



::प्रधानआयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

द्वितीय तल, जी एम टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot - 360 001

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



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइल नं./ Appeal / File No. V2/I49/BVR/2018-19	मूल आदेश नं / O.I.O. No. BHV-EXCUS-000-JC-66-2017-18	दिनांक/ Date: 30.3.2018
---	---	--	-------------------------------

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

BHV-EXCUS-000-APP-133-2019

आदेश का दिनांक / Date of Order:	30.05.2019	जारी करने की तारीख / Date of issue:	30.05.2019
------------------------------------	------------	--	------------

श्री कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से मुजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,
Rajkot/jamnagar/Gandhidham :

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

M/s Mahavir Inductomeit Pvt. Ltd., Plot No. V-5, Ship Breaking Yard, Sosiya, District- Bhavnagar.

इस आदेश (अपील) न व्यर्थन काई व्यक्ति निम्नलिखित तरिके म उपयुक्त प्राधिकार / प्राधिकरण क 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, मूल्यंकन, मसंयन्त्रितन भीमामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को जाना 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 (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को जाना चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa 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 माँग, व्याज की माँग 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 रजिस्ट्रार के नाम से किमी भी मार्बजिनक 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। न्यूनतम 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 जिन आदेश के विरुद्ध अपील की गयी हो, उनकी 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 माँग, व्याज की माँग 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 रजिस्ट्रार के नाम से किमी भी मार्बजिनक 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। न्यूनतम 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/



9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती है एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें में एक प्रति प्रेषित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलवीय 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 of 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 अपीलवीय प्राधिकरण (सेन्ट्रल) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विनियम अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलवीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, वरतों कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग बिना राग शुल्क" में निम्न शामिल है

- धारा 11 डी के अंतर्गत रकम
- सेन्ट्रल जमा की ली गई गलत राशि
- सेन्ट्रल जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- वरतों यह कि इस धारा के प्रावधान विनियम (नं० 2) अधिनियम 2014 के आरंभ से पूर्व किमी अपीलवीय प्राधिकारी के समक्ष विचारणीय स्थान अर्जी एवं अपील को लागू नहीं होंगे। /

For an appeal to be filed before the CESTAT, 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 Central Credit taken;
- amount payable under Rule 6 of the Central 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 कोपुनरीक्षण आवेदन :
Revision application to Government of India:

इस आदेश को पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अदर मन्दि, भारत सरकार, पुनरीक्षण आवेदन इकाई, विन मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संजद 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-35B ibid:

- (i) यदि माल के किमी नुकसान के मामले में, जहां नुकसान किमी माल को किमी कारखाने से भंडार गृह के पारगमन के दौरान या किमी अन्य कारखाने या फिर किमी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किमी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किमी कारखाने या किमी 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 किमी राष्ट्र या क्षेत्र को निर्यात कर रहे मूल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किमी 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 an 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) सनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इंडी क्रेडिट इस अधिनियम एवं इनके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (नं० 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि 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 उत्पाद 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 माध्यम 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 OI 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 होने हुए भी की लिखा पट्टी कार्य में वचने के लिए यथास्थिति अपीलवीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट 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 अपीलवीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाना 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 अपीलवीय 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 ::

M/s Mahavir Inductomet Pvt Ltd, Sosiya, Bhavnagar having Central Excise Registration No. AABCM8848GXM003 (*hereinafter referred to as "Appellant"*) filed Appeal No. V2/149/BVR/2018-19 against Order-in-Original No. BHV-EXCUS-000-JC-66-2017-18 dated 30.3.2018 (*hereinafter referred to as 'impugned order'*) passed by the Jt. Commissioner, Central GST & Central Excise, Bhavnagar Commissionerate (*hereinafter referred to as "lower adjudicating authority"*).

