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**की सुनार संतोष, अधार्य अपूर्ण अधिकरण, राउप्योद ३०० ५ दिल**ी

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- भाग भागुकार संश्रुष्ट अस्तुम्बर अन्युक्ता १६ वड असूना किस्तुन सम्बद्ध १७ वट वट वट प्राप्त स्थान है। उन्होंद्र है अन्युक्त अस्ति सामग्रीयाम स्थान सम्बद्धित स्थान है। इस्ति स्थान से पृष्टिकी स Jί Singlings of states Hartisten, O'C issued by Autilia "ChiroCethylaen (Advisor Full 1999) (Chiron Foresetti), CE. Raise Mailthage (Manahlahami)
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्य में देशक विकास करिया एक प्रत्येक विकास के किया है है है है है है है जिल्हा के उन्हें के किया के प्रत्ये के क Any person againment by the Oracle seasons way file on 1555 के 15 for experiment substitute in Coloring Way.

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्रोते सर्वा (१,४%, १%) स्वरत्ता सर्वा के के के कि को है और उपन्य हो स्वरत्ता के अधिक का अपनी प्राप्त के का अधिक वर्षकार सीम मेरिक, बीम कार, पहुंचके स्वा क्ष्म के अहम्बद्धार अधिक या समामाई के

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এ বিনি, নামনান্দেশক প্ৰদান কৰা কৰুৰ জন্ম কাৰ্যাৰ জনাই বুজন নিৰ্মাণ কৰা নামৰ প্ৰদান কৰিছে। ১৯১১ প্ৰিৰ্মাণ কৰা কৰি <sup>কিছিল</sup>লৈ কি লাখন জনা কেন্দ্ৰণী কেন্দ্ৰীয়ে দীয়া কৰা অধিকান্তৰ সংক্ষম হ'ব ১৯ ছে ১৮ কেন্দ্ৰীত বিশ্ব কৰিছে পালে উপস্থিত স্থান সং ਕੁਸੰਦਾ ਸਮਝ ਲਾਮ ਅਤੇ ਨਹੀਂ ਅਮਰ ਸਾਰੇ ਕਰਾ ਪਾਉਂਤੇ ਰਾਗ ਨਾਲ ਸਥਾਤਾਥ 50 ਸਾਰੇ ਅਤੇ ਹੋ ਗਾਇਦ ਨਹੀਂ ਅਹਾਰੇ, 1000ਵ ਅਸਤ 5,000ਵ ਸਮ ें जाना 10,000% रूप के बेपारिया दक्षा भूत करी कीर अल्डाक की किस्सीन्त पान कर मुख्य , अनेदियान किसे कर कादित कर के सहस्र कर करित र विकास में किये के प्राथमिक के का कि एउए आहे देखांक्त कि एक एतर्प भिन्न सका गांच । प्राप्त द्वार का शृक्षण का का आहे. क्षक में हुआ कोहिए कर उक्कीर अमेरिक जायारिक कारी भारत दिया है। सार 1 स्टेबर की अंदि के प्रीटिक पाएक मा के सह 2004 जा शांप ZiYaan araasaa

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কলে প্ৰায়ে এইটা পৰি ন্ৰান্ত আৰ্থন কৰিবলৈ গলৈ মানুহৈছে কৰিবলৈ কৰিবলৈ কৰিবলৈ আৰু নাৰ্চাৰ কৰিবলৈ আৰু এইটাৰ নাৰ্চা ٠:. 

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െ വെടുത്തിലും വെടുത്തു. Bredi വർ വെട്ടുത്ത് വിക്കുന്ന കോട്ട് പ്രശ്യാസ് പ്രവാശനായിരുന്നും അതിന്റെ വിവിദ്ദേശി വേദ്യവാണ് കോട്ടുത്തി വേദ്യ സ്ഥാന് പ്രവാശനായ വിശ്യാപ്പു വെട്ടുത്തിലും പൂടിയുടെ പ്രസ്ത്രം പ്രവേശനായ വരു പ്രവാധനായത്ത് വ്യവസ്ത്രം വേദ്യ വരുന് പൂട്ടുത്തില് സ്ഥാന് വരുന്ന് പ്രവാശന്ത്രത്ത്തിലും സ്ഥാന് വരുന്നും വരുന്നും വരുന്നും വരുന്നും വരുന്നും വരുന്നും

