্যাযুক্ত (अभिन्त) আ আজীবৰ পদার্ভণ বস্তু এই ধীৰা গত জীয় এলে।ও স্কৃত্য оботне сокружующей сереть Ангентичного в головки,

## व्यक्तिमा स्वयः जी राज्य है (१९५७) 🖰 🖰 राज्यः CST (श्रेष्टरण), ংশ্ ব'শি বিশ বৃহ → Kine Cor so simg Strad.

 $\underline{\operatorname{Localet}} \in \operatorname{Re}[\operatorname{Local}] \cap \operatorname{Model} 1$ THERE IN NO. 100 PERSON NO. 142 Пополітору в розвіт проділення до пополіторії в пополітор



र्वाकेरको ज<u>ाक हा थे. ५५०.</u> अ

A STATE OF THE STA

क्षप्रकार को ये श्रीकृत है।

ુ મુખ્ય કર્યો છે. 👙

7.17

Appeal y 10 e No.

VII/PII/Reservation

с (11) год с (20) раског јемк, к1./2016 (7

15,00,2017

आपित अगुरू जाला (Coder In Aggert No.)) Ŧ

## B\$W-ZY(US<u>+(M-/))P-(38-2018-19</u>

लख्य जा दिनाल हैं

पुर्व करने हो पराह 💯 Diabe obligatives

29.06.2018

17.05.2017 Dull of Class

Passes for Shei P. A. Yusuwa, Curtanisaisser. Citar & Control Enrive, Hutch[Fourthitham].

ংটিলুবলা বাঁহাল হেলেকেইললে (লেলে) ছিলাল ছেলে হছে উল্লাহ প্রায়াপ্ত বাই **র্টিটাল এটা**গ র महरम् रामाराजी, दिन के १५८५,८५६ के अन्य पर ही थीं है। या नशाये (आक्षेत्र) करीच पस्तु कर सेंग कर हरा  $b_{\mathrm{cons}}$  and  $a_{\mathrm{cons}}$  and  $b_{\mathrm{cons}}$  by  $a_{\mathrm{cons}}$  where  $b_{\mathrm{cons}}$  and  $b_{\mathrm{cons}}$  are  $b_{\mathrm{cons}}$ १९५८ की पा । एक के पोर्ट्सन दूर को बाद प्रयोगी के अन्दर्भ में आदेश आदिन जाता है **उद्दर्भ में** प्रयोग प्रतिकारी के इस है सिरावन किए कर है।

or pairs where a Board's bothes be the translation. Fig. 37] dailed 17.10.217 which has also find the Stype 17.87 and A=0 (c. 2017). Similar to become demonstrates. CGST & Council Backs. Knull/Personalitions, that pure appointed as Appelled. Anthorsty for the purpose of parsing profession respects of appeals also method declaration of all Council Escions. Acc, 1994 and September 35 to the Linearity 363 - 3554.

अपने जोतुन्तरो समुन्तर जेल्लुन्तरो के 1896मा स्थापन जोलुन्त, भेजनीय करें कि पृत्यि सैनानन कार्यका के पास्तरात कार्यकार में है। से बार प्रतिक कार्यकी पेस कार्य भेल आधिया में प्रतिकार के से 1845 - अस्ति की बाज्यक marintaged (Obs. 1880) के प्रतिकार के 498/honely front/Ping day executed Communiques of Control Repose & Generol Bay (Support Communique & Control Republicant Reposence).

अमेलिकर्त के प्रारंक्षण का नाम एक एक एक (Same 's Additions of the Appellants of Losphania) । 🖼 T 60/4 Atam Manchar Ship Browton Int. Sec., Plat No. 88, Ship Receding York, Aiang, Post Mauari, Zhavonngar,

না র জন্মান্ত্র । এটির জা আজি নিজ রিজির কলি । ও কুল । টিজেরী র মিমারা ক রক্ষা सर्वे अपने कर **स**्ता है है।