2. The brief facts of the case are that the Appellant was engaged in manufacture of Ferrous and non-Ferrous Articles falling under Chapter 72 to 81 of the Central Excise Tariff Act, 1985 obtained by breaking old and used imported ships. The Appellant had imported vessel "MV CAHARLOTTEN BORG" vide Bill of Entry dated 21.2.2011, which was assessed provisionally on 21.2.2011 and after payment of duty on 22.2.2011, vessel was beached in the ship breaking plot of the Appellant on 23.02.2011. After completion of Customs formalities, 'Out of Charge' was given by the Customs Authority on 7.3.2011.

2.2 During scrutiny of ER-1 Return for the month of March, 2011, it was found by the jurisdictional Range Superintendent that the Appellant had availed Cenvat credit of whole of Additional Duty of Customs (CVD) paid on imported vessel "MV CAHARLOTTEN BORG" amounting to Rs. 3,68,39,912/-. As per proviso inserted in Rule 3(1) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as 'CCR,2004'*) vide Notification No. 3/2011-CE(NT) dated 1.3.2011, Cenvat credit is allowed only upto 85% of Additional Duty of Customs paid on ships, boats and other floating structures for breaking up falling under Tariff item 89080000. It appeared to the Commissionerate that the Appellant had wrongly availed Cenvat credit of Rs. 55,25,987/- in excess of 85% of CVD.

2.3 Show Cause Notice No. V/15-36/Dem/2011-12 dated 25.1.2012 was issued to the Appellant calling them to show cause as to why Cenvat credit of Rs. 55,25,987/- should not be disallowed and recovered from them under Rule 14 of CCR,2004 read with Section 11A of the Central Excise Act, 1944 (*hereinafter referred to as "Act"*) along with interest under Rule 14 *ibid* read with Section 11AB of the Act and proposing imposition of penalty under Rule 15(1) of CCR,2004.

2.4 The above Show Cause Notice was adjudicated vide the impugned order which disallowed Cenvat credit of Rs. 55,25,987/- and ordered for its recovery along with interest under Rule 14 of CCR,2004. The impugned order also imposed



penalty of Rs. 55,25,987/- under Rule 15(1) of CCR,2004.

3. Being aggrieved with the impugned order, the Appellant has preferred appeal on various grounds, *inter alia*, as below :-

(i) The impugned order is not legal and proper and not passed in accordance with the provisions of the Central Excise Act, 1944 and rules made thereunder.

(ii) It is undisputed facts that the subject vessel of the Appellant was arrived at Alang anchorage on 18.02.2011 and the appellant had filed Bill of Entry for clearance of said imported vessel on 21.02.2011. On its assessment of Customs duty by the Department the duty was paid on 22.02.2011. After beaching of the vessel at the registered plot of the Appellant on 23.02.2011, they immediately availed Cenvat credit of CVD of Rs. 3,68,39,912/- in their Cenvat accounts; that the ship was given out of Customs charge on 07.03.2011 by the Customs authority; that Notification No. 03/2011-CE (NT) dated 01.03.2011 amended Rule-3 (1) clause (VII) of the CCR-04 *inter alia* restricting Cenvat credit of CVD to 85% but the said notification was effective from 01.03.2011. Hence, they are eligible to avail Cenvat credit of 100% of CVD.

(iii) The Adjudicating authority erred in observing that right from arrival of the said vessel till its out of Customs charge given, the said vessel remained in the custody of the Gujarat Maritime Board (GMB) and the appellant became its owner only after 07.03.2011 and hence, the appellant should have availed Cenvat credit only on or after 07.03.2011 i.e. date on which out of Customs charge given. As per Standing Order No. 06/1999 (Cus) dated 01.11.1999 issued by the then Commissioner of Customs & Central Excise, Rajkot, custody /ownership remains with the shipbreaker after beaching of vessel at ship breaking plot, since Gujarat Maritime Board was not appointed as Custodian of at SBY Alang under Section 45 of the Customs Act, 1962. Therefore, it is wrong to conclude that the ownership of the said vessel was with GMB till out of Customs charge was given by the proper officer of the Customs