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্ন (জন কথাৰে চনাৰ্য বিচাৰ্য কৰিব টো বিচাৰ প্ৰকৃষ্ণ হ'ল পৰি কৰে নাই। ইছুক্তৰ কৰা হপুপুৰু ও ই 11 চনাই এই চনাই এই ই জাইছু বাবা ইন্ত আৰু ইছু সংগ্ৰহণ কৰা ইন্ত কৰা কৰিব কৰা এই ই জাইছি ১০ কুৰ্ব (1918) কেছু কোনাই বিচাৰ (1918) ১০ কুল্ল সংগ্ৰহণ কৰিব কৰা বিচাৰ কোনাই কোনাই কোনাই আনহাতে আনহাতে কোনাই কৰা এই কোনাই কৰা কৰা কৰা কোনাই কোনাই কোন ১৯৯ কেছুক্ত বিচাৰ (1918) বিচাৰ কোনাই কোনাই কোনাই কোনাই আনহাতে আনহাতে কোনাই কোনাই ক ..:

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এছ নুষ্ঠানি 'ব্যাসকলে প্ৰক্ৰান্তিকৈ' — 970 জন্ম নুষ্ঠান 'বিন্দুৰ স্কৃতিক' কৰা কৰা কৰা এক জনি নিৰ্দ্ধানিক বিনা কৰিছি ব্যাসকলে সুক্ৰান্তিকৰ নাম নিৰ্দ্ধানিক বিনা স্কৃতিক সমূহতে কৰিছিল। সংগ্ৰাহণ কৰা কৰিছিল সংগ্ৰাহণ কৰিছিল কৰা কৰিছ কৰা প্ৰক্ৰিয়া মহাত্ৰাহাৰ কৰা কৰা কৰা কৰা কৰিছিল কৰিছিল কৰাই মান্তিক বিনাধানিক কৰা বিনাধানিক কৰা কৰিছিল। ٦:

बोल कर , देवराव तायह कुल का होदल के उने प्रत्य के प्रत्य के किया है। यह किया किया के स्थान के लिए के अपने के क बार प्रतिकृतिक के किया किया किया के किया का मार्थिक किया है। यह किया के प्रत्य के प्रतिकृतिक के किया के किया के Marting of the said of to the light system to the said of the said of the Contents of the Contents and the said of the Contents of the said o

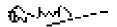
কল্ এটাট্রার এই এটা এই এটা এটা লাক্ষ্যের লাক্ষ্যে সাম্প্রতি প্রতিপ্রতিপ্রতি এটা নির্দান বিশ্ব বিশ্ব বিশ্ব বিশ্ব সংক্ষ্যালয়ে সুখনে কাল্টি নির্দান সাম্পর্ক প্রতিপ্রতান, বিশ্ববিদ্যালয় (Alexander) হয় এই এক প্রতিশ্ব বিশ্ববিদ্যালয় সাম্পর্ক বিশ্ববিদ্যালয় এটা সাম্পর্ক বিশ্ববিদ্যালয় করে বিশ্ববিদ্যা ٠.



# :: ORDER-IN-APPEAL ::

M/s NBM Iton and Stock Trading Pvt Ltd. Along, Bhavnagar Naving Control Excise Registration No. AAACH7420CXM002 (hereinofter referred to as "Appellant") Inted Appeal No. V2/161/BVR/2018-19 against Order-in-Original No. 1/AC/BVR-2/BVR/MC/2018-19 dated 27.4.2018 (hereinofter referred to as 'impugned order') passed by the Ass. Commissioner, Control GSI & Control Excise. Bhavnagar-2 Division, Bhavnagar Commissionerate (hereinofter referred to as "lower adjudicating authority").