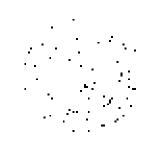
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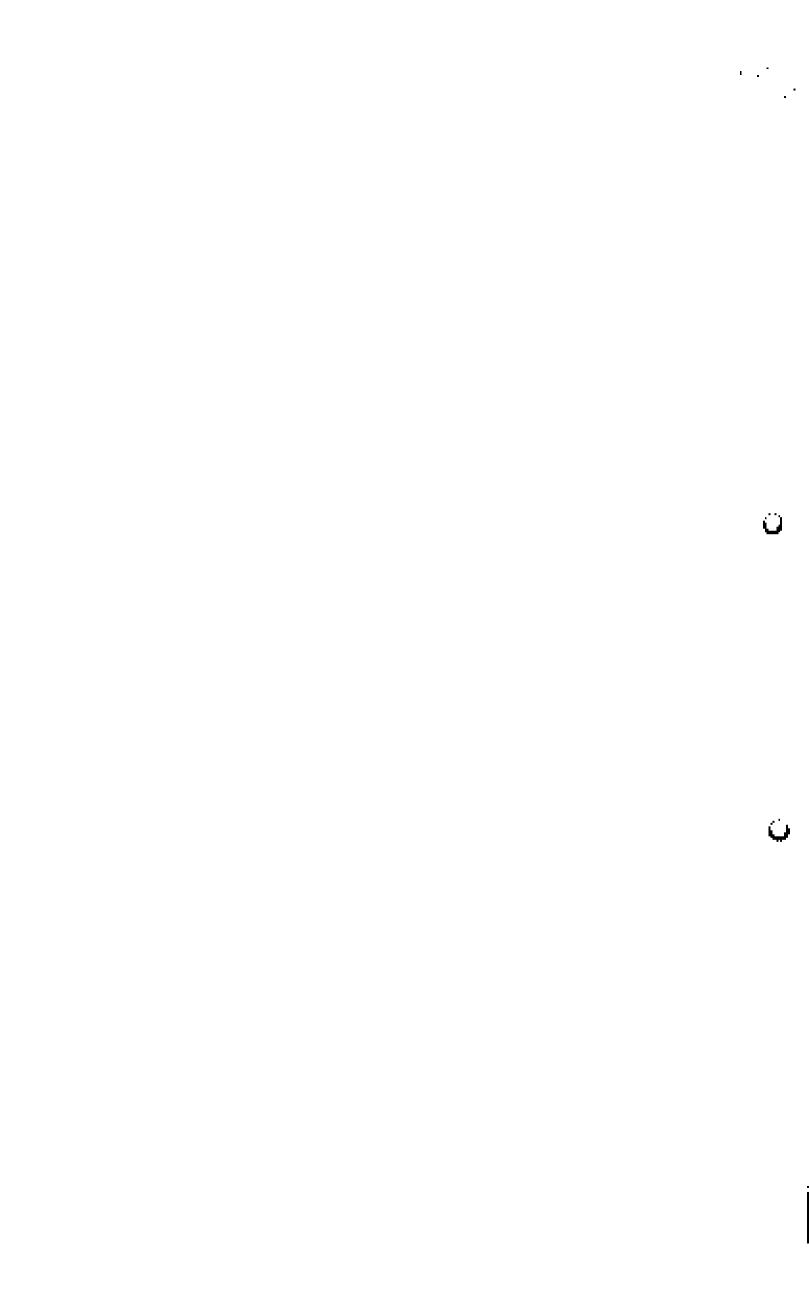
ਸ਼ੀਜ਼ ਬਹੁਤ ਬਹੁਤ ਸ਼ਹੂਰ ਪੂਰ ਪੂਰੇ 25 ਰਹਾ ਸੀਕੀ। 201<sup>9</sup>1939 ਕੇ ਮੌਕੇ ਸ਼ਹਿਰ ਐਚੀਕੇ ਤੁਸਾਰ ਪ੍ਰਸ਼ਾ ਜੰਗਰਾ ਪੂਰਤ ਜੋ ਪ੍ਰਸ਼ਾ 2868 ਦੇ ਕਰਮਾਨ ਦੇ ਜ਼ਿੰਦਰ ਸ਼ਹਿਰਤਾ 1854 ਕੀ ਬਹੁਤ ਉੱਤੇ ਕੈਚ ਸ਼ਹੂਰ ਸ਼ਿੰਦਰਤਾ ਵਿੱਚ ਸ਼ਹੂਰ ਦੇ ਜ਼ਿੰਦਰਤਾ ਜ਼ਿੰਦਰਤਾ ਦੇ ਸ਼ਹੂਰ ਸ਼ਹੂਰ ਸ਼ਹੂਰ ਸ਼ਹੂਰ ਸ਼ਹੂਰ ਤੋਂ ਦੇ ਸ਼ਹੂਰ ਦੇ ਸ਼ਹੂਰ ਸ਼ਹ M.

त्रबंबर । सून्यपद्ध सं सहयोगा हमा राज्य शैंगा १००० के ब्रोन २००५ पा पुरुष र व शैनपर अधिनीय इतासायका में हो किश्व पांत, १८६ काँक में 7, १९६ के 1 के महिलाई में किया प्रतिकृति है। अ अञ्चलके Limit of Courant Backs के एक एक किया शृहणात्र किया है। इ.स. १९७० १७०० किया वाल्योगात्र के किया के प्रतिकृतिक के स्टूबर १९००

हम्बारत गरिस्टर (१६) से ५ ० ० वर्ष असीत के उसका १४ अभी अनाई होता शतक, गरीत १ ५६ ४४० वर्ष विकास स्रोतीत क्यारवेदिकता (मिल्ट्र) के शंगकत १९१० भीतिक । द्वितीय सम, क्यूनाचे **पर्यो (मार्ग** अस्मित्रकार १४०० शर्म की कार्य नाहिए ए 11 .

