



::आयुक्त (अपील-III) का कार्यालय, केंद्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS-III), CENTRAL EXCISE,
 द्वितीय तल, केन्द्रीय उत्पाद शुल्क, भवन / 2nd Floor, Central Excise, Bhavan.
 रेस कोर्स रिंग रोड, / Race Course Ring Road,
 राजकोट / Rajkot- 360001



सत्यमेव जयते

Tele Fax No. : 0281 - 2477952/2441142 Email cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/96 & 98/BVR/2016	42 & 43/AC/RURAL/BVR/RR/2015-16	19.03.2016,

ख अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-005 to 006-2017-18

आदेश दिनांक / Date of Order :	25.04.2017	जारी करने की तारीख / Date of issue:	27.04.2017
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**श्री उमा शंकर, आयुक्त (अपील-III) द्वारा पारित /
 Passed by Shri Uma Shanker, Commissioner (Appeals-III)**

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :-

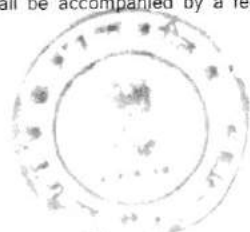
घ **अपीलकर्ता/ प्रतिवादी का नाम एवं पता / Name & Address of the Appellant/ Respondent :-**

**M/s. Atam Manohar Ship Breaking P. Ltd., Plot No. 88, Ship Breaking Yard, Alang
 Dist : Bhavnagar,**

इस आदेश(अपील) से व्यक्ति कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
 Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
 Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए।/
 The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघानी नगर, अहमदाबाद-380016, को की जानी चाहिए।/
 To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
 The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
 The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

- केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
 - सेनवेट जमा की ली गई गलत राशि
 - सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे। /

For an appeal to be filed before the CES
TAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, समद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाधिधि पर या बाट में पारित किए गए हैं। /
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। /
In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER IN APPEAL ::

The present appeals has been filed by M/s. Atam Manohar Ship Breakers (P) Ltd., Plot No. 88, SBY Sosiya, Post : Manar, Dist.: Bhavnagar (hereinafter referred to as "the appellant") against Order-in-Original Nos: 42 & 43/AC/Rural/BVR/RR/2015-16 both dated 19.03.2016 (hereinafter referred to as the "the impugned order") passed by the Assistant Commissioner, Central Excise, Rural Division, Bhavnagar (hereinafter referred to as the "the adjudicating authority").

2.1 The facts of the case are that the appellant was engaged in the activity of manufacturing of goods and materials obtained by breaking up of ships, boats and other floating structures falling under the chapter heading 8908 to the First Schedule of the Central Excise Tariff Act, 1985. It appeared that the appellant had cleared the goods namely Shackles, Turn Buckles, Eye Bolts Ring, Cada, Kappa, Hooks Socket, Pulley Blocks, Trolleys, Bracit etc. from the old ships without payment of Central Excise duty under non-excisable invoices, by treating them as 'non-excisable goods' as well as Iron & Steel Plates by mentioning wrong description as Waste & Scrap of Iron & Steel Melting Scrap to evade payment of Central Excise duty.

2.2 The above observations led to issuance of two show cause notices as detailed below:

(i) SCN No.VI/8(a)-281/EA-2000/AG-B/2014-15 dated 29.05.2015, which was adjudicated by the lower authority vide impugned order, wherein, he confirmed Central Excise duty of Rs.1,86,012/- under Section 11A(4) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') alongwith interest under section 11AA of the Act; and imposed penalty of Rs.93,006/- under Section 11AC(1)(b) of the Act.

(ii) SCN No.V.72/03-36/D/Rural/2014-15 dated 05.03.2015, which was adjudicated by the adjudicating authority vide impugned order, wherein, he confirmed Central Excise duty of Rs.6,336/- under Section 11A of the Act upon the appellant and appropriated on being already paid by them; imposed penalty of Rs.6,336/- under Section 11AC of the Act; imposed penalty of Rs.6,336/- under Rule 26 of the Central Excise Rules, 2002; and imposed redemption fine of Rs.1,62,500/-.

