O/O THE COMMISSIONER (APPEALS), CENTRAL [illegible]

[illegible] Floor, GST Bhawan

[illegible] Circle, Race Course Ring Road,

[illegible] 360 001

Tele Fax No. [illegible] 2477952/2441142

Email: [illegible]@gmail.com

[illegible]

[illegible]			
क	Appeal / File No. [illegible]	O.I.O. No. [illegible]	Date [illegible]

ख [illegible] (Order-In-Appeal No.):

BHV-EXCUS-000-APP-144-TO-145-2018-19

[illegible] Date of Order:	20.06.2018	[illegible] Date of issue:	26.06.2018

Passed by Shri P. A. Vasave, Commissioner, CGST & Central Excise, Kutch(Gandhidham)

[illegible]

In pursuance to [illegible] dated [illegible] read with Board's Order No. [illegible], Shri P. A. Vasave, Commissioner, CGST & Central Excise, Kutch(Gandhidham), has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग [illegible]

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham / Bhavnagar :

घ [illegible] Name & Address of the Appellants & Respondent :-

1. M/s [illegible] Enterprise, Plot No. 01, Ship Breaking Yard, Alang, Bhavnagar - 364 081
2. Shri [illegible] Kumar [illegible], Partner of M/s. [illegible] Enterprise, Bhavnagar

[illegible]

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) [illegible]

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) [illegible]

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) [illegible]

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, [illegible] Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) [illegible]

The appeal to the Appellate Tribunal [illegible] be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central [illegible] Rules [illegible] and shall be accompanied [illegible] should be accompanied by a fee of Rs. [illegible] 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/-.

(ii) [illegible]

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/-.

(iii) [illegible]

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.

(iv) [illegible]

[illegible]

(i) [illegible]

(ii) [illegible]

(iii) [illegible]

[illegible]

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.

(i) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

[illegible] 1994 [illegible]

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:

(ii) [illegible]

In case of any loss of goods, where the loss occur 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.

(iii) [illegible]

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.

(iv) [illegible]

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(v) [illegible] 1998 [illegible]

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.

(vi) [illegible]

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.

(vii) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।

[illegible] 200/- [illegible] 1000/- [illegible]

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.

(viii) [illegible]

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, not withstanding 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.

(ix) [illegible] 6.50 [illegible]

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.

(x) [illegible] 1982 [illegible]

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.

(xi) [illegible]

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. K.P.G. Enterprise, Plot No. 81, Alang Ship Breaking Yard, Alang, Dist.: Bhavnagar (hereinafter referred to as "Appellant No. 1") and Shri Rakesh Kumar Bansal, Partner of Appellant No. 1 (hereinafter referred to as "Appellant No.2") filed appeals against Order-In-Original No. 30-34/AC/RURAL/BVR/R/2016-17 dated [illegible].01.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise, Rural Division, Bhavnagar (hereinafter referred to as "the lower adjudicating authority"). Since, the issue involved in both the appeals are similar, the said appeals are being taken up commonly in this single order.

2. Briefly stated, the facts are that :-

(i) The Audit party noticed that the appellant had availed CENVAT credit of Rs. 2,16,11,247/- on 05.08.2014 i.e. 85% of the CVD as per restriction contained vide Notification No. 3/2011-CE(NT) dated 01.03.2011 in respect of Bill of Entry No. SBY/120/2014-15 dated 30.07.2014 filed on the import of vessel namely MV 'Golden' and the same was reflected in the Cenvat credit account in their monthly return for the month of August 2014. However, the appellant again availed Cenvat credit of Rs. 8,47,863/- of CVD on the basis of worksheet prepared by them in respect of above referred Bill of Entry and had taken credit of duty assessed considering bunker (fuel & oil) contained in the Tanks engine room as classified under Chapter 27100030. The Appellant has taken such credit, keeping reliance upon the High Court judgment (2012(11) TMI 322- Gujarat High Court- 2013 (298) ELT547(Guj.)-CE- Customs Gold Control Reference No. 14 of 2004) dated 06.07.2012 in the case of M/s Priya Holding (P) Ltd. wherein the bunkers containing oil were to be treated as part of the vessel's machinery and were classifiable under Heading No. 89.08 of the schedule to the Customs Tariff Act, 1975.