Is the distributional Ferrit at a shore, it cases with a Tay Appellate follows in 1971-11 at  $2^{n}$  That, Business is Bases,  $(a_{n}, b_{n}, b_{n})$  and the remarks of appeals other fixed as methanic in page. Solve





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सीना शुरूर प्राप्ति अनार शुरूर र १८ के असे होंगे अधिक १९ (१४%) के बीचे अधिकों के सानार से फिटीब करोड़ कर है और के हैं है

कर्त्योग क्याद् २ क्रम 👉 ने संबर्ध के और भूत जाता किए गए शुक्रक वा जिल्हा शक्ति 🏗

राग ११ है के दिन्दीत क

प्रेंग्यर कमा जो भी मध्य गाय: ३५३

on street of expension of हुए हाए। उन्हें के प्रतान पूर्व हाइस के अपने के प्रतान के प्रतान है कि प्रतान है

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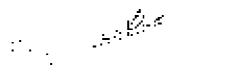
ੇ ਸ਼ਾਹਰ ਦਾ ਸ਼ਹੁਤ ਜਿਸਨੇ ਸ਼ਬੂਰ ਹੈ। ਕਰ ਦੀ ਜਿਹੀ, ਜਾਣ ਪੜ੍ਹ ਸਾਡ ਜੀ ਇੱਕ ਇੱਕ ਹੈ ਪਟਾਜ਼ਗ ਦਾ ਹੈ ਸਰੂ ਪਣ ਉਸੇ ਸਤੂੰ ਵੇਪਦੀਆਂ ਤਰਜ਼ਾਹ ਸੁਰੱਖ ਦੇ ਉਦੋਂ (ਵੇਪਦ) ਦਾ ਸ਼ਹਿਰੀ ਦੇ ਸ਼ਹਿਰ ਦਾ ਸਹੀ, ਜਿਵਜਾ ਹਾਲ੍ਹ ਦੀ ਸ਼ੀਟ ਦੀ ਜਿੰਦੀ ਦਾ ਨਾਵੀ ਹੈ। ਜਿਸਦੇ ਸ਼ਹਿਰੀ ਦੇ ਸਿੰਗੀਆਂ ਦੀ ਸ਼ਹੂਰ ਦੇ ਸ਼ਹਿਰੀ ਸ਼ਹੂਰ ਦੇ ਦਾ ਦਹੀ ਹੈ। ਜਿਸਦੇ ਸ਼ਹੂਰ ਦਾ ਇਸ ਸ਼ਹੂਰ ਦਾ ਸ਼ਹੂਰੀਆਂ ਜਿੰਦੀਆਂ of on ਸੁਤਕਾਰ ਦੇ mathemal listed in the manufacture of the goods which are experied to any country of tendent obligate listed

