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



द्वितीय तल, जी एस 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

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइल संख्या/ Appeal / File No. V2/3/BVR/2019	मूल आदेश सं / O.I.O. No. 02/Supdt/CM/2018-19	दिनांक/ Date: 17/12/2018
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ख अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-236-2019

आदेश का दिनांक/ Date of Order:	21.10.2019	जारी करने की तारीख / Date of issue:	22.10.2019
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /
 Passed by Shri Gopi Nath, 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 सृजित: /
 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. Kiran Ship Breaking, Plot No. 82, Ship Breaking Yard, Alang, Distt- Bhavnagar, Gujarat.

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, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी 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) 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) 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 fee 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 For 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

- (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

- 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 होगा। /

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 :

- (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 कोपुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद 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 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 समायाविधि 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।
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 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, 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 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 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 ::

M/s Kiran Ship Breaking Company, Plot No. 82, Ship Breaking Yard, Alang, Post: Manar (Dist.: Bhavnagar) (hereinafter referred to as **"the appellant"**) have filed the present appeal against Order in Original no. 02/Supdt./CM/2018-19 dated 17.12.2018 (hereinafter referred to as the **"impugned order"**) passed by the Superintendent, Central Excise & GST Range Alang-I, Bhavnagar (hereinafter referred to as **"the 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 "JADE" vide Bill of Entry dated 25.2.2011, which was assessed provisionally on 25.2.2011 and after payment of duty on 25.2.2011, vessel was beached in the factory premises i.e plot of the Appellant on 25.02.2011. After completion of Customs formalities, 'Out of Charge' was given by the Customs Authority on 7.3.2011.

2.1 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 "JADE" amounting to Rs. 50,47,769/-. 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. 7,57,165/- in excess of 85% of CVD.

2.2 Show Cause Notice No. V/15-38/HQ/Dem/2011-12 dated 08.02.2012 was issued to the Appellant calling them to show cause as to why Cenvat credit of Rs. 7,57,165/- 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



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interest under Rule 14 *ibid* read with Section 11AB of the Act and proposing imposition of penalty under Rule 15(1) of CCR,2004.

2.3 The above Show Cause Notice was adjudicated vide the impugned order which disallowed Cenvat credit of Rs. 7,57,165/- and ordered for its recovery along with interest under Rule 14 of CCR, 2004. The impugned order also imposed penalty of Rs. 75,716/- under Rule 15(1) of CCR, 2004.

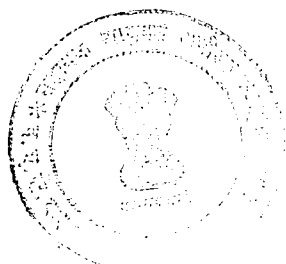
3. Being aggrieved with the impugned order, the Appellant has preferred appeal on various grounds, *inter alia*, as below :-

(i) The impugned order is not proper and legal. It has been passed by violating the principle of natural justice as well as failed to give due respect to the settled laws cited in the defense reply to the Show Cause Notice.

(ii) The vessel under reference was beached on 25.02.2011 at the valid registered premises under Central Excise law. The input in the present case is the vessel/ship i.e Cenvatable goods was received in the Appellant's factory premises on 25.02.2011.

(iii) The conditions laid down to avail CENVAT credit under Rule 4 of the Cenvat Credit Rules, 2004 clearly establishes that cenvat credit in respect of the input/subject vessel beached/received on 25.02.2011 in the registered factory premises may be taken immediately. The credit was availed on the duty paying documents. Since the input was received prior to the amendment of the Rule, i.e prior to 01.03.2011, cenvat credit cannot be denied to them.

(iv) The CBEC vide DO letter No. 334/3/2011-TRU dated 28.02.2011 has laid down that Rule 3 of the Rules has been amended to prescribe that Cenvat credit shall not be allowed in excess of 85% of the additional duty of customs paid on ship, boats etc. imported for breaking, the date on which the provisions came into force. As the duty was paid prior to 01.03.2011, they were entitled to take and avail the Cenvat credit. That the Department had delayed in granting out of customs charge, therefore



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the appellant cannot be prevented from availment of Cenvat credit till the out of Customs charge is given. They relied upon the below mentioned case law:

(a) M/s Shiv Ship Breaking Company- 2007 (218) E.L.T. 414 (Tri-Ahmd.)

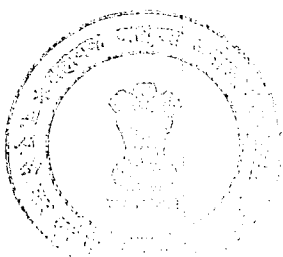
(v) As per the statutory provisions provided in the Cenvat Credit Rules, 2004, cenvat credit can be availed as soon as the input is received in the factory premises. That in the present case, the 'input' was whole old and used ship under reference imported for breaking up had been beached at the designated plot on 25.02.2011, therefore they have rightly availed the cenvat credit at the rate of 100% of CVD.