The appellant no.1 has availed Cenvat credit of additional duty of Customs (CVD) amounting to Rs.[illegible]/- paid on Fuel Oil, M.G.O. (H.S.D. Oil) & Lube Oil by classifying under Chapter 27100000 and utilized thereafter.

The said Cenvat credit availed by the Appellant no.1 on the basis of a worksheet showing details of differential duties prepared by themselves attached to the Bill of Entry No.SBY/120/2014-15 filed on the import of vessel namely "MV Golden" and it was alleged that the appellant no.1 had availed cenvat credit under dispute was on the basis of improper cenvatable documents by contravening the provisions of Rule 9(1)(a) of the Cenvat Credit Rules, 2004 and accordingly the appellant no.1 had been issued show cause notice dated 23.12.2016 by the Additional Commissioner, Central Excise & Service Tax, Audit III, Rajkot.

(ii) Subsequently, on the basis of information received that the appellant no.1

had wrongly availed Cenvat credit of the additional duty of customs (CVD) paid on Fuel oil, MDO (HSD Oil) & Lub oil etc. contained in the ship imported for breaking purpose. an inquiry conducted and statement of Shri Rakesh Kumar Bansal, Partner of the appellant No.1 (appellant No.2) recorded on 23.02.2016. On scrutiny of the documents produced by the appellant no.2, it was noticed that in ER-1 return for the month of December 2014, an amount of Rs.6,44,828/- was declared against the 'Details of Cenvat credit' taken on inputs on imported inputs which was fully utilized by February 2015 leaving Nil balance of Cenvat credit. The appellant No.2 in his statement clearly agreed that immediately after beaching of a vessel at their ship breaking plot, all the fuels & oils were removed from the vessel and sold out without storing the same and the same were not used in the process of obtaining goods and materials by breaking up of ship, but were directly sold in the open market.

On the basis of investigation carried out including statement of appellant no.2 dated 22.03.2016 it was noticed that the appellant no.1 had wrongly availed cenvat credit of Rs 6,44,828/- in violation of provisions of Rule 3 read with Rule 2(k) of the Cenvat Credit Rules, 2004 and accordingly show cause notice No.V.15-27/Dem/HQ/2016-17 dated 05.09.2016 was issued by the Joint Commissioner, Central Excise, HQ., Bhavnagar.

(iii) With reference to both the abovementioned show cause notices, the lower adjudicating authority vide the impugned order confirmed the demand of cenvat credit of Rs 6,44,828/- raised vide SCN no. V.15-27/Dem/HQ/2016-17 dated 05.09.2016 under the provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944, imposed equivalent amount of demand as penalty upon the appellant no.1 under the provisions of Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 and also imposed personal penalty of Rs 5,000/- upon appellant no.2 under the provisions of Rule 15A of Cenvat Credit Rules, 2004. Since same amount of Cenvat Credit can't be demanded twice against the appellant no 1, therefore dropped the proceedings initiated vide show cause notice no V.CH/3-18/Adj-I/ADC-71/15-16 dated 23.12.2015. Being aggrieved with the impugned order the appellants have filed the present appeals.

3. The appellants have filed the present appeals on the following grounds :

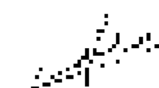
(i) Impugned order passed by the adjudicating authority is not proper and legal as the same has been passed by ignoring the provisions of Section 4 of the Central Excise Act, 1944 and in as much as none of the submissions, made by the appellants in its written replies dated 07.03.2016, 03.10.2016 & 02.12.2016 have been considered (ii) The appellants have relied upon the decision of the Hon'ble Gujarat High Court in the case of M/s. Priya Holding (P) Ltd. Vs Commissioner of Customs, as reported in 2013 (290) ELT 347 (Guj) wherein it is clearly held that 'Bunkers lying inside the engine room are