- ेंग, जिल्हें पहुंचल शास्त्र का आपना किया मिल सन्द्रा के लेखा, किया का अनुसार कर बाद कियाँ किया का कि के मिल्लिस को बुंदरी करहाँ में कर कर कर किया शास कर के अनुसार में किया के hour asymptom of divers
- 94 मिनिश्वन उनाए के उपाएन के के देवाला के लिए जो इव्हें क्रिकेट देव आधीनवन एवं इनके विभिन्न प्रेस्ट के किए हैं के 1950 के 195
- IV TEACH THESE AT A ARTHUR AND MENT HAND WITH THE ARTHUR STREET STREET STREET STREET AND ARTHUR DESCRIPTION OF A REPORT OF A STREET AND ARTHUR STREET AND ARTHUR STREET AND ARTHUR STREET AND ARTHUR STREET ARE ARREST AS A STREET AS A ST
- ੱਲੀ ਜ਼ਰੂਰੰਗਪ ਤਾਂ ਹੋਵਾਂ ਕੇ ਹਰਮ ਵਿੱਚ ਸੰਗਿਊਸ਼ ਜਿਸ ਨਿਹਾ ਹਰਮ ਤੋਂ ਰਾਵੂ ਸਹਿ ਸੰਗਿਆ ਹੈ ਜਾਉਂਗ। ਜੈਨੀ ਗੁਲਾਬ ਗਿਆ ਹਨ ਜਾਂਦਾ ਸਾਬੰਧ ਕਿ ਤੁਸਲੇ ਨਾਲ ਹੈ ਜੋਏ ਸਥਿੰ 2007 ਸਿੰਗਿਆ ਨਿੰਸੀ ਜਿਸ ਜੀ ਕਿ ਜੀ ਸਿੰਗਿਆ ਹੈ। ਵਿੱਚ ਸਾਰਕਾਰ ਸਿੰਘ ਸੰਗਿਊਸ਼ ਸਾਬੰਧ ਸਿੰਗਿਆ ਹੈ। ਜਿਸ ਸਾਬੰਧ ਸੰਗਿਊਸ਼ ਸਿੰਗਿਆ ਹੈ। The remails and by its sign of the remains only in the street 2007 ਸਿੰਗਿਆ ਸੰਗਿਆ ਸਾਬੰਧ ਸਿੰਗਿਆ। ਸਿੰਗਿਆ ਸਿੰਗਿਆ ਹੈ।
- ি সভিত্য আইং না কৰিবলৈ এই কি আন চাৰে চুলা নাই কি আনাইং কি জিল সকল কা স্থান কা প্ৰক্ৰিয়া কি কি আৰু কি বাংলাক কি জুলাকে কুলাকে কি জুলাকে কুলাকে কি কি আৰু কি কি কুলাকে কি জুলাকে কি কুলাকে কি কি আৰু কি কুলাকে কি কুলাকে কি কুলাকে কি কুলাকে কি কুলাকে কি কুলাকে কুলাকে কি কি কুলাকে কি কুলাকে কি কি কুলাকে কি কুলাকে কি কুলাকে কুলাকে কি কুলাক
- (i) some shifter continued at we collected at 10.75 per surpress we always the action of continued and we will shall be in the continued and shall be action of a source two collected and the continued and the expeditations at the collected and the object of the collected and the collected and the object of the collected and t
- (F) । শূমি, পুনৰ, সমগ্ৰহ চেলা, শূম্য গুনু আছেন, স্থানিকৰ সৰাব্যাইনমান (কৰি বিশ্বি) জিবসাচনা, 1987 টা ইনিয়া চক্ষ এখন কেন্দ্ৰিয়া সম্পৰ্ক না সমিশ্বি সকলে এক বিশ্বি কি এই যৌগালে কেন্দ্ৰিক দিনা আনা ইয়াই বা colonies a regime of the Particles of the Conservation (Record Section 1982).
- (4) उन्तर अधीनीय अभिन्न है को अपने के छै। करने हैं पहिले का प्रतिकृत अपि नदीनतृत पाडकात के किए भूगलाठी दिसलीय देवलाइट १५०० (1987 कुन के की पाट मार्ग्य हैं) । ? The time of service of within and the off receiver of reading to this alphabet uppend to the Eigher 30 selfche 20 figure किए जा कि 200 कि 200 where the fundamental violation of violation appears.

## :: ORDER IN APPEAL ::

The present appeal has born filed by M/s AtamMarions: Ship Breakers Pvt. Ltd., Plot No. 68, Ship Recyclin, Yard. Along, Dist.: Bhavragar (hotespatter lefened to self-the appealant) against Omortin-Onglinal No.45/AC/RURAL/BVR/RR/2016 by dated 13.02.2017 (hotestrafter referred to as the title impugned order) passociary the Assistant Commissioner, Central Enriso Rura Russon, Bhavragar frereins/centeferred to as the 1the adjoc certing exillipitly\*).

