



आयकर (अपील) का न्यायालय, केन्द्रीय प्रत्यक्ष कर विभाग, भारत सरकार, नई दिल्ली।
 INCOME TAX APPEALS TRIBUNAL, CENTRAL DIRECT TAXES, GOVT. OF INDIA,



दिल्ली का न्यायालय, 207/1, 207/2, 207/3, 207/4, 207/5, 207/6, 207/7, 207/8, 207/9, 207/10, 207/11, 207/12, 207/13, 207/14, 207/15, 207/16, 207/17, 207/18, 207/19, 207/20, 207/21, 207/22, 207/23, 207/24, 207/25, 207/26, 207/27, 207/28, 207/29, 207/30, 207/31, 207/32, 207/33, 207/34, 207/35, 207/36, 207/37, 207/38, 207/39, 207/40, 207/41, 207/42, 207/43, 207/44, 207/45, 207/46, 207/47, 207/48, 207/49, 207/50, 207/51, 207/52, 207/53, 207/54, 207/55, 207/56, 207/57, 207/58, 207/59, 207/60, 207/61, 207/62, 207/63, 207/64, 207/65, 207/66, 207/67, 207/68, 207/69, 207/70, 207/71, 207/72, 207/73, 207/74, 207/75, 207/76, 207/77, 207/78, 207/79, 207/80, 207/81, 207/82, 207/83, 207/84, 207/85, 207/86, 207/87, 207/88, 207/89, 207/90, 207/91, 207/92, 207/93, 207/94, 207/95, 207/96, 207/97, 207/98, 207/99, 207/100

नया बंधु विंग, नया बंधु रोड, दिल्ली-110002।

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ईमेल: appeals@tribunals.in

आयकर अधिनियम, 1961 के अन्तर्गत।

क. प्रारंभिक सूचना (आयकर अधिनियम, 1961 के अन्तर्गत) के अन्तर्गत प्रारंभिक सूचना नम्बर: 1/2018-19
 तारीख: 10.06.2018

ख. सूचना नम्बर: 1/2018-19
 तारीख: 10.06.2018

ग. सूचना नम्बर: 1/2018-19
 तारीख: 10.06.2018

आयकर अधिनियम, 1961 के अन्तर्गत।

BHV-EXCISE-004-APP-087-2018-19

आयकर अधिनियम, 1961 के अन्तर्गत।
 Date of Order: 10.06.2018
 आयकर अधिनियम, 1961 के अन्तर्गत।
 Date of Order: 10.06.2018

Forwarded by Shri P. A. Vrahas, Commissioner, CGST & Central Excise, Bangalore/Chikmagalur.

आयकर अधिनियम, 1961 के अन्तर्गत।
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 आयकर अधिनियम, 1961 के अन्तर्गत।

In accordance with Board's notification dated 10.06.2018, with effect from 10.06.2018, the jurisdiction of the Commissioner, CGST & Central Excise, Bangalore/Chikmagalur, has been expanded to include the jurisdiction of the Commissioner, Bangalore/Chikmagalur, in respect of appeals filed under Section 80 of Central Excise Act, 1944 as amended up to the Finance Act, 1994.

आयकर अधिनियम, 1961 के अन्तर्गत।
 आयकर अधिनियम, 1961 के अन्तर्गत।
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 आयकर अधिनियम, 1961 के अन्तर्गत।