classifiable under chapter heading 8908 of the Customs Tariff Act, 1975 and not under chapter 27 of the Customs Tariff Act, 1975, this view has also been taken by the DGFT vide their letter F.No.IPC/4/5/164/87/82/DC 2(A) dated 20.06.2013. In view of this they had worked out the duty liability by considering the above mentioned settled laws that the appellant before availing the cenvat credit under dispute had vide their letter dated 17.03.2015 clarified the grounds that disputed cenvat credit had been taken on the basis of Bill of entry read with the paid up Challan read with the declaration mentioned on the reverse page of the relevant Bill of Entry, therefore had legally availed the cenvat credit under dispute under the provisions of Rule 3 of the Cenvat Credit Rules, 2004; they had availed cenvat credit under dispute on the bunkers lying inside the engine room which was classified under chapter 89.08 of the Customs Tariff Act, 1975 read with Central Excise Tariff Act, 1985 and also filed declaration in the bill of entry that they would availed cenvat credit on the goods falling under chapter 89.08 of the said Tariff Acts, accordingly the said fuels & oils were nothing but the 'ball input' as specified under Rule 2(k) of the Cenvat Credit Rules, 2004; the proper document was the bill of entry read with working out duty liability of such bunkers under chapter no.89.08 instead of chapter 27 and accordingly such bunkers was the that input for availment of such cenvat credit as provided under provisions of Rule 3(1)(vii) of the Cenvat Credit Rules. the appellant have relied upon the various citations viz. (i) Marmagoa Steel Ltd vs UOI – 192 ELT 32 (Bom HC, DB), 2008 (229) ELT 481(SC), (ii) Kerala State Electronic Corporation vs CCE – 1998 (94) ELT 44, (iii) Indian Oil Corporation Ltd. vs CCE – 2006 (205) ELT 535, (iv) ACH Electric Ltd vs CCE Faridabad 1 – 2016 (244) ELT 489 (Tri. Chan) & (v) CCE vs CMS Computers – 2005 (192) ELT 20 (SC-3 Member Bench) & (vi) S. Kumars Ltd. vs CCE (2007) 211 ELT 124 (CESTAT).

4 The personal hearing in the matter was fixed on 25.01.2018 and again on 20.02.2018 which was attended by Shri N.K. Maru, Consultant (Authorised Representative) on behalf of the appellant No. 1 & 2. He has reiterated the submission made in the appeal memorandum and further written submission made vide their letter dated 01.03.2018 with a request to decide appeal accordingly.

5 In pursuance of Board's Notification No.29/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No.05/2017-ST dated 16.11.2017, the instant appeals have been taken up hand for passing Order-In-Appeal.

6. I find that in case of instant appeal, the impugned order was received by the appellants on 13.01.2017 and date of filing of appeals is 17.03.2017. Hence, the appeals have not been filed within the stipulated time period and there is delay of 3 days in filing the appeals. However, the appellants have made request for condonation of delay and reason described thereof appeared to be genuine hence I condone the delay under Section 35(1) of the Central Excise Act, 1944. The condition of pre-deposit also stand fulfilled.



7. I have gone through the impugned order, appeal memorandum and written submissions made by the appellants. The issue to be decided in the present appeals is *whether Cenvat Credit of Rs. 6,44,085/- availed on the CVD paid on fuel oil, Marine Gas Oil (HSD), Lube oil etc. classified under Chapter 27100000 by the appellant no.1 is correct or otherwise and recovery interest thereon and penalty imposed vide impugned order is correct or otherwise?*

8. In the instant case, I find that the appellant no. 1 have availed CENVAT credit of Rs.6,44,085/- on the CVD paid on Fuel oil, Marine Gas Oil (HSD), Lube oil on the worksheet prepared on the basis of Bill of Entry No. SBY/120/2014-15 dated 30.07.2014 filed on import of the vessel namely MV 'Golden'. Prior to availment of this Cenvat credit, appellant no. 1 had taken Cenvat Credit of Rs. 2,16,11,247/- on 05.09.2014 in respect of CVD paid on import of ship M.V. 'Golden' classified under Heading No. 89.08 of the schedule to the Customs Tariff Act, 1975.
Said Cenvat Credit being restricted to 85% of total CVD of Rs. 2,54,24,997/- on Bill of Entry No. SBY/120/2014-15 dated 30.07.2014 as per Notification No. 3/2011-CE(NT) dated 01.03.2011.