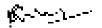
- The brief rants of the case are that the Appellant was engaged in manufacture of various Ferreus and non-Ferrous Articles falling under Chapter 72 to 81 of the Central Excise Tariff Act, 1985 obsained by breaking old and used imported salps. The Appellant had imported vessel \*BUKLITA OMEGAT vide Bill of Entry dated 71.7.2011, which was assessed provisionally on 24.2.2011. The vesser was beached in the ship breaking plut of the Appellant on 24.02.2015. After completion of Customs formalities, 'Out of Customs Charge' was given by the Eustoms Authority on 3.3.2011.
- 2.2 Euring scrutiny of ER 1 Return for the month of February, 2011; it was found by the jurisdictional Range SuperIntercent that the Appellant had availed Cenval credit of whole of Additional Duty of Customs (CVD) paid on imported vessel "BUKHTA CIMEGAT amounting to Rs. 1.15.34.225/-. As per proviso inserted in Rule 3(1) of the Cenval Credit Rules, 2004 (hereinalter referred to as if CCR,2004") vide Notification No. 3/2011/CE(NT) dated 1.3.2011, Cenval credit is allowed only upto 85% of Additional Duty of Customs paid on ships, buals and other floating structures for breaking up falling under Tamff Item 89080000. It appeared to the Commissionerage that the Appellant had wrongly availed Cenval (redit of Rs. 17,30,135/- in excess of 85% of CVD.
- 2.3 Show Cause Notice No. V715-397HQ/Dem/7001-t2 dated 8.2.7012 was issued to the Appellant calling them to show cause as to why Convat credit of Rs. 17,30,1357, should not be disallowed and recovered from them under\_Rade\_14 of CCR.2004 read with Section 18A of the Central.



Excise Act. 1944 (hereinofts) referred to an "Act" along with interest under Rule 14 fbid 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 Nation was adjustrated vide the Impugned order which disallowed Cenver predictor Rs. 17,30,1357- and ordered for its recovery along with interest under Rule 14 of CCR,2004. The impugned order also imposed populty of Rs. 17,30,1357- on the Appellant under Rule 15(1) of CCR,2004.
- 3. Being aggrieved with the impugned order, the Appealant has preferred appeal on various grounds, Jaker alfa, as below :-
- (i) The impugned order is non-speaking and non-reasoned order as the adjudicating authority has not dealt with the pleas raised by the Appellant.
- They had filed Bill of Entry for clearance of imported vessel "BURHTA OMEGA" on 21.02.2011 and after its assessment by Gustoms, the CVD was paid on 21.02.2011. Thereafter, vessel was beached at the registered plot of the Appellant on 74.02.2011 and they immediately availed Cervat credit of CVD in their Cervat account; that they had taken all reasonable steps before taking Cervat, credit on inputs; that permission for clearance of vessel for preaking was received late due to cending work of destroying wire; cast by the Customs Officers; that to consider that in absence of such permission, the Cervat credit is not available is not correct; that it is settled position of taw that when duty paid nature of liquid is not in doubt, Cervat credit cannot be demed.
- (iii) Bill of entry is a specified document under Rule 9(1)(c) of CCR, 2004 for taking Cenvat credit and there is no restrictions that Cenvat credit calmot be taken without four of Customs charge condensement on Bill of Entry;
- (IV) The Adjudicating authority errod in observing that right from arrival of the said vessel till its our of Costons charge given, the said vessel remained in the custody of the Sujarar Mariffine Board (GMB) and the appellant became its owner only after 3.3.2015 and home, the appellant





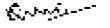
should have availed Cenval credit only no or after 3.3.2011 i.e. date on which out of Customs change given. The adjudicating authority failed to observe that Gujaral Maritime Board is not custodian of Alang/Susiyo Ship breaking yard as Alang/Susiyo is not a port and that Alang/Susiyo Ship breaking yard has been declared as landing place only for ships imported for breaking up: that the shipbreaker is custodian of the goods; that the Appellant has correctly taken 100% Cenvat credit as the Custom clearance and receipt of duty paid inputs in the factory were simultaneous and at the very same place i.e. their plot to shipyard. The Appellant has correctly availed 100% of Cenvat credit of CVD amounting to Rs. 1,15,34,225/- and relied upon case law of M/s Shiv Ship Breaking Company- 2007 (218) E.L.T. 414 (Tri Ahmd)

- (v) Regarding imposition of bonalty under Rule 15(1), the appellant submits that there is no intention on part of the Appellant to defrage. Revenue to evade payment of duty and besce, the Appellant is not liable to penalty.
- 4. Personal Heading was fixed in the case on 17.4.2019, 22.5.2019, and 4.6.2019, however, the Appellant old rink appear on aby of the above dates but sent written submission vide letter dated 3.6.2019, wherein the grounds of appear are restorated and requested to set aside the impressed order are allow their appeal.