(iv) It is on record that after payment of Customs duty the vessel was allowed to beach by the Customs authority at the registered plot of the appellant at SBY, Alang on 23.02.2011 and hence, the appellant was entitled to avail Cenvat credit being duty paid input/vessel was received by the Appellant in their registered premises and ownership was already with the appellant since entire Customs duty was paid. Further the availment of Cenvat credit at the rate of 100% of the C.V. duty paid was also right action on the part of the Appellant as



[Handwritten signature]

Notification No. 03/2011-CE (NT) dated 1.3.2011 was not in existence at the time of availment of Cenvat credit by the Appellant.

(v) It is undisputed fact that the area of their registered plot falls within the jurisdiction of the Customs area in terms of the Section 2 of the Customs Act, 1962. Therefore, our registered plot area where imported vessel/input was beached also falls within the approved area of our factory in terms of the Rule 9 of the Rules; that 'Out of Customs charge' means the goods can be cleared outside port/Customs area and since in the present case, the goods were already in the registered premises of the Appellant since 23.02.2011, on which duty was also paid, therefore the appellant cannot be prevented from availment of Cenvat credit till the out of Customs charge is given and relied upon following case laws:

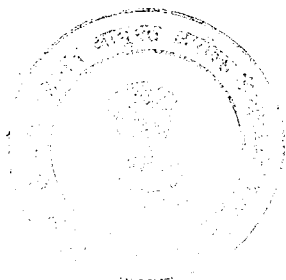
- (a) M/s Shiv Ship Breaking Company- 2007 (218) E.L.T. 414 (Tri-Ahmd)
- (b) Order-in-Appeal No. 61/2011(BVR)/RBT/Comm(A)/Raj dated 20.9.2011 passed by the Commissioner (Appeals), Central Excise, Rajkot in the case of M/s. Rishi Ship Breakers.

(vi) Regarding charging of interest and imposition of penalty, the appellant submits that they have done nothing wrong nor transgressed any of the provisions of the Cenvat Credit Rules, 2004 and that the appellant has correctly availed the Cenvat credit at the rate of 100% of CVD and hence, they are not liable to interest and penalty.

4. In Personal Hearing, Shri A.H. Oza, Consultant appeared on behalf of the Appellant and reiterated the grounds of appeal and submitted that duty of Customs and CVD was paid by them on 22.2.2011; that ship had beached on 23.2.2011; that after beaching ship is in their custody as per Standing Order No. 6/1999-Cus dated 1.11.1999 (Para 3); that since they had paid CVD on 22.2.2011 and ship was in their custody since 23.2.2011, they can take Cenvat credit on 25.2.2011 as held by the CESTAT, Ahmedabad in the case of Shiv Ship Breaking - 2007(218) ELT 414(Tri. Ahm) and Commissioner(Appeals), Rajkot's order dated 20.9.2011 in another case of Rishi Ship Breakers, Bhavnagar; that appeal may be allowed on basis of above.

Discussion & Findings:

5. I find that the Appellant has complied with the provisions of Section 35F of the Act by depositing Rs. 4,14,500/- @7.5% of Rs. 55,25,987/- vide Challan No. 50009 dated 5.7.2018, as declared by them in Appeal Memorandum. The

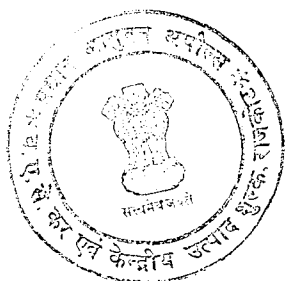


respondent i.e. Commissioner of Central Excise, Bhavnagar has not submitted any contrary report and hence, I find that the Appellant has complied with the provisions of Section 35F of the Act.