9. I find that the appellant no. 1 have taken such credit, keeping reliance upon the judgment [2012 (11) TMI 582 – Gujarat High Court – 2013 (289) ELT 247 (Guj.) – CE-Customs Sales Central Reference No. 14 of 2004] dated 05.07.2012 pronounced by the Hon'ble High Court of Gujarat at Ahmedabad in the case of M/s. Priya Holding (P) Ltd versus Commissioner of Customs, Preventive, Jamnagar; wherein the bunkers containing oil were to be treated as part of the vessel's machinery and were classifiable under Heading No. 89.08 of the Schedule to the Customs Tariff Act, 1975. The appellant have prepared worksheet and availed credit of duty assessed considering bunker (fuel & oil) contained in the tanks engine room as classified under Ch 27 under their respective sub heading 27100000. I find that said judgment of Hon'ble High Court of Gujarat pronounced on 05.07.2012 and Bill of Entry No. SBY/120/2014-15 dated 30.07.2014 filed on the import of vessel namely MV 'Golden' after lapse of almost two years of said judgment. Appellants in Para 11 of their Appeal Memorandum (statement of facts) stated that after issuance of the said judgment dated 05.07.2012, the department has started to assess to duty of CVD of the bunkers lying inside the engine room under the Chapter Heading No. 89.08 of the Customs Tariff Act, 1975 read with the provisions of the Chapter Heading No.89.08 of the Central Excise Tariff Act, 1985, instead of under Chapter 27 on which Appellant has paid duty. Therefore, on this ground the Appellant no.1 is not eligible to take Cenvat Credit on work sheet prepared by them. Moreover, the Appellant no.1 already availed 85% of the Cenvat Credit of CVD as per restriction contained vide Notification No. 3/2011-CE(NT) dated 01.03.2011 in respect of the said Bills of Entry. I also find that as per the said High Court judgment, engine department tanks (bunkers) containing oil were to be treated as part of the vessel's machinery and were classifying under Heading No. 89.08 of the Schedule to the Customs Tariff Act, 1975 and no separate

duty is leviable thereon. However other tanks containing fuel and oil did not form part of the HOI of the vessel and had to be classified under their own heading and duty has to be charged accordingly. The Hon'ble High Court vide above judgment has decided the matter of classification of engine room bunker. Therefore, if appellant has found that Customs assessed Bill of Entry under wrong classification, they were required to raise objection at the time of assessment. But, in the instant case, the Appellant has prepared worksheet at their own without getting Bill of Entry amended by the Customs and had availed Cenvat Credit of CVD on fuel and oil classified under Chapter 27100000. Considering this fact, I find that Cenvat Credit is eligible on fuel and oil subject to assessed under heading no. 89.08 only as per the said Hon'ble High Court order. Remaining part of fuel and oil which is not treated as part of the vessel and assessed under sub heading 27100000, the Cenvat Credit is not admissible on it.

10. I find that the lower adjudicating authority in the impugned order has noticed that in statement dated 22.03.2013, the appellant no.2 has clearly stated that immediately after beaching of the ship at their plot, all the fuels & oils are removed from the vessel and sold out without storing the same were not used in the process of obtaining goods and materials by breaking up of ship. I agree with conclusion of the lower adjudicating authority that it is evident that such Fuel oil, Marine Gas Oil and Lub oil do not form part of input in term of Rule 3 of the Cenvat Credit Rules, 2004 and therefore cenvat credit on the same not available to the appellant as elaborate at para 2.5 & 5.8 of the impugned order.

11. The said Appellants in their defense also contested that initially show cause notice dated 23.12.2015 was issued to them on the basis of Audit report dated 12.08.2015 that they have wrongly availed cenvat credit of Rs.6,44,858/- on the basis of improper cenvatable document by contravening the provisions of Rule 9(1)(c) of the Cenvat Credit Rules, 2004 and subsequently inquiry was conducted by the officers of Anti-evasion, Central Excise, Bhavnagar and second show cause notice dated 05.09.2016 issued to them. The ground raised in second SCN is that they have availed cenvat credit of Rs.6,44,856/- by contravening the provisions of Rule 3 read with Rule 2(k) of the Cenvat Credit Rules, 2004 as well as in violation of Explanation of III to sub rule (4) of Rule 6 of the CCR with intention to evade payment of central excise duty and therefore department was not sure under what grounds the demand under reference is recoverable and also contended that disputed cenvat credit was availed in the month of December 2014, whereas the SCN was issued on 23.12.2015 and the same was time barred. I find that the lower adjudicating authority in the impugned order at para 3.7 to 3.12 rightly established that the cenvat credit availed in the month of December-2014 has been utilized by February 2015 and both the cases came to the notice of the department only after audit and inquiry conducted by the department. Further, I find that as per above mentioned order dated 05.07.2012 of the Hon'ble High Court, Cenvat Credit is eligible on fuel and oil subject to assessed under heading no. 89.08 only. Remaining part of fuel