1. M/s. Anand Manghar Shop Breakers Pvt. Ltd., Flat No. 03, Ship Recycling Ward, Mang. Post Manna, Eluvvaugala.

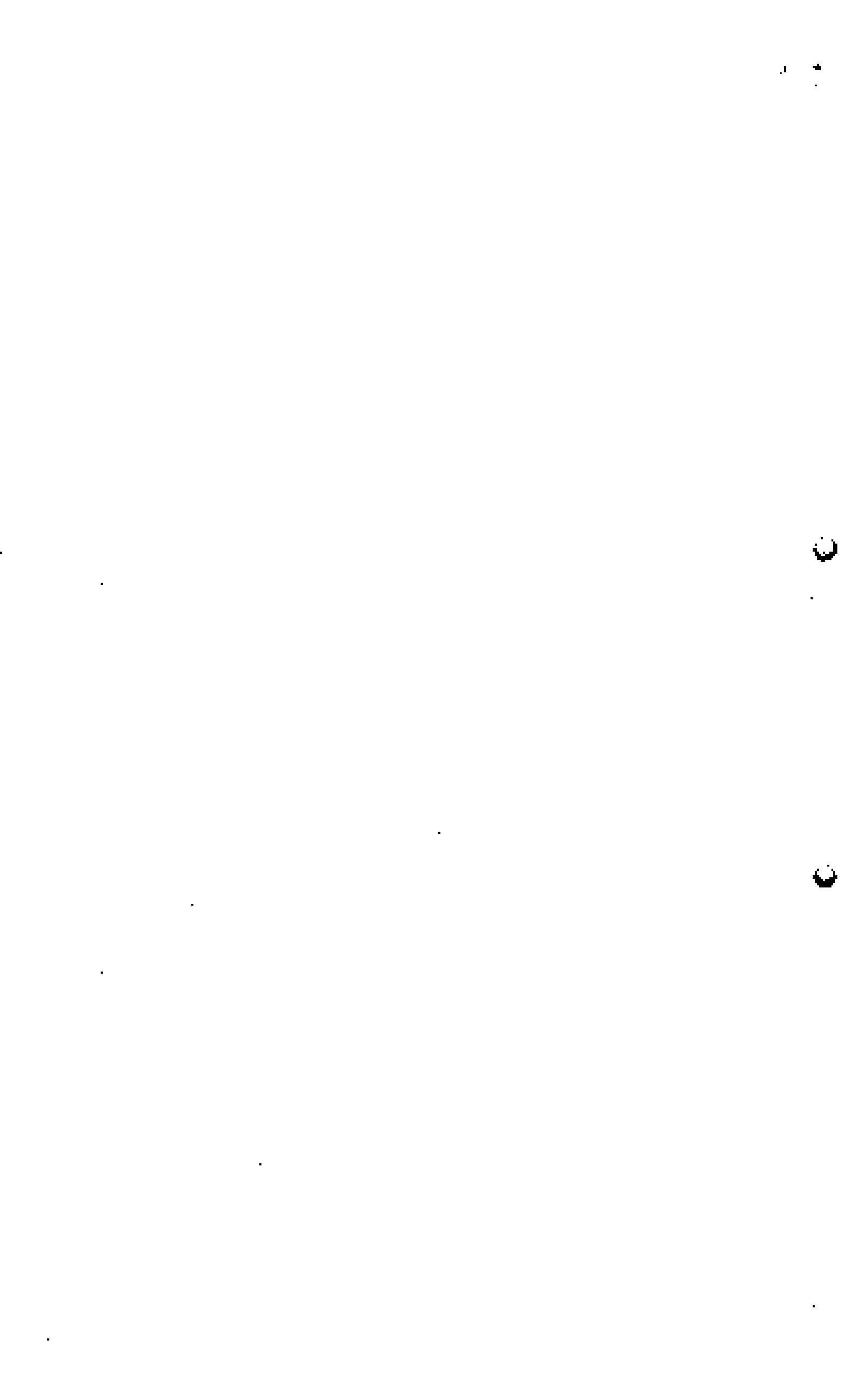
आयकर अधिनियम, 1961 के अन्तर्गत।
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The jurisdiction of the Commissioner, Excise & Ship Recycling Ward (1/1/18) of Bangalore/Chikmagalur has been expanded to include the jurisdiction of the Commissioner, Bangalore/Chikmagalur, in respect of appeals other than as mentioned in para 1 of order.



ORDER IN APPEAL:

The present appeal has been filed by M/s. Aam Vasthah Ship Breakers Pvt. Ltd., Do. No. 83, Ship Recycling Yard, Alang, Dist. Anandgar (hereinafter referred to as the appellant) against Order-in-Original No.05/2017-JR/30/2017 dated 17.03.2017 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, Central Excise, Rural Division, Bhavnagar, (hereinafter referred to as the adjudicating authority).

2.1 The facts of the case are that the appellant was engaged in the activity of manufacturing of excisable goods and materials obtained by breaking of ships, keels and other floating structures falling under the Chapter heading 8408 to the First Schedule of the Central Excise Tariff Act, 1944. It appeared that the appellant had received its goods namely Winding wire including superannule, Training hook for lifeboat, D Socket (manuckle kapar socket), D Socket chain pully to buckle, D Socket Wire clamo / Chain cuppa / Tamb seal burfar, D Winch mechanicals SWL 7.5 MT etc. from the old ships without payment of Central Excise duty by treating them as non excisable goods.