5.1 I also find that the Appellant has filed miscellaneous application for condonation of delay of 24 days in filing appeal which state that they had received the impugned order on 18.4.2018 but could file appeal only on 11.7.2018. They requested to condone delay of 24 days in filing appeal on the grounds that their taxation officer remained out of city on official work, and hence, they could not file appeal within time limit of 60 days. Considering that delay is within further period of 30 days as provided under proviso to Section 35(1) of the Act, I condone delay of 24 days in filing of this appeals and take up this appeal for decision on merit.

6. I have carefully gone through the facts of the case, the impugned order and ground of appeal submitted by the appellant in the memorandum of appeal. The issue to be decided is whether the Appellant has rightly availed Cenvat credit @100% of CVD in respect of import of vessel vide Bill of Entry dated 21.2.2011 or otherwise.

7. On going through the records, I find that the Appellant imported vessel "MV CAHARLOTTEN BORG" vide Bill of Entry dated 21.2.2011, which was assessed provisionally on 21.2.2011 and after payment of duty on 22.2.2011, vessel was beached in the ship breaking plot of the Appellant on 23.02.2011. The vessel was given 'Out of Customs Charge' by the Customs Authority on 7.3.2011. The Appellant availed Cenvat credit of Additional Duty of Customs of Rs. 3,68,39,912/- paid on the said vessel. The lower adjudicating authority disallowed Cenvat credit in excess of 85% of Additional Duty of Customs amounting to Rs. 55,25,987/- on the ground that as per proviso inserted in Rule 3(1) of CCR,2004 vide Notification No. 3/2011-CE(NT) dated 1.3.2011, Cenvat credit is allowed only upto 85% of Additional Duty of Customs paid on ships, boats and other floating structures for breaking up falling under Tariff item 89080000. The Appellant has contested that after payment of Customs duty on 22.2.2011, the vessel was beached at their registered plot at SBY, Alang on 23.02.2011 and hence, the appellant was eligible to avail Cenvat credit being duty paid input/vessel was received by the Appellant in their registered premises and ownership was also with them since entire Customs duty was paid; that Notification No. 03/2011-CE (NT) dated 1.3.2011 restricting Cenvat credit @85% of CVD was not in existence at the time of availment of Cenvat credit by



the Appellant and relied upon case laws of Shiv Ship Breaking Company- 2007 (218) E.L.T. 414 (Tri-Ahmd) and Order-in-Appeal dated 20.9.2011 passed in the case of M/s. Rishi Ship Breakers.

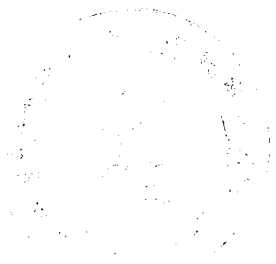
7.1 I find that issue involved in the present case is to determine relevant date when the Appellant can avail Cenvat credit of Additional Duty of Customs paid on import of vessel, whether relevant date is when the ship beached in the plot of the Appellant on 23.2.2011 or when 'Out of Customs Charge' was given on 7.3.2011. It is not disputed that the Bill of Entry dated 21.2.2011 filed by the Appellant was assessed provisionally on 21.2.2011 and returned to the Appellant for payment of Duty. After payment of duty on 22.2.2011, the vessel was beached in the ship breaking plot of the Appellant on 23.2.2011. The vessel was given 'Out of Customs Charge' by the Customs Authority on 7.3.2011. I find it is pertinent to examine the provisions of Rule 4(1) of CCR, 2004, which governs conditions for allowing Cenvat credit, which are reproduced as under:

“RULE 4. Conditions for allowing CENVAT credit. — (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service or in the premises of the job worker, in case goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be :”

(Emphasis supplied)

