Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.1

Excise Appeal No. 10041 of 2023
(Arising out of OIA No. RAJ-EXCUS-000-APP-346-355-2022 dated 29.09.2022 passed by Commissioner (Appeals), Rajkot)

Sonex Ceramic **...Respondent**
Survey No. 129/1, 8A, National Highway
Lalpur, Morbi-363642

VERSUS

C.C.E. & S.T. Rajkot **...Appellant**
Central Excise Bhavan, Race Course
Ring Road, Income Tax Office,
Rajkot-Gujarat-360001

WITH

(i) Excise Appeal No. 10042/2023 (Shri Karshanbhai Premjibhai Vadaviya);
(ii) Excise Appeal No. 10043/2023 (Smt. Prabhaben J Vadaviya);
(iii) Excise Appeal No. 10044/2023 (Shri Ajay Kantilal Vadaviya);
(iv) Excise Appeal No. 10045/2023 (Shri Lalit Manjibhai Vadaviya);
(v) Excise Appeal No. 10046/2023 (Shri Jayantilal Premjibhai Vadaviya);
(vi) Excise Appeal No. 10047/2023 (Shri Kantilal Premjibhai Vadaviya);
(vii) Excise Appeal No. 10048/2023 (Smt. Jayaben Kantilal Vadaviya);
(viii) Excise Appeal No. 10049/2023 (Shri Shailesh Manjibhai Vadaviya);
(ix) Excise Appeal No. 10050/2023 (Smt. Dinaben Karshanbhai Vadaviya);

(Arising out of OIA No. RAJ-EXCUS-000-APP-346-355-2022 dated 29.09.2022 passed by Commissioner (Appeals), Rajkot)

APPEARANCE:
Shri Vikas Mehta, Consultant appeared for the appellant
Shri H. Nachane, Authorised Representative appeared for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10114-10123 /2026

DATE OF HEARING: 18.02.2026
DATE OF DECISION: 20.02.2026

SOMESH ARORA:

Both sides agreed that the matter has been decided by lower authorities by considering the evidences uncovered by DGCEI which are substantially similar to the matter of Famous Ceramics Industries and others vs Commissioner of Central Excise & Service Tax-Rajkot as reported in 2025 (11) TMI 1541-Cestat Ahmedabad, which disposed the appeals filed by various ceramic floor and wall tile manufacturers and others related persons who were subjected to penalties, by allowing their appeal.

2. The learned counsel points out that a catena of decisions were considered and evidence appreciated which is similar in their case also as the books of accounts i.e. cash transactions were involved and the case was based upon the same. That appellant was also part of the same search as was done against 186 tile manufacturers of Morbi District by the Central Excise Officers of DGCEI. Being part of the same investigation, the facts and evidences is strikingly similar and the decision cited above deserves to be followed. This court has gone through the decision of Famous Ceramics Industries & Others vs CCE & ST-Rajkot (cited supra) striking similarities in the evidence which was appreciated in that bunch and also, in this case. This court is therefore, of the view that the evidence as has been pointed out in para 8.2 of that case, para 8.3 and 8.4 is also either lacking or is part of the evidentiary edifice, which has been demolished in that Case:

> 8.2 From the above, it can easily be made out that while various entries indicate in the Axis Bank account statement that there were cash deposits, the names were written by some authors of the recipient Shroff. The bank statement itself does not indicate any name and at the end, are hand scripted names with abbreviations, which have been reduced to in box names like Pravinbhai Shirvi, Satishkumar etc. There is nothing to indicate by any documentary or otherwise established evidence as to how PS was construable as Pravinbhai Shirvi by the department, how names scripted in Gujarati became Shatishkumar for the department. The evidence therefore is far from credible. Even the investigations has admitted that the abbreviations did not provide clue in many cases of follow up investigations, how then same is construed as evidence. Therefore, there is substance in the defence of the appellants, that the names of the appellants and the third party private records are not matching properly and are not decoded by the author of such private records. Line of distinction has to be drawn in this regard, that the record of cash receipts in Axis Bank is a documentary evidence only of fact of some cash coming, but insertion of various abbreviations or scripting which has been done by some one at the end of the Shroff, the same loses evidentiary value and becomes a third party record having no evidentiary value, as the person who scripted such names has not been established or made to state about or to indicate as to who has given him information about scripting such scribblings in front of the bank statement. These statements therefore, prove nothing except that they were cash transactions in the bank account of various Shroff/ Broker. Lack of investigation or incomplete investigation as has been done by the department wherein, more than 40 units have not even been searched indicates that the whole investigation has been carried out half-heartedly and in haste to make the case without even conducting the enforcement related procedure of search, recovery of documents and verification of the related aspects. The third-party evidence which is not substantiated by any documentary evidence and the whole case which is simply based upon statements of Shroff/ Brokers as to who was likely recipient or intermediaries of the manufacturers who received such payment cannot prove the serious charge of clandestine removal of so many manufacturers at large of Morbi and around. It is well founded principle of enforcement jurisprudence that mere mentioning of name by testimonial evidence or even derived records cannot form basis for making allegations of clandestine removal.

8.3 In Vineet Narain and Others vs. Union of India and Others, (1998) 1 SCC 226, the Hon'ble Apex Court refused to treat diary entries and loose sheets recovered from some Hawala Operators as substantive evidence without independent and proper corroboration. From the above chain of evidence collected by the department, it is clear that even the aspect of cash receipt by the manufacturers of Morbi etc. who are the present appellants is not free from doubt and cannot be taken to be established by the department. Apart from above, evidences required to sustain charge of clandestine removal involving various aspects such as receipt of unaccounted raw materials and its use for production of unaccounted finished goods including excess consumption of electricity and clandestine removals of such goods and stock discrepancies at the end of the manufacturer or buyers, receipt of cash by the manufacturer and payment link to the buyers through a series of middleman including Shroff, non-availability of excess cash during search at any end, transports document and transport related authorities have not even been attempted to be produced, same is therefore fatal to the case of the department.

8.4 In view of the foregoing, we find substance in the defence made by the appellants in relation to charge levied against them of clandestine removal. We find that the same is far from the truth on the basis of various submissions, made before us by the appellants on various aspects in isolation and collectively. After due appreciation of the various materials on record, including case laws and on proper evaluation of evidence produced before us, we find that the charge of clandestine removal is far from proved against the appellants and other co-accused. The other aspects of valuation etc. pale into insignificance, on the basis of findings that the charge of clandestine removal itself is unsustainable, same is therefore not pronounced upon. We accordingly hold that the charge of clandestine removal not having been proved by the department, the demands are consequently not sustainable and so are the penalties etc. against the manufacturers and other accused of various nefarious activities. Penalties on them cannot be sustained. The impugned orders are accordingly set aside with relief

In view of foregoing, the orders in this case are also liable to be set aside. Same is done with consequential relief. Penalty imposed is also set aside. Appeals are allowed.

(Order pronounced in the open court on 20.02.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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