- 2.1 The facts of the case are that the appellant is availing the harett of Donyat Credit as per the Centari Credit Ruins, 2004, During the Audit by the Centari Excise officers for the period from January 2014 to Tecomper 2014 noticed that appellant has availed Convet Covin amounting to Fig. 9.20,8817 of the Additional duty of Customs Lei Coustervalling Duty (CVD) on the basis of dominant (le. worksheet) presared by the appalant than solves. Further, so envesaged under Natification Na-03/2011- CE(NT) dailed 01.00.2011, convat tirada shall not be ellowed in excess of 45% or the soldflike all duty of declaris paid under sub-society (1) of Sochen 3 of the Customs Tandi Act, on ships, beats and other floating significating in presking on felling. Under tertify termine, 59980000 of the first Spriscule to the Customs Cariff Art. The Hoard vide Circular No. 37/96. Cus., dated 03.07.4936 monthmet that toet and officertained in the vessels machinery and angines can only be repaided as forming integral pair of the vesce, and to be classificate along with the vescel under heading no. 89,09, The ramai ing feel and oil has to be classified separately in their own appropriate heading. the Audit party noticed that the appallant had already evalled CENVAT credit of Re-4.68,02,667A Tel. 65% of the CVD as per restriction contained vide Notification No. 392011-CE(N I) dated 00.03.2011 in respect of All or Entry No. SRY/1952014-15 dated. 13.08.201/ filed on the import of vessel camely "THERESA ANTARCTIC" and the same was reflected in the Convet credit account in their monthly return for the month; of August, 2014. The appellant availed Cerva, medit of Re. 9/20/381/- of GVD on the basis of worksheet prepared by them in research of above referred Bill of Entry and had taken credit of duty assessed considering banker (fuel & oil) contained in the Han $\otimes$ engine room as classified under Chapter 27 (00000). The Appellant has laken such. credit, knopping relations upon the High: Court judgment (2012;11) TMI 552- Ordarat High. Court (2013) (288) ELT347(Ct)[J-CH- (Ct)storns Gold Control Reference No. 14 of 2004). called 05.07.2012 in the case of M/s Priyo Bolding (P: LM whorein the cunkers) containing oil were to be besued so part of the vessels imponitions and were dissellable. under Heading No. 89 09 at the schoolie to Sie Customs Tariff Art, 1975.
- 7.2 The elastic nascriations (ed. 5 satisfied Slaw Cause Notice No.V.CH/19.47/Audit (RAdditional Commissioner 026/15-46 (Initial 26.01.2016, which was adjudicated by the tower authority vice impugned order, wherein, to confinited



domains of Central Excise duty of R3.3,20,881/- Under Section 11A(4) of the Central Excise Act. 1914 (nersicalize referred to as the Act plangwith interest under section 14AA of the Act end Imposed penalty of R3.9,20,38 to under Section 14AC of the Act read with Rafe 15(2) of the Central Credit Rules,2004

- 3. Being aggrieved with the impugned order, the appellant has preferred the present epical contenting inter-ella that the impugned order is not proper and legal one the same has been passed by ignoring the provisions of Rule 3(1)(c) of the Cenvat Credit Rules, 2004 read with the settled base lows.
- S.1 It is saimilled (ad that the dispute under reference that been taken place on agonint of PAR No. A rest-lited NV 9086629014-15 idated 12.0% 2016. In this April, it was primed our that your Appellant lead wrongly evailed Cenval Credit of Rs. 9.20.8914-on the basis of Improper Cenvalable documents by contravening the provisions of Rule 9(1)(c) of the Cenval Credit Rules, 2004. The Rule 9 of Cenval Credit Rules, 2004 provides the livate documents Appellifs and Roturds; for awaiting Convat Credit Rules, provided under the provisions of Rule 3 read with Rule 4 of the Cenval Credit Rules. The provisions of Rule 3 read with Rule 4 of the Cenval Credit Rules. The provisions of Rule 9(1)(c) provided for light Convatable documents which reach as; "a high of entry; or".
- The Appoint had made the recurred CHNVAT DECLARATION in guististics of Rule 3 of the Cerval Credit Rules, 2004 in respect of the goods povered upper tariff Itam 8508 00 00 of the First Schadule to the Capatome Tariff Act. Accordingly systles the Ceroal Credit or the "foil input" as defined under Bule 2(k) of the Cervat Choff Rules, 2004. In the present case, the ship MT Therese Anteretic has been classified under CET as 86080000. For belief understanding recredited the provisions of cistivitie Rule 3(1)(k)) or the Cervar Grout Rules, 2004 as under-
  - "the additional duty leviable under Section 3 of the Customs Tariff Act equivalent to the duty of excise specifica under clause (i), [ii], (iii), [iv], (v), (vii) and (via) provided that CFNVAT credit shall not be allowed in excess of eighty five per cent of the additional duty of customs paid under subsection (1) of Section 3 of the Customs Tariff Act, on ships, books and other floating attructures for breaking up falling under terrifitien 8008 00 00 of the First Schedule to the Customs Tariff Act".
- 3,3 Subsequent to the above factor, position, Appellant has noticed the judget refoldated 05,07 2012 passed by the Her big High Count of Africa above in the case of M/s. Priya Hellling (P) High viGC Provention, reperted in 2010 (288) ELT 347 (Guj) wherein it was held that:

Tribunal's finding based on the Book littled 'Ship Design and Construction' that Fuel and oil contained in the engine department tanks is always associated. and connected with the machinery and engine of the chip which firm and integral part of the vessel and hence would be classifiable under Heading No. 89,08 (b)(). uphold". The department has not filed any Appea, against the said judgment dated 35.07.2012. The department is assessing such duty of quatons in respect of quantity of First Oas, Lube. Olis containing in inside in the engine room) under the tariff. lient 8909 00 00 of the First Schedule to the Greaterne Tarilf Act. Therefore, you Appellant had re-worked out the duty of quaterns of the said bills by considering the same under the said Tariff items No. 69 05 of the Ogstome Teath Act read with the Gentral Excise Tablif Act, 1985. The re working out the customs duty on the east olds. has not effected the total customs only of  $3 ext{s}, 7,08,73,9407$  poid vine challen dated. 14.03.2014. The eligibility of Convat Crock in view of the self-order dated (6.17.2012) passed by the Hoo'ble High Court of Guj. Ahmedabad has been writted mit by considering the logal position that no such duty was levied on such bunkers under the Chapter No. 27 of the Customs Tariff Act, 1 Why but was required to be bejony. classifying said outlikers under Tatiff (len) 88.08 of the Customs Tariff /km, 1975. The easi worksheet was nothing but "part and partial of the Bill of Eighy". The department had not denieu that the amount of Cerwal Credit under dispute had not been paid on. the buckers lying inside in the endine room. Further too, your Appellant needingly. declared for aveiling the Cerwal Credit facility in respect of the goods falling under-Chapter Heading Na. 88/08. The bunkers (singline de the engine room has clearly classified under Chapter Fleading No. 2008) of the Customs, (criff Act road with the Central Excise Tariff Add, 1935. Your Appellant itself not wrongly availed the Carosti. Goodit, but availablin accordance with the provisions of Bule 2(k), 3 and  $3(0)(\epsilon)$  of the Cerwa, Credit Rules, 2004. Therefore, the impugned order is not proper and legal. The [gaine under reference is raised on the basis of the records, returns maintained/lifed by: your Appellant from time to time. All audi, particulars were recorded in the respective. register of the business carried out by your Appellant. Therefore, your Appellant was not at all lable for penal action under Rule 19(2) of the Centret Credit Rollog, 2004 road with l the providing of Section 11AC of the Central Excise Art, 1944 also SCN issued is linter <u>barred</u>.

- 3.4 . The appellant relied upon the bit resignation is was:
- (a) Magnegos Stale Ltd. Vs UDI-192 BLT 32(Born, FC, BB), 2008 (220)FLT 491 (SQ).
- (b) Kersta State Financia Corp.Vs CCE (1993(34)EL1.
- (c) Indian Oil Corp. Ltd. Vs. CCE- 2008(200) HL7 500.
- (n) BCH: Block): \_in\_vs CCA Faridabad-1-2015(344) =F\_4L6 (Tri.Chan)-
- (e) CCE Vs CMS Computors-2005(1782) H. (120 (SC-5 Meinheit Bonon).
- (§ S.Kumai Eto, Vato)~(2007)211ELT 124(CHSTAT).
- The personal hearing in the matter was fixed on 07 02,2018. Since, the appallant.



vide lotter dated 05 (W 2018) requested to terranolities date of personal hearing theratore, next date of personal hearing was fixed on 12.20.2019 and 22.00.2018. But no body from the appellant side elsended personal hearing on the given dates. Therefore again as per appellant reduced letter dated 20.00.2018, further ipersonal hearing apportunity was given on 30.04.2018 but habody from the appellant side was furned up. Since arough opportunities were given to appellant for personal hearing, but they did not always the appellant accordingly (take up this perforance page appears).

- 5. Subsequently, in pursuance of Reard's Notfficetion No 202017-10 Ex (No) rated 17.19.2017 year with Board's Order No.05/2017 ST dated 16.11.2017. The instant appeal has been taken on hand for passing Order-in-Appeal.
- 8. If and that in case of Fraterit appeal, the Impugned order was received by the appealant on 15.02.2017 and date of filing of appeal is 02.04.2017. Hence, the appeal pavolibean black within the affordated time ported and there is no delay in filing the appeal. The Appellantialso paid Ret 69,0707 (7.5% of duty demand) vide Challan Not 141 dated 20.03.2017, honce condition of pre-depositions stand fulfilled.
- 7. If have gone circuigh the impugged order, appeal memorandism and written submissions made by the appealant. The limited issue to be decided in the present appeal is whether Convet Christ of Rs. 9,20 8864 aveiled by the appealant is surroot or attenues soft Whether Interest thereon and penalty impossed wide impreprior order is correct or offerwise?
- The Appolant has a roady availed 10 NVAT Credit at Hs. 4,58,02,367/- j.e. 85%. of the CVB as partrastiction contained vide Notification No. 3/2011 CE(NT) dated 01.03.2010 in respect of the Bills of Erroy No. 387/33/42014-19 dated 13 58 2014 fleet. an the import of vissel namely. THERESA At TARCTICS and the same was rejected in the CENMAT credit account in their monthly return for the month of August, 2014. However, in addition to above, the Noticed also evalled Convet Craft; of Ry (1,20,981/4) of CMD on the basis of a worksheet prepared by them in respect of above referred Bill. of Energy I find from the sold workshop, propared by the sold Appellant that they hap taken practitiof duty assessed considering Lunker (fixel & cift contained in the Tanks) engine room as classified under Ch 27 under their respective sub-heading 271000000. The said Appellam has taken such emdit, keeping relience upon the judgment [2015] (6.1) CML  $692 \pm Gajarat$  High Court  $\pm 2010$  (294)  $\pm 311$  <math>947 (36gj)  $\pm 335$  Costoms Galati Commit Reference, No. 14 of 2004) dated 09/07/2002 pronounced by the Han ble High-Court of Gujershiet Ahmerlated in the case or M/s. Frrya Holding (P) Ltd vorsus. Commissioner of Customa, Fraventive, Jamnagar, wherein the burvers containing of were to be frested as part of the wason's machinery and word elasaticate under Heading No. 89,09 of the Schedule to the Customs Parid Act, 1970...