3. Being aggrieved with the impugned order, the appellant has preferred the present appeals contending interalia that:



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(i) With regard to the goods viz. Shackles, Turn Buckles, Eye Bolts Ring, Cada, Kappa, Hooks Socket, Pulley Blocks, Trolleys, Bracit etc., it is undisputed fact that they had correctly and legally cleared the disputed goods under cover of bills / invoices as mentioned above as "non excisable goods" as the same was out of purview of Section XV of the tariff read with Chapter Note 9 of the tariff. The said goods obtained from the ship are non-excisable as no process was carried out to obtain the disputed goods but only taken out from the board of the ship and not covered as excisable goods in terms of Rule 2(d) and 2(f) of the Central Excise Tariff Act, 1985. This practice has already been settled by the Department and being followed since 1983 from which ship breaking activities have been undertaken at Ship Breaking Yard, Alang / Sosiya, Dist.: Bhavnagar. In Cir. No.345/61/97-CX dated 23.10.1997, it has been specifically clarified that the goods and materials recovered during the course of Ship Breaking are "non excisable goods" as there is no entry in the Central Excise Tariff Act, 1985. This circular is squarely applicable in the present case.

(ii) With regard to the goods viz. Iron & Steel Plates, it is admitted fact that these goods were manufactured by scrapping of the old and used imported ships and are not always in specific measurement say having width of 600 MM or less and more than 600 MM with a specific thickness say 4.75 MM less or more etc. The confirmed duty is nothing but a "differential duty" for classifying the goods as Waste & Scrap of Iron & Steel Melting Scrap under CESTH No.72044900 instead of Iron & Steel Plates under CESTH No.72085110. The goods described under CESTH No.72085110 reads as "Plates", the description of which is "Other, not in Coils, not further work than hot rolled". In addition to this, it has also been provided that such Plates should have been having a thickness exceeding 10mm. In the present case, the department has not proved that the seized goods were nothing but Plates as described under CESTH No.72085110 and enhanced the value of the goods without any concrete evidence. They also contested for imposing penalties and redemption fine to the extent of Rs.1,62,500/-. In support of the case, they relied upon the Board's letter F.No.137/167/2006-CX-4 dated 03.10.2007 and the following decisions:

- Praxair India Pvt. Ltd. – 2012 (278) ELT 579 (S.C.)
- Lajpat Rai Jindal – 2010 (28) STT 474
- Shanthi Casting Works – 2009 (20) STT 459
- Densons Pultretaknik – 2003 (11) SCC 390

4. The personal hearing in the matter was held on 09.12.2016 which was



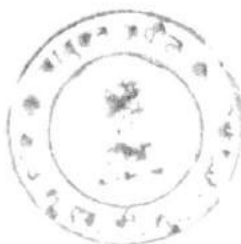
attended by Shri N. K. Maru and Shri U. H. Qureshi, both Consultants, on behalf of the appellant, who reiterated the grounds of appeal. They contended that the description of goods is not matching with tariff heads. They also pointed out para 8 of the Circular No.1014/2/2016-CX, dated 01.02.2016 and made additional written submission wherein they relied upon the following citations:

- Oswal Knit – 2002 (241) ELT 213
- CMS Computers – 2005 (182) ELT 20 (S.C.)
- ECE Industries – 2004 (164) ELT 126 (S.C.)
- ITW Sigmod – 2008 (221) ELT 75 (CESTAT)

5. I have gone through the impugned order, appeal memorandum and submissions made during the personal hearing. The issue to be decided in the present appeal is as to whether –

- (i) *the claim of the appellant to the effect that the goods viz. Shackles, Turn Buckles, Eye Bolts Ring, Cada, Kappa, Hooks Socket, Pulley Blocks, Trolleys, Bracit etc. are “non excisable goods” as the same was out of purview of Section XV of the tariff read with Chapter Note 9 of the tariff, is correct or otherwise.*
- (ii) *the differential duty confirmed by the lower adjudicating authority by classifying the seized goods as Iron & Steel Plates, which were cleared as Waste & Scrap of Iron & Steel Melting Scrap by the appellant and consequently imposing penalties and fine are, correct or otherwise.*