### Discussion & Findings:

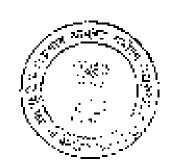
- 5. I limit that the Appellant has complied with the provisions of Section 35F of the Act by depositing Rs. 1,29,760/ 207,5% of Rs. 17,30,4357- vide Challan No. 00124 dated 27.7.2018, as declared by them in Appeal Memorandum.
- 5.1 Talso find that the Appellant has filed apprecation for condonation of delay of 28 days in filing appeal which state that they had received the impugned order on 3.5.2018 hor could file appeal only on 30.7.2018. They requested to condone collay of 28 days in filing appeal on the grounds that their consultant firm was busy in reply work related to Income Tax and hence, they could not file appeal within time limit of 60 days. Considering

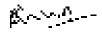




that delay is within further period of 30 days as provided under provise to Section 35(1) of the Act, I condense colleged 28 days in filling of this appeal and take up this appeal for decision or specific.

- 6. I have carefully good imposit he facts of the case, the impogned order and the grounds of appeal substitted by the appellant in the anomorandom of appeal. The issue to be decided is whether the Accollant has rightly availed Cenvat cradit \$199% of CVD in respect of import of vessel "BUKHTA OMEGA" vide ONL of Entry dated 21.2.2011 or otherwise.
- On going through the emprey, a find that the appellant imported Ţ, vessel "RUKHTA OMEGA" vios Bill of Entry dated 21.2.2011, which was assessed provisionally on 23.2 2019 and vessel was beached in the ship breaking plot of the Appellant, on 24 92,2011. The vessel was given 'Outof Customs Charge' by the Customs Authority on 3.3.2011. The Appellant availed Cenvat credit of Additional Budy of Customs of Rs. 1,16,34,275/paid on the said vessel. The lower adjudicating authority disallowed Convot precit in excess of 85% of Additional Buty of Customs amounting to Rs. 17,30,1357: on the ground that as per provise inserted in Rule 3(1) of CCR,2004 vide Notification No. 3/2011-CE(N)) dated 1.3.2011, Cereat sredit is allowed only upon Risk of Additional Duty of Customs paid on ships, ecots and other floating structures for breaking up falling under Tariff item 89080000 . The Abbeilant has contested that they had filled  $\mathrm{BH}_{\mathrm{c}}$ of Entry on 21.2.2011 and after payment of Customs duty on 21.2.2011. the versel was brached at their registered plot at Ship preaking Yard on 24.02.2011 and hence, the appellant was eligible to avail full Cenvat. credit being duty paid (#53) / www.l was received by the Appelsant in sterin registered premises; that Bill of entry is a specified document under Rule 9(1)(c) of CCR, 2004 for taking Cenvar credit and there is no restriction that Convat credit cannot be taken without fout of Customs charge' endorsement on Bill of Firtry and relicd upon case laws of Shiv Ship Breaking Company- 2007 (218) F.L.T. 414 (T) (Amd).
- 7.1 I Most that four involved in the present case is to determine relevant date when the Appellant can avail Cenvat credit of Additional Duty of Customs paid on emport of vessel, whether relevant date is when





the stip beached in the plot of the Appellant on 24.2.2011 or when 'Out of Change' was given on 3.3.2011. It is not disputed that the Bill of Eatry dated 21.2.2011 filled by the Appellant was assessed provisionally on 21.2.2011 and returned to the Appellant for payment of Daty. After payment of duty, the vessel was beached in the ship breaking plot of the Appellant on 74.7.2011. The vessel was given 'Out of Customs Charge' by the Customs authority on 3.3.2011. I find it is perlinent to examine the provisions of Rade 4(1) of CCR, 2004, which governs conditions for allowing Convaturedly, which are reproduced as ander:

\*RULE 4. Conditions for allowing CENVAT credit. (1) the CHNVAT credit in respect of inputs was the about imaginately to receipt of the inputs in the factors of the manufactures of in the premises of the unvider of output service of in the premises of the job worker, it cose goods are sent directly to the job worker on the direction of the membracturer to the provider of comput service, as the case may be:

(Emphasis supplied)

- j (inc. That the Appellant was engaged in the manufacture of Ferrous) 7.2 april num-Ferrinas Artikles obtained by preeking 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 24.2.2011 in the ship breaking plot of the appellant, it would mean that vessel its, input was received by the Appollant in their factory premises on 24.2.2011. By virtue of Rule 4(1) of CCR, 2004 supro, the Appellant became effailite to avail full Convat credit. of Ackinimat outy of Customs on 24.2.2011 i.e. date of heading of the vessel in their ship breaking plut. Consequently, proviso inserted in Rule: 3(3) of fCCR,20043 vide Notification No. 372011-CE(NT) dated 1.3.2011. restricting availment of 85% of Cervat credit of CVD will not be approable. is respect of Vosset "BUKHTA OMEGA" triported 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 for availing Cenvat credit. As per Section 47 of the Customs Acr, 1962, 347-2400 Importer pays applicable Customs duty and completes all