- Jakan

In the grasoff case, as get Rule 9(1)/g; of the Cenvat Credit Rules, 2004, that appallant can take Cernal Credition a Rit of Erroy or on Milinating documenter-

. :

- (d) is certificate issued by an appraisar of quatoms in respect of goods imported through a Foreign Post Office; on
- (e) a distance redemping payment of somion tax by the person liable to pay service tax under sub-pauses  $(\widehat{n})$ ,  $(\widehat{v})$ ,  $(\widehat{v})$  and  $(\widehat{v})$  in dauge  $(\widehat{d})$  of sub-rule  $(\widehat{l})$  of rule  $(\widehat{d})$  of the Service Tax Roles, 1994; or
- (t) an invalce, a bit or challen leaded by  $\epsilon$  provider of input service on an after the  $\epsilon$  (th)day of September, 2004; or
- (g)6)) 1760'09, bill or challan issued by an input service distributer under rule 4A at the Service Tex Rulee, 1991.

Provided that the crash of auditional duty of customs, exted under sub-section (5) of section is of the Costoma Tertit Act, 1975 (\$1 of 1975) shall not be allowed if the invoice. or the supplismentary involce, as the case may be, bears an indication to the effect than no credit of the ealp additional duty shall be admissible:

in too instant case, I thid that the Appelant has taken CENVAT crock on the worksheet prepared on the basis of Bit of Entry No. 86Y/137/2014-45 (lated). 13.08.2014 fliet on Import of the vessel namely "THERESA ANTARCTIC". However, still the terms of Rule 9(1) if the CHMMAT Greatification, 2004, a worksheet prepared by the  $^{\circ}$ Notices is not an admissible document for availing CENVAT Credit. Moreover, the provise to Section 149 is the Gustoms Act, 1962 states he accomment at a bill of entry. or subpling Mill of bill of export shall be so actionized to be einer decisiter the imported. pace's have been cleared for home consumption except on the basis of documentary. evidence will chiwas in existence et tille time the godds were bleered. In the instant case i the essessed bill of entry has to be the proper document, not a calculation shoot. prepared by the Notices. Titerefore, it hold that the appellant has wrongly availed. CENVAL Credit of Rs. 5,20,8914 and in ferms of Rule 5 of the CENVAT Credit Rules : 2004 the contention of the Appellant life not maintelinable as they cannot exact that Carysa Credit on the basis of calculation sheet propured by them which is not a WARC. coaunteaL

Now copping to the Second correction of Appellant whereby they has taken such. 13. credit, keeping reliance upon the judgment [2012 (11) TMI 532-6ajarat High Court  $\sim$  $2013~(202)~\mathrm{ELT}~347~(Ge).) + \mathrm{CB-Customs}~(50th~Control-Reference No. 14-01-2004).$ dated \$5.37.2812 pronounced by the Manible High Court of Gujarat of Ahmacapad in the case of MA. Priya Holding (P) Lie versus Commissioner of Custons, Prevention. Jernnagar, wherein the bunkers containing oil were to be treated as part of the vessel's. machinery and ware describable under Heading No. 82.03 of the Schedula to the Quelons, rand Act, 1875. They opposed worksheet and they had taken credit of duly assassed densitiering bunker (fuel & oil) contained in the Tarks angine room 88 place/fled under GI: 27 under their respective sub-heading 27:100000. I find that said judgment of Horista High Court of Colerat pronounced (a) 05.07.2012 and Elli of Entry No. 8547/37/2014-15 cated 13:08:2014 find on the imput of virsol namely THERESA. 