6.1 I observe that the dispute is regarding excisability or otherwise of the impugned goods viz. Shackles, Turn Buckles, Eye Bolts Ring, Cada, Kappa, Hooks Socket, Pulley Blocks, Trolleys, Bracit etc., emerging from ship breaking activity, cleared as “non-excisable goods” by the appellant, in context of Chapter XV of the schedule to the tariff. The overview of the statutory provisions governing the matter is of utmost importance. Section XV of the first schedule to the tariff covers ‘Base metals and articles of Base metals’, i.e. chapters 72 to 83; Note 9 of that Chapter reads “9. *In relation to the products of this Section, the process of obtaining goods and materials by breaking up of ships, boats and other floating structures shall amount to manufacture.*” Further classification heading “8908 00 00” is for “vessels and other floating structures for breaking up”.

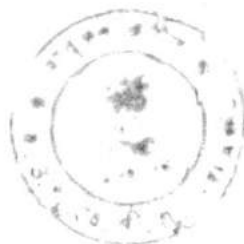


6.2 I further observe that the Board, vide Circular No.1014/2/2016-CX. dated 01.02.2016, has clarified as under:

8. Proviso to rule 3(1)(vii) of CENVAT Credit Rules, 2004 was inserted vide Notification No. 3/2011-Central Excise(NT), dated 1.3.2011. In the breaking of ships, products of section XV(base metals and articles of base metal) are obtained which are deemed to be manufactured as provided in section note 9 of Section XV of the First Schedule to the Central Excise Tariff Act, 1985. On the other hand, a number of used serviceable articles such as pumps, air conditioners, furniture, kitchen equipment, wooden panels etc. are also generated. These are generally sold as second hand goods by ship breaking units but no excise duty is payable as they do not emerge from a manufacturing process. At the same time, ship breaking units are allowed to avail full credit of additional duty of customs paid on the ship when it is imported for breaking. This anomaly was resulting in excess utilization of CENVAT credit. Rule 3 of the CENVAT Credit Rules, 2004 was accordingly amended to prescribe that Cenvat credit shall not be allowed in excess of 85% of the additional duty of customs paid on ships, boats etc. imported for breaking.

It can be seen from the above that if any serviceable article, which is generated during the breaking of ships and sold as second hand goods, then such good is not to be treated as excisable goods. On keen perusal of the impugned invoices viz. T-3 dated 05.04.2014, T-4 dated 05.04.2014 and T-22 dated 16.05.2014, I find that the goods viz. Shackles, Turn Buckles, Eye Bolts Ring, Cada, Kappa, Hooks Socket, Pulley Blocks, Trolleys, Bracit etc. have been cleared by the appellant as "Machinery and Parts". The lower adjudicating authority has concluded the said articles to be having the nature of scrap of parts of ships but has not given findings as to how these articles would classify as scraps. It is a prevalent market practice that waste & scrap are normally sold on weight basis and fetch low price. I observe that these articles have not been sold on weight basis rather sold as "Machinery and Parts" at a price much higher than that of price of waste & scrap and hence, can not be termed as waste & scrap. I accordingly set aside impugned order No. 42/AC/Rural/BVR/RR/2015-16 dated 19.03.2016.