2.2 The above observations led to issuance of Show Cause Notice No.W15-33/Jam/6028/14-15 dated 18.01.2016, which was adjudicated by the lower authority vide impugned order, wherein, he confirmed Central Excise duty of Rs.12,73,095/- under Section 11(A) of the Central Excise Act, 1944 (hereinafter referred to as the Act) along with interest there on as per Section 11(A) of the Act; and imposed penalty of Rs.12,23,093/- under Section 11(C)(i)(a) of the Act.

3. Subsequently, in pursuance of Board's Memorandum No.26/2017-C Ex (NT) dated 17.03.2017 read with Board's Order No.05/2017-ST dated 16.11.2017, no. appeal space has been taken on file for passing Order-in-Appeal.

4. It is found that in case of instant space, the impugned order was received by the appellant on 20.03.2017 and date of filing of appeal is 20.03.2017. Hence, the space have been filed within the stipulated time period and there is no delay in filing the appeal. The condition of pre-deposit, also, is fulfilled.

5. Being aggrieved with the impugned order, the appellant, has preferred the present appeal containing materials that were regard to the goods viz. Winding wire including superannule, Training hook for lifeboat, D Socket (manuckle kapar socket), D Socket chain pully to buckle, D Socket Wire clamo / Chain cuppa / Tamb seal burfar, D Winch mechanicals SWL 7.5 MT etc., it is undisputed fact that they had correctly and legally treated the disburse goods under cover of bills in values as mentioned above as 'non excisable goods' as the same was out of purview of Section XV of the tariff read with Chapter Note 9 of the tariff. The said goods obtained from the ship are non excisable

as no process was carried out to obtain the dissolved goods but only taken out from the board of the ship and not covered as excisable goods in terms of Rule 2(d) and 2(f) of the Central Excise Tariff Act, 1985. This practice has already been settled by the Department and being followed since 1983 from which ship breaking activities were being undertaken at Ship Breaking Yard, Alang / Veerava, Dist: Bhavnagar. In Circular No.3455/87-CX dated 27.12.2013, it has been specifically clarified that the goods and materials recovered during the course of Ship Breaking are 'non-excisable goods' as there is no entry in the Central Excise Tariff Act, 1985. This circular is squarely applicable in the present case.

5. The personal hearing in the matter was held on 20.01.2018 and again on 14.02.2018. In response, the appellant was order dated 05.03.2018 requested to fix another date of personal hearing therefore, next date of personal hearing was fixed on 22.03.2018. Since no body from the appellant attended personal hearing on the given dates, therefore appellant as an appellant request letter dated 20.01.2018 next personal hearing opportunity was given on 05.04.2018 but nobody was turned up. Since enough opportunities were given to appellant for personal hearing, but they did not attend the same. Accordingly, take up this matter as per available record.

7. I have gone through the impugned order, appeal memorandum and written submissions made by the appellant. The issue to be decided in the present appeal is that the claim of the appellant to the effect that the goods viz. Winding wires including superconductive, Training hook for Diesel, D Socket bus socket, Copper socket, D Socket chain pully turnbuckle, D Socket / Wire clamp / Chain clasp / Turnbuckle number, D Which mechanicals (SWL 7.5 MT) etc. are of the 'non-excisable goods' as they come to out of process of Section 2X of the tariff and Chapter Note 9 of the tariff, or other fee.

8. I observe that the dispute regarding excisability or otherwise of the impugned goods viz. Winding wires including superconductive, Training hook for Diesel, D Socket turnbuckle, copper socket, D Socket chain pully turnbuckle, D Socket / Wire clamp / Chain clasp / Turnbuckle number, D Which mechanicals (SWL 7.5 MT) are emerging from ship breaking activity, cleared as 'non-excisable goods' by the appellant, in context of Chapter 2X of the schedule to the tariff. The overview of the statutory provisions governing the matter is of utmost importance. Section 2X of the first schedule to the tariff covers Base metals and articles of Base metals, i.e. chapters 72 to 82. Note 9 of first Chapter reads "9. In relation to the products of this heading, the process of obtaining goods and materials by breaking up of ships, boats and other floating structures shall amount to manufacture". Further classification heading "8505 00 00" is for "cassets and other floating air release for breaking up".

8. Circular No.3455/87-CX dated 28.12.87, is a clarificatory circular on subject "Repeal of Mysal used on non-excisable items removed from the ship in the process of ship breaking" wherein it may be 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, 1925 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, on the ship, except ship stores are classifiable under 8509 as an input taking part in the activity of ship breaking under Rule 57A of the Central Excise Rules, 1944.

