002. They had also failed to maintain proper records of the production/clearance of their finished stock and therefore contravened Rule 10 of Central Excise Rules, 2002. They had also failed to issue proper invoice in respect of the said goods cleared from their factory as above as such contravened Rule 11 of Central Excise Rules, 2002. All these acts of contravention on the part of the said assessee have been committed by way of willful mis-statement, suppression of facts deliberately contravening the provisions of Central Excise Rules with an intention to evade the Central Excise duty. The commissions and omission on their party made the assessee liable for imposing penalty under the provisions of Section 11AC of Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

47. Regarding the proposal to impose penalty under Rule 26 of the Central Excise Rules 2002 on Shri Bhaskar Pranlal, Vibhakar, Chairman-cum-Managing Director of M/s. Precision Infratech Ltd., I find that all the above mentioned activities were carried out at the behest of Shri Bhaskar Pranlal Vibhakar, as he categorically stated in his submissions that depositions of his employees should not be given due cognizance as it was only he who looked after the entire functioning of the unit, and that his employees did not have adequate knowledge or exposure in their specified field of work. As the most responsible person of the firm, it was his prime responsibility to ensure that all the rules and procedures of the law prevailing in the country are followed and fulfilled. By failing to determine the duty liability of the goods manufactured at his factory and failure to follow the Central Excise law, showed his *mala fide* intention to evade duty. I have all the reasons to believe that he was fully aware of the impending duty liability of the goods manufactured, but he chose to ignore the same and thus Shri Bhaskar Vibhakar was fully concerned in removing and selling; and dealing with the excisable goods which he knew and had reason to believe were liable to confiscation under the Central Excise Act, 1944 or Rules made there under. Therefore, he is liable for penalty under the provisions of Rule 26(1) of Central Excise Rules, 2002.

48. In view of the above, I pass the following order.

ORDER

- (i) I hereby confirm the demand of Central Excise duty including Education Cess and Higher Education cess amounting to Rs. 42,39,55,410/- (Rupees Forty two Crores, Thirty Nine Lakhs Fifty five thousand Four Hundred and Ten only) involved on contractual revenue of Rs.338,27,57,576/- during the period from 1-5-2007 to 31-3-2012, under the proviso to Section 11A(1)/11A(4) of the Central Excise Act, 1944.
- (ii) I hereby confirm the demand of Central Excise duty including Education Cess and Higher Education cess amounting to Rs.99,19,275/- (Basic Rs.96,30,364/-, Education Cess Rs.1,92,607/- and Higher Education Cess Rs.96,304/-) during the period from 01.04.2012 to 16.10.2012., under the proviso to Section 11A(4) of the Central Excise Act, 1944.
- (ii) I impose penalty of Rs.43,38,74,685/- (Rupees Forty three crores Thirty Eight lakhs Seventy Four thousand Six hundred and Eighty five only) under Section 11 AC of Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules. However, I give the option of benefit of reduced penalty @ 25% of the Central Excise duty with the condition that if entire payment along with interest and reduced penalty so determined, is made within 30 days from the receipt of the this order.
- (iii) I order for recovery of interest at the prescribed under Section 11AB/11AA of Central Excise Act, 1944..
- I impose penalty of Rs. 1,00,00,000/- (Rupees One Crore only) under Rule 26 (1) of Central Excise Rules 2002 on Shri Bhaskar Pranlal Vibhakar, Chairman-cum-Managing Director of M/s. Precision Infratech Ltd, 884-885, Opp. Jaystar Laminates, Bavla-Bagodra NH-8A, Bavla-382220, Taluka-Dholka, Dist: Ahmedabad



49. The following Show Cause Notices are hereby disposed off.

| Sr. No. | SCN F.No. | SCN Date |
|---------|--------------------|------------|
| 01 | V.73/15-23/OA/2012 | 08.06.2012 |
| 02 | V.73/15-26/OA/2013 | 15.03.2013 |



Dr. Baibir Singh
(Dr. Baibir Singh)
Commissioner,
C.G.S.T.,

Ahmedabad, North

Dated : 07.07.2020

F.No.V.73/15-23/OA/2012

BY R.P.A.D/ Hand Delivery/ S.P.A.D

- 1) M/s. Precision Infratech Ltd,
884-885, Opp. Jaystar Laminates,
Bavla-Bagodra NH-8A, Bavla-382220,
Taluka-Dholka, Dist: Ahmedabad.
- 2) Shri Bhaskar Pranlal Vibhakar,
Chairman-cum-Managing Director of M/s Precision Infratech Ltd,
884-885, Opp. Jaystar Laminates,
Bavla-Bagodra NH-8A, Bavla-382220,
Taluka-Dholka, Dist: Ahmedabad

Copy to:

1. The Principal Chief Commissioner, CGST & C. Excise, Ahmedabad Zone.
2. The Dy Commissioner, CGST & C. Excise, Division – V, Ahmedabad-North.
3. The Superintendent of CGST & C. Excise, AR-V, Div- V, Ahmedabad-North.
- ✓ 4. Guard File.