Import formalities, ther goods are ecowed to be cleared for home consumption in the present case the goods i.e., vessel was not be cleared for home consumption since, that breaking plot itself was factory. I also find that fout of Customs Charge' has defining to do with availment of Cenvat chedit as there is no such restrictions? conditions prescribed in Rule 4(1) of CCR, 7004 for allowing Cenvati chedit. It is on record that the vessel was beached in the strip breaking about of the Appellant on 24.2.2011 after fail of Entry was duly assessed and payment of duty and "Call of Customs Charge" was given on 1.12 2011. The delay occurred in giving fout of Customs Charge' should not to a reason to deny substantial right of the Appellant to avail Cenvat credit when it became due on 24.2.2011. I rely on the Onler passed by the Hombie CCST AT. Altimedabad passed in the case of Shiv Ship breaking Co. (courted as 2007 (218) ELI 414 (Tri. Ahm), wherein it has been hold that,

- The taking of profit before out of about a given is or the most, a technical violation. This part of out of charge by the CVD paid on the ship is not be disputed the CVD amount which was taken as credit was attributely part on \$3.9-2004. No objection for breaching of the vessel are been granted by the Costoms Officers on 15.9-2004. Under these directions ones, the representation for the delay in grant or out of charge by the Customs is not explained. Even if the delay was instiffed, it cannot lead to dealed of Carvat credit on the CVD paid on the vessel. The taking of profit before out of about a given is or the most, a technical violation. This pechalical violation is gaused due to the delay in grant of out of charge by the Tteraument and it cannot take away the substantial right to Coroni and along to the general appellant, expectedly, when the customs decrease and the very car a place, namely, the shippard.
- 7. Since the credit has been highly taken, there is morbing irregular in millistrian of Cenva, credit amounting to Rs. 3,89,5517, before 14,10-84.7 (Emphasis supplied)
- 8. In view of above, I sold that the Appellant has rightly availed Cenvat credit of 100% of Additional Duty of Costons and demand of Cenvat credit of Rs. 17,30,1357, under Rule 14 of CCR, 2004, interest on this demand and behalty imposed, under Rule 15 of CCR, 2004 are required to he set aside.



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- 9. In view of above, i set astde the impugned order and attow the appeal.
- 9.1 अपीलकर्त्ती तृवारः दर्ज की गई अपील का निपदारः उपरोक्त सरीके से किया जाता है।
- 9.1 The appeal filed by the Appellant is disposed off as above.

= सद्धा(%) - / (√) ) - (िहुल आहे

प्रधान आयुक्त (अपीस्स)

িন্দ্ৰ **গাল** জ্যোগ্ৰহ (১০৮৬)

## By R.P.A.D.

Tu

MAS NBM from and Steel Trading. Pvt Ltd,

Plot No. 61, Ship breaking Yard,

i Meng.

<sup>i</sup> District Bhaynagar, i

। संघाती,

। ਐ. ਰਜਬੀਪਸ਼ਾ ਆਨ੍ਹਨਾ ਦੂਰੇ ਦੁਨੀਕ ਟ੍ਰੇਡਿੰਗ - ਪਾਰ੍ਵੇਟ ਮਿਲਿਟੋਫ਼,

ਸਲੀਹ ਤਾਂ 61, ਵਿੱਧ ਐਨਿੰਗ ਵਾਡੇ, *ਤਾਲੇ*ਵ ਵਿੱਕਰਾ ਅਨੁਵਾਰ੍ਹ

### पनि :-

- प्रधान भूक्ष्य आधुक्त, वरतु एव रोटा कर एवं कन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्रअनुमदाबाद को जानकारी हैत्.
- 2) आयुक्त, वस्तु एवं सेतः धर एवं केन्द्रीय उत्पाद शुक्क, आदक्तार आयुक्तालयः अध्वनगर को आदश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त. दस्तु एवं सेवा कर ५७ ३०६(२) ४८५(८, शुल्कः, आवनगर-2 मण्डल, आकामर आयुक्तपत्व, आवनगर जो १९वश्यक कर्मवाही हेत्।

कुंग आहे प्राइता।

