



::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
	V2/66 /BVR/2016	36/AC/RURAL/BVR/RR/2015-16	06.02.2016,

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

BHV-EXCUS-000-APP-015-2017-18

आदेश दिनांक / Date of Order :	29.05.2017	जारी करने की तारीख / Date of issue:	05.06.2017
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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. Mahadev Ship Breaking P. Ltd., Plot No. 134, Ship Breaking Yard., Sosiya/
 Alang, Dist : Bhavnagar**

इस आदेश(अपील) से व्यथित 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 उत्पादन 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) नियमवली, 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, व्याज 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 नियमवली, 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, व्याज 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 नियमवली, 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 (सेरटेट) 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, बशर्त 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

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेनवेट जमा की ली गई गलत राशि
- (iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी 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 :

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) 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 परतक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, ससट 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 छुट (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 इयूटी 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 समायाचिधि पर या बाद 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।

जहाँ 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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण 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, not withstanding 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 संबन्धित 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 appeal has been filed by M/s. Mahadev Ship Breakers Pvt. Ltd., Plot No. 134, Ship Breaking Yard, Alang, Dist. Bhavnagar (hereinafter referred to as "the appellant") against Order-in-Original No: 36/AC/Rural/BVR/RR/2015-16 dated 06.02.2016 (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. During the course of audit for the period from March-2014 to Feb - 2015, it was revealed that the appellant had cleared the goods, "PVC Scrap", "Rubber wastage" and "other scrap", from the old ships without payment of Central Excise duty under non-excisable invoices, by treating them as 'non-excisable goods'.

2.2. The appellant was issued a Show Cause Notice No. VI/8(A)-326/EA-2000/AG-A/2014-15 dated 14.10.20158, which was adjudicated vide the impugned order under which the adjudicating authority had confirmed Central Excise duty amounting to Rs. 3,81,994/- under Section 11A (4) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') alongwith the interest thereon under Section 11AA of the Act and penalty under Sections 11AC of the Act.

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

(i) The impugned order is not proper, just and also not in accordance with the provisions of the CETA as well as excise law. The audit objection so raised is nothing but a matter of interpretation of statutory provision as already laid down during the year 1985-86 by the Govt. in the CETA.

(ii) The Note No. 9 of Section-XV clearly lays down and specifically explains as to which goods and materials generally obtained, recovered, derived or generated during the ship breaking activities are considered to be within the ambit of definition of



"manufacture" to decide the excisable goods and chargeability of excise duty on it in ship breaking industry. It is undisputed fact that the said Section XV contains and covers chapter 72 to 83 (Base metal and articles of base metal) only of CETA and therefore the question of levy and collection of excise duty by virtue of above section note 09 is restricted and applicable only to the goods and materials as generated or obtained during ship breaking activities and falls within chapter 72 to 83 only and rest of the goods and materials generated, obtained and recovered during ship breaking activities do not fall within the definition of manufacture and thereby do not fall within the excise net and thereby there is no question to levy of excise duty on it.

(iii) So far so many audit parties including CERA audit party have visited the appellant's plot in past and inspected the statutory as well as private records of the unit but no such unfounded and unlawful audit objection was raised so far. Therefore, the audit objection so raised in the above audit report has no support of law and the impugned order which is fully based on it is simultaneously liable to be dropped for sake of maintaining sanctity of the statute.

(iv) It is clarified that the subject disputed scrap items/materials were never manufactured or produced by the appellant on board of the vessel by adopting any process of its manufacture. Similarly no inputs to manufacture said scrap were procured and utilized by the appellant then how the department considers the item as manufactured by the appellant. In fact said scrap materials were lying on board of vessels at work shop and different places which the appellant had simply collected and then down loaded on the registered premises/plot to put it for display for subsequent sale purpose to scrap dealers. According to the words & phrases the meaning of word "production" has been defined as "production of a commodity would mean bringing into existence a new commodity which can be brought to the market for being bought and sold having a different name, character and use."

(v) The respondent authority has wrongly applied the extended period of 05 years in the SCN just to give a colour to the subject SCN/OIO as well as for his justification for recovery of excise duty at any cost from the appellant. The impugned order is absolutely lacking and does not support with the vital and paramount ingredients to invoke extended period. There is plethora of judgment wherein it has been stated that the SCN is a basic foundation of legal dispute and it should be issued with full descriptive as well as in lawful manner covering all points of dispute in neat and clean manner. The appellant vehemently express their displeasure for invoking larger period in the SCN