7.2 I find that the Appellant was engaged in the manufacture of Ferrous and non-Ferrous Articles obtained by breaking old and used ships. Thus, subject vessel imported by the Appellant was input for them. Further, Ship breaking plot of the Appellant registered under Central Excise was situated within the jurisdiction of the Customs area. So, when the vessel is beached in the ship breaking plot, it effectively means that vessel i.e. input has reached in the factory premises. In the present case, when the vessel was beached on 23.2.2011 in the ship breaking plot of the Appellant, it would mean that vessel i.e. input was received by the Appellant in their factory premises on 23.2.2011. By virtue of Rule 4(1) of CCR, 2004 *supra*, the Appellant became eligible to avail full Cenvat credit of Additional duty of Customs on 23.2.2011 i.e. date of beaching of the vessel in their ship breaking plot. Consequently, proviso inserted in Rule 3(1) of 'CCR,2004' vide Notification No. 3/2011-CE(NT) dated 1.3.2011 restricting availment of 85% of Cenvat credit of CVD will not be applicable in respect of Vessel "MV CAHARLOTTEN BORG" imported by the Appellant.

7.3 I also find that the lower adjudicating authority has erroneously considered date when 'Out of Customs Charge' was given as the relevant date



[Handwritten signature]

for availing Cenvat credit. As per Section 47 of the Customs Act, 1962, when the importer pays applicable Customs duty and completes all import formalities, then goods are allowed to be cleared for home consumption. In the present case, the goods i.e. vessel was not be cleared for home consumption since, ship breaking plot itself was factory. I also find that 'Out of Customs Charge' has nothing to do with availment of Cenvat credit as there is no such restrictions/ conditions prescribed in Rule 4(1) of CCR, 2004 for allowing Cenvat credit. It is on record that the vessel was beached in the ship breaking plot of the Appellant on 23.2.2011 after Bill of Entry was duly assessed and payment of duty but Out of Customs Charge was given only on 7.3.2011. The delay occurred in giving Out of Customs Charge should not be a reason to deny substantial right of the Appellant to avail Cenvat credit when it became due on 23.2.2011. I rely on the Order passed by the Hon'ble CESTAT, Ahmedabad passed in the case of Shiv Ship breaking Co. reported as 2007 (218) ELT 414 (Tri. Ahm), wherein it has been held that,

"6. We have carefully considered the submissions from both sides. The CVD paid on the ship is not in dispute. The CVD amount which was taken as credit was admittedly paid on 13-9-2004. No objection for beaching of the vessel has been granted by the Customs Officers on 15-9-2004. Under these circumstances, the reason for the delay in grant of out of charge by the Customs is not explained. Even if the delay was justified, it cannot lead to denial of Cenvat credit on the CVD paid on the vessel. The taking of credit before out of charge is given is at the most, a technical violation. This technical violation is caused due to the delay in grant of out of charge by the Department and it cannot take away the substantial right to Cenvat available to the appellant, especially, when the customs clearance and receipt of the duty paid inputs in the factory were simultaneous and at the very same place, namely, the shipyard.

7. Since the credit has been rightly taken, there is nothing irregular in utilization of Cenvat credit amounting to Rs. 3,89,551/- before 14-10-04."

(Emphasis supplied)

8. In view of above, I hold that the Appellant has rightly availed Cenvat credit of 100% Additional Duty of Customs amounting to Rs. 3,68,39,912/-. I, therefore, set aside demand of Cenvat credit of Rs. 55,25,987/- under Rule 14 of CCR, 2004 and penalty of Rs. 55,25,987/- imposed under Rule 15 of CCR, 2004.

9. I set aside the impugned order and allow the appeal.

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

9.1 The appeal filed by the Appellant is disposed off as above.

सत्यापित,



विपुल शाह
अधीक्षक (अपील्स)

(कुमार संतोष)

प्रधान आयुक्त (अपील्स)



By R.P.A.D.

To, M/s Mahavir Inductomelt Pvt Ltd, Plot No. V-5, Ship breaking Yard, Sosiya, District Bhavnagar.	सेवा में, मे. महावीर इंदक्टोमेल्ट प्राइवेट लिमिटेड प्लॉट न. वी-5, शिप ब्रेकिंग यार्ड, सोसिया, जिल्ला भावनगर।
--	---

प्रति :-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।