Ради **3** ж 1 б

ANTARC SICT stor large of above two years of said judgment. The Appellant to Para 9 of their Appeal Momorandum stated that after Issuance of the sold judgment pater. 05 07.2012, the department has started to classify such hunter under Ot acter Heading No. 98 09 instead of under Chapter 27 on which Appetentions used buty. Therefore, on antsigno inditthe Appellant is not eligible to take Convot Cronit on work shoet gregared by them. Moreover, the Appollant stroady availed 65% or the Convet Credit of CVD as per rostriction contained with Net Section No. 3/2011-CE9NT; dated 01.00.2011 in respect of the said Bills of Entry. It also find that as per the said High Court Juggment, styling occariment tanks (burlions) containing of were to be heated as part of the vesse is machinery and were classifying under Hooding No. RRUM of the Schedule to the Customs Taiff Act, 1945 and no repertie only is leviable thereon. However other tanks: containing fuel and oil old not form part of the LDT of the vision and bot to be gravined. under the ricket heading and duty had to be charged appointingly. If supeliast has found that Bill of Entry was assessed under wrong passification, they were required to sake objection at the time of assessment  $\beta$  it, in spire of soing the same, the Appellar , has property worksheet at their own without getting amended by the Customs and had availed Convet Credit of CM3 on suct and or described (major Chapter 27100000) Further, I find that Porthie High Court vice above mentioned order dated 25.07.2072As the decided the issue of description of engine main curver under Chapter Heating  $\,$ No. 88.00 and not the issue of Convet Creek Considering this fact, I (aid that Cenvet Credit is eligible on fuel stid oil subject to assessed under heading no. 49.09 only as por the sale Honfald High Court order. Remaining part of high end off which he not frealed separt of the vessel and assessed under submeading 27100000, the Geneat Credit is not admissible on it.

The salt Appellant in their defence also contested that demand was issued to them as the basis of Audit report dated 32,05.2015 and Range Supermondant was awara that ration filled by them was duly self assessed and perfailing for the month of December 2014, whereas the SCN was issued on 29.01.2013. In view of this factual position SGN was time barred. I find that Appellant availed 45% Convat Gradit of GVD. in the month of August 2014 on Edit of Entry No. 3BY/157/2014-15 dated 13.08.2014. filed on the impart of vessal namely "TLERESA ANTARCTIC". Cense: Credit of Re-8,20,881/- taken by the Appellant on the basis of work sheet prepared by themselves in the mouth of December,2014. This (actionne Into notice to department after source) or documents by the audit party. It ence, extended period of five years is conacity invoked. by the lower adjudicating authority under the profession Section 14A (4) of the Contral Exclass Act 1944, to recover the predictively availed. I find that the referest at appropriate rate on the amount so recoverable also liable to be recovered from the Appellant under the provisions of Socian TIAA of the Central Excise Act, 1944 mad with Rule 14 of the Central Create Builds 2004. I also find that penal action under the provisions of Section 11AC of the Constal Excise Act, 1944 Feed with Rules 15 of the

Central Creat Rules, 2004 has been correctly taken by the lower adjudicating authority.

- I have also corefully gone through all the case laws rated by the Appellant and 12. and that none of them are applicable in the present as horse of the care), ewaideal will . wrong availment of CENVAT Gredi, of filer lying to the engine room. Therefore, I dainy All the contention indea by the Appellant.
- 1.1 Stie to above reasons, the continuation of the above domain, alongwith the interest under Soction 11AA and the penalty under Section 11AC of the Control Habise Abl, 1944 apusar legical
- 14. In view of the above facts and circumstances, I uplicibly the entire domain. of the maugried order No.45/AC/RURAD/DVR/RR/2016/47 6afe(1 13.02.2017) confirming the duty linterest and penalty on many, and reject the appeal filed by the appellant.
- 48. The appeal filed by the supplication and approach of this paye terms.

 $g_{\rm tot}$  (specifically

(P. A. Yasave) Commissioner (Apacais) / Commassister: GGST &Central Excise, Kultch (Genehatinach).

Date: 15.33.2018

F. No. V.2/75/3VF/2017

<u>⊇v B,⊇</u> A.D.

Ta, Mis. Atam Manol at Ship Breakers (P) Ltd., Plat No. 63, Ship Recycling Yard, Alang, I Dist.: Bhavnagar.

## Copy to:

- 1). The Principal Chief Commissioner, 03681 @Central Excise. Almiedabad.
- ই) The Dy Mast. Commissioner, Certra Hyraso, Ruta Division, Brisvillagar.  $g_{\rm c}^2$  The Dy. / Aset. Commissioner (Sys.), H.O., shaving at  $\sim$  for unleading on Webstlet . ஆச்சோர் File.