when there is no elements of fraud, misstatement, collusion and suppression of facts are present in the entire transaction. Further, as per the precinct of law before invoking extended or larger period or any penal action upon a company/registered unit or a person, the establishment of *mens-rea*, malafide intention and deliberate defiance of law to defraud Govt. revenue should be present in a case which qualify and justify for such action of the authority concerned. The appellant relied on CBEC Circular No. 5/92-CX.4 dated 13.10.92 wherein the Board has clearly stated that such attitude of the departmental officers would only increase fruitless adjudication with the gamut of appeals and reviews, inflation of outstanding figures and harassment to the bonafide assessee. It was further clarified that mere non-declaration or wrongful declaration of goods sold is not a sufficient and debatable cause and ground for invoking larger period but a positive mis-declaration with intention of evasion of excise duty is absolutely necessary as per decision of Hon'ble Supreme Court in the case of Padmini Products and Chemphar Drugs. The appellant also drew attention towards CBEC Circular No. 312/28/97-CX. dated 22.04.97 and No. 268/102/96-CX dated 14.11.96 which also provides guideline and necessary instruction to the field staff for uniformity in issuance of SCN. The impugned order has been issued against the norms and principles as laid down by the CBEC under the above referred circulars therefore the adjudicating authority has grossly transgressed or violated the norms and orders/instructions/circular issued by the CBEC. The appellant relied on following case-laws in this regard.

- Arviva Industries (I) Ltd. – 2007 (209) ELT 5 (SC)
- Alpanil Industries – 1999 (113) ELT 317 (Tri.-Mum.)
- Apollo Tyres Ltd. – 1999 (108) ELT 247 (Tri.-Mum.)
- Shree Arun Packaging Corpn. – 1997 (94) ELT 195 (Tri.-Del.)

(vi) The CBEC Cir. No.345/61/97-CX dated 23.10.1997 clearly clarifies that as to which goods and materials recovered during the course of ship breaking is/are considered to be falls within the ambit or net of excisable goods. In other words, clearly throw a light that the goods and materials recovered during breaking activities of a vessel which are outside the ambit of Section XV of the Schedule to the CETA are non-excisable and thereby there is no question of recovery of excise duty on such goods & materials. In the subject case the goods namely Rubber scrap, plastic scrap, glass scrap/acrylic scrap, etc. recovered during breaking activities of a vessel and sold out in as such form falls within the chapter heading No. 39153090, 40040000 and 70010090 of CETA as stated by the adjudicating authority at para 4 of the impugned order and therefore the said chapter headings are clearly fall outside the ambit of section XV of



the CETA. The appellant also relied on CBEC Circular No. 1014/2/2016-CX dated 01.02.16 recently issued which also at para 8 clearly clarifies the practice prevailing at SBY Alang for classification of non-excisable goods. The Public Notice No. 01/2010 issued by the Additional Commissioner of Central Excise, Bhavnagar wherein the department has provided and enclosed a consolidated and an exhaustive list of excisable items which are generally generated, obtained and recovered during the course of dismantling of old, used and condemned vessels and other floating structures. The disputed items of the present case are nowhere found listed or specified in the said list and the said list consists from chapter no. 72 to 81 only.

4. The personal hearing in the matter was held on 25.04.2017 which was attended by Shri A.H. Oza, Consultant, on behalf of the appellant, who reiterated the grounds of appeal.

5. I have gone through the impugned order, appeal memorandum and submissions made during the personal hearing.

6. I observe that the dispute is regarding excisability or otherwise of the impugned goods, i.e. Rubber scrap, plastic scrap, glass scrap/acrylic scrap, 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".

7. Circular No.345/61/97-CX dated 23.10.97, is a clarificatory circular on subject 'Reversal of Modvat credit on non-excisable items removed from the ship in the process of ship breaking', wherein a view is conveyed that "*..... the goods and materials recovered during the course of ship breaking, which are outside the ambit of Section XV of the Schedule to the Central Excise Tariff Act, 1985, are non-excisable goods as there is no entry in the Tariff which describes the act of obtaining these items as an activity of manufacture. Moreover, entire ship except ship stores are classifiable under 8908 is an input taking part in the activity of ship breaking under Rule 57A of the Central Excise Rules, 1944.*"

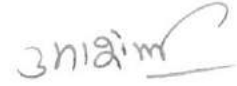


8. The classifications/chapter headings covering the impugned goods, viz. Rubber scrap, plastic scrap, glass scrap/acrylic scrap, etc., as described by the impugned order, falling under Central Excise Tariff Heading 3915, 4004 and 7001 of the first schedule to the Central Excise Tariff Act, 1985. Since the disputed goods are outside the ambit of Section XV of Schedule to the Central Excise Tariff Act, 1985, the said goods when emerged or recovered during breaking up of old and used ship, cannot be treated as excisable goods in view of discussions held above. Therefore, the impugned order confirming recovery of central excise duty on clearance of goods alongwith interest and imposing penal action upon the appellant does not survive.

9. In view of the above facts and circumstances, I set aside the impugned order and allow the appeal filed by the appellant.

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

10. The appeal filed by the appellant stands disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - III)

By R.P.A.D.

To,
M/s. Mahadev Ship Breakers Pvt. Ltd.,
Plot No. 134,
Ship Breaking Yard, Alang,
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 – I/II, SBY Alang.
- 6) PA to Commissioner (Appeals-III), Central Excise, Ahmedabad.
- 7) Guard File.