10. In context to the above, the adjudicating authority has categorically held that the impugned goods removed from the ship which has come to being broken and hence they qualify for Chapter Note 5 of Section XV of schedule to the tariff. On the other way, I find that the appellants have stressed specifically the said process of obtaining goods and the fact that the impugned goods had not undergone any other processes prior removal thereof from the ships and their having been sold in their original form to promote the absence of manufacturing activity. In fact, once the products are taking under Section XV, the removal thereof would naturally fall within the criteria of 'manufactured goods' not of ship breaking and will attract duty. Hence, for the items classifiable under Chapters under Section XV, if emerging from breaking up of ship, it would be their classification which will be the deciding factor rather than the process of breaking up as misconstrued. In the instant case, the adjudicating authority has discussed the proper classifications of each of the impugned goods respectively to be falling under the Chapters taking under Section XV of the schedule to the tariff.

11. As regards the claim that since 1985 at the beginning of Ship Breaking Yards of Aangi/Sasiya, the ship breaking industry has been clearing the impugned goods as non-excisable goods and the regular audits have been conducted and satisfactory results have been filed by them without any objections. I find that it was from the budget of 1985 that the Ship Breaking activity was defined as an activity of manufacture by virtue of insertion of Note 7 to Section XV of the Schedule to the tariff as mentioned in the clarificatory circular dated 23.11.85. Further, it is also a fact that once the items were cleared as non-excisable and no duty was paid thereon, their clearance entries are not relevant in the statutory sense to-relieve as claimed. I also find that the appellants have nowhere shown or indicated any other classification/chapter readings in the clearance notes or even on the invoices of the impugned goods, cleared as non-excisable without payment of duty. Further, the case-law relied upon by the appellant, which has no relevance to the facts and circumstances of the present case and therefore ratio of said case laws are not squarely applicable in the present case.

12. Once it is overruled the confirmation of the above demand under Section 11A is upheld. Once liability of payment of Central Excise duty is confirmed, levy of interest automatically follows. I further observe that on an assessment is conducted to the extent of statutory provisions relating to debarring for duty facility. The wrong conclusion of an ordinary person, person x has, the assessee has deliberately committed

(Signature)

and thereby suppressing / mis stating the fact to the Department. Non-readiness in exercise of judgment. It has been held that ignorance of law is not an excuse. Further, even the existence of element of suppression, mis-statement etc. is found. The actus reus period is invariable and penal provisions are strict. Inevitable as held in the case of *M/s. Manohar Finance* [2019 (256) ELT 560 (Og)] . Therefore, the plea of non appeal is not acceptable. Hence, I am not persuaded by the arguments put forth by the appellant in this regard also. The refusal was rejected only during the course of audit, and hence imposition of penalty under Section 114C (1)(a) of the Central Excise Act, 1944 is justified. My above view also gets bolstered by the Commissioner (Appeals) Rajkot vide OIA No. DM/EXC/3000/APP/19/152/16/17 dated 20.10.2018. The adjudicating authority in his findings at para 3.1 to 3.12 of the impugned order, while confirming the demand of duty, interest and penalty, has also discussed the issue of classification of the impugned goods in detail and I am in agreement with the same.

13. In view of above reasons, the confirmation of the above demand alongwith the interest under Section 114A and the penalty under Section 114C(1)(a) of the Central Excise Act, 1944 appear logical.

14. In view of the above facts and circumstances, I uphold the entire demand of the impugned order No. 2040/HRSA/5VHR/2018-17 dated 17.01.2017 confirming the duty, interest and penalty on merits and reject the appeal filed by the appellant.

15. The appeal filed by the appellant stands dismissed on the above terms.



(P. A. Vasave)
 Commissioner (Appeals) /
 Commissioner
 GST & Central Excise,
 Kutch (Gardidhar)

T. No. W30084500/2017

Date: 10.05.2018

By S.P.A.D

To,
 M/s. Aman Manohar Equip Breakers (P) Ltd.,
 Plot No. 10, Ship Recycling Yard, Alang
 Dist. Bhavnagar.

Copy to:

The Principal Officer (Commissioner), GST & Central Excise, Ahmedabad
 The Dy. Asst. Commissioner, Central Excise, H.K. Dhevi, Bhavnagar.
 The Dy. Asst. Commissioner (Ops.) T. Q., Bhavnagar – for uploading on website
 (Gmail File)