4. In Personal Hearing, Shri N.K. Maru and Shri U.H. Qureshi, Consultants appeared on behalf of the Appellant and reiterated the grounds of appeal and submitted additional submissions dated 24.09.2019 for consideration.

5. I find that the Appellant has complied with the provisions of Section 35F of the Act by depositing Rs. 56,790/- @7.5% of Rs. 7,57,165/- vide Challan No. 50003 dated 30.01.2019, 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.

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 25.2.2011 or otherwise.

7. On going through the records, I find that the Appellant imported vessel MV "JADE" vide Bill of Entry dated 25.2.2011, which was assessed provisionally on 25.2.2011 and after payment of duty on 25.2.2011, vessel was beached in the factory premises i.e plot of the Appellant on 25.02.2011. The vessel was given 'Out of Customs Charge' by the

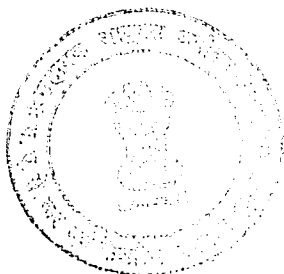


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Customs Authority on 7.3.2011. The Appellant availed Cenvat credit of Additional Duty of Customs of Rs. 50,47,769/- paid on the said vessel. The adjudicating authority disallowed Cenvat credit in excess of 85% of Additional Duty of Customs amounting to Rs. 7,57,165/- 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 the D.O letter No. 334/3/2011-TRU dated 28.02.2011 of the CBEC laid down that Rule 3 of the Rules has been amended to prescribe that Cenvat credit shall not be allowed in excess of 85% of the additional duty of customs paid on the ships, boats etc. imported for breaking; that cenvat credit @ 85% of CVD was not in existence at the time of availment of Cenvat credit by the Appellant; that after payment of Customs duty on 25.2.2011, the vessel was beached at their registered factory premises i.e plot on 25.02.2011 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; they relied upon case laws of Shiv Ship Breaking Company- 2007 (218) E.L.T. 414 (Tri-Ahmd) passed in the case of M/s. Rishi Ship Breakers.

7.1 I find that issue involved in the present case is to determine the 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 25.2.2011 or when 'Out of Customs Charge' was given on 7.3.2011. It is not disputed that the Bill of Entry dated 25.2.2011 filed by the Appellant was assessed provisionally on 25.2.2011 and returned to the Appellant for payment of Duty. After payment of duty on 25.2.2011, the vessel was beached in the ship breaking plot of the Appellant on 25.2.2011. 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:

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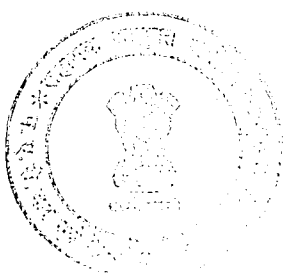
"RULE 4. Conditions for allowing CENVAT credit. — (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service or in the premises of the job worker, in case goods are sent directly 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, factory premises i.e plot of the Appellant registered under Central Excise Act. So, when the vessel is beached in the factory premises 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 25.2.2011 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 25.2.2011. 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 25.2.2011 i.e. date of beaching of the vessel in their factory premises i.e plot. Therefore, 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 "JADE" imported by the Appellant.

7.3 I also find that the 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 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 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

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beached in the factory premises i.e plot of the Appellant on 25.2.2011 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 25.2.2011. 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,

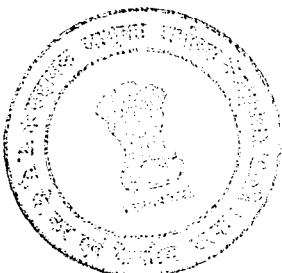
"6. We have carefully considered the submissions from both sides. The CVD paid on the ship is not in dispute. The CVD amount which was taken as credit was admittedly paid on 13-9-2004. No objection for beaching of the vessel has been granted by the Customs Officers on 15-9-2004. Under these circumstances, 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. 50,47,769/-. I, therefore, set aside demand of Cenvat credit of Rs. 7,57,165/- under Rule 14 of CCR, 2004, interest and penalty of Rs. 75,716/- imposed under Rule 15 (1) of CCR, 2004.

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



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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.

स्त्यापित

अ. अ. अय्यर
अधीक्षक (अपील्स)

(Gopi Nath)
Commissioner (Appeals)

R.P.A.D.

<p>To, M/s Kiran Ship Breaking Company, Plot No. 82, Ship Breaking Yard, Alang, Post: Manar (Dist.: Bhavanagar)</p>	<p>सेवा में, मे. किरण शिप ब्रेकिंग कंपनी, प्लॉट नं. -82, शिप ब्रेकिंग यार्ड, अलंग, पोस्ट: मनर (डि. भावनगर)</p>
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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) उप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मण्डल-II, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) अधीक्षक, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, रेनज-अलंग-I, भावनगर।
- 5) गार्ड फ़ाइल।