7.1 With regard to the differential duty confirmed by the lower adjudicating authority by classifying the seized goods as Iron & Steel Plates, I observe that the lower adjudicating authority, at para No. 16.2 to 22 in the impugned order No. 43/AC/Rural/BVR/RR/2015-16 dated 19.03.2016, has given the detailed findings and appreciated all the oral and documentary evidences resumed during investigation, which clearly corroborates oral and documentary evidences in evasion of Central Excise duty by the appellant. Accordingly, he has confirmed Central Excise duty of Rs.6,336/- alongwith interest and penalties under Section 11AC of the Act & Rule 26 of the Central Excise Rules, 2002 and also imposed redemption fine of Rs.1,62,500/-. The findings of the lower adjudicating authority are based upon the vocal and profuse confessions on



the part of Shri Mukesh Gupta, Broker of Iron & Steel product emerged from ship breaking and Shri Anil Jain, Director of the appellant, who have clearly and categorically admitted the impugned goods were in fact M. S. Plates having price of Rs.28,500/- per M.T., however, being cleared at suppressed price of Rs.25,806/- per M.T. by mis-declaring the goods as Waste & Scrap of Iron & Steel Melting Scrap. The investigation has discussed the modus operandi of appellant No.1 in detail and hence, for the sake of brevity, I am not reiterating the same all over again.

7.2 Notwithstanding above, I also find that the appellant had also deposited the amount of Rs.6,336/- without registering any protest towards discharging their liability of Central Excise duty, which implies that the appellant had also accepted their liability of payment of Central Excise duty on the charges levelled against them. Thus, in view of above discussions and findings, I am of the considered view that the claim made in this regard by the appellant is not maintainable and consequently hold that the facts deposed by Shri Mukesh Gupta, Broker of Iron & Steel product emerged from ship breaking and Shri Anil Jain, Director of the appellant in their respective statements dated 18.03.2014 have to be granted due evidential value. In this regard, I also, rely upon the decision of Tribunal in the case of *M/s. Surei Engg. Works V/s CCE, New Delhi reported as 2004 (167) ELT 195 (Tri. Del.)*, wherein, it has been held at para 6 as follows:

"It is well settled that admission made by the maker can be accepted as a substantial piece of evidence under the law. He cannot be later on, permitted to turn round and deny that his admission was not voluntary, unless he is able to establish that the admission was extracted from him under coercion, duress, threat, etc. This being the position in law, in my view, the admission made by Shri Aaloke Surie, the proprietor of the appellant's firm which he never retracted by alleging to had been taken out from him, by beating, coercion, provided substantial piece of evidence for proving the allegations against him, as contained, in the SCN. He even deposited the duty amount without any protest. Therefore, the non-preparation of the Panchnama and joining of the independent witnesses, under these circumstances, has got no bearing on the merit of the case."

7.3 In view of above discussion and findings, I do not find any infirmity in the impugned order so far as confirmation of demand of Central Excise duty, interest and penalty upon the appellant under Section 11AC of the Act is concerned. However, since penalty under Rule 26 of the Central Excise Rules, 2002 is imposed upon a person and not upon a firm, therefore, I do not find any reason to uphold it upon the appellant. Further, looking at the value of the goods seized in the instant case i.e. Rs.5,42,640/- and duty & penalty amount involved in it, I observe that the amount of fine of Rs.1,62,500/- imposed by the lower adjudicating authority is on the higher side, hence, reduce the fine amount from Rs.1,62,500/- to Rs.40,625/-.



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8. In view of above discussions and findings, the impugned order No. 42 & 43/AC/Rural/BVR/RR/2015-16 both dated 19.03.2016 are modified to the above extent.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

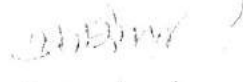
9. The appeals filed by the appellant stand disposed off in above terms.

सत्यापित,



आर. एन. मीणा,

अधीक्षक (अपील)



(उमा शंकर)

आयुक्त (अपील्स - III)

By R.P.A.D.

To,
M/s. Atam Manohar Ship Breakers (P) Ltd.,
Plot No. 88, SBY Sosiya, Post : Manar,
Dist.: Bhavnagar.

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Central Excise, Bhavnagar.
- 3) The Assistant Commissioner, Central Excise, Rural Division, Bhavnagar.
- 4) The Dy. / Asst. Commissioner (Sys.), H.Q., Bhavnagar – for uploading on website.
- 5) The Superintendent, Central Excise, AR – II, Alang.
- 6) PA to Commissioner (Appeals-III), Central Excise, Ahmedabad.
- 7) Guard File.