and oil which is not treated as part of the vessel and assessed under sub heading 27100000, the Cenvat Credit is not admissible on it as per Rule 3 read with Rule 2(k) of the Cenvat Credit Rules, 2004. I find that lower adjudicating authority has rightly observed that Note 9 of Section XV (Base Metals and Articles of Base Metal) of the Schedule I appended to the Central Excise Tariff Act, 1985 covers all the goods falling under 72 to 83 of the Act ibid. Note 9 of Section XV explains that in relation to the products of the section, the process of obtaining goods and materials by breaking up of ships, boats and other floating structure shall amount to manufacture. Therefore, it is undoubtedly cleared from the definition of Rule 2(h) of CCR2004 that, for ship breaking, goods and materials obtained by process of breaking of ship, boats or other floating structure can only be considered as 'excisable goods'. Rule 2(h) of the CCR, 2004 defines that 'finished products' means excisable goods manufactured or produced from input, or by using input services. Further Rule 3 of the CCR, 2004 states that a manufacturer or producer of final products or a provider of output service is allowed to take credit of duties or excise paid on input or input service and received by the manufacturer for use in or in relation to, the manufacture of final product. Further, as defined under Rule 2(k) of CCR, 2004, input means all goods used in the factory by the manufacture of the final product but excludes any goods which have no relationship whatsoever with the manufacture of a final product. From this definition, it is clear that the item which is not used in the factory by manufacture of final product cannot be considered as 'input' as defined under Rule 2(k) of CCR, 2004 and as such Cenvat Credit of duty paid on such item will not be available to the assessee under Rule 3 of the CCR,2004. Accordingly demand has been rightly confirmed by the lower adjudicating authority alongwith interest and penalty with reference to show cause notice dated 05.09.2016 and dropped the proceedings initiated vide show cause notice dated 23.12.2015.

12. Regarding applicability of extended period, I find that the lower adjudicating authority has held that the appellants had suppressed the facts from the department that Fuel, Lub Oil etc on which Cenvat Credit were taken not used in or in relation to manufacture of their final product. From the monthly ER-1 returns it cannot be ascertained whether the goods against appellant no. 1 has taken credit were used in the manufacture of their final excisable product or whether Cenvat credit is admissible on such inputs or otherwise. It is only when investigation was carried out against the appellants, the fact of non eligibility of Cenvat credit on such goods came to the notice to the department. In view of foregoing discussion, I find that extended period of five years is correctly invoked by the lower adjudicating authority under the proviso to Section 11A (4) of the Central Excise Act 1944, to recover the credit wrongly availed. I find that when demand is confirmed, the interest at appropriate rate on the amount so recoverable also liable to be recovered from the Appellant under the provisions of Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules 2004. I also find that penal action under the provisions of Section 11AC of the Central Excise Act, 1944 read with Rules 15 of the Cenvat Credit Rules, 2004 has been correctly taken by the lower adjudicating

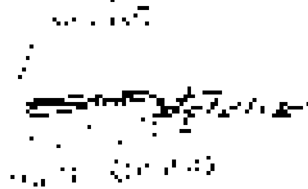
authority.

13. I have also carefully gone through all the case laws cited by the Appellant and find that none of them are applicable in the present as none of the case laws deal with wrong availment of CENVAT Credit of fuel lying in the engine room. Therefore, I deny all the contention made by the Appellants.

14. Due to above reasons, the confirmation of the above demand alongwith the interest under Section 11AA and the penalty under Section 11AC of the Central Excise Act, 1944 read with Rules 15 of the Cenvat Credit Rules, 2004 appears logical.

15. In view of the above facts and circumstances, I uphold the entire demand of the impugned order No. 33-34/AC/RURAL/BVR/RR/2016-17 dated 17.01.2017 confirming the duty, interest and penalties on merits and reject the appeals filed by the appellants.

16. The appeals filed by the appellant stands disposed off in above terms.



(P. A. Vasave)
Commissioner (Appeals) /
Commissioner
CGST & Central Excise,
Kutch (Gandhidham)

F. No. V.2/53/BVR/2017
F. No. V.2/54/BVR/2017

Date: 23.06.2018

By R.P.A.D.

To,

1. M/s. K.P.S. Enterprise,
Plot No. 51, Alang Ship Breaking Yard,
Alang, Distt. Bhavnagar.

2. Shri Rakesh Kumar Bansal,
Partner of M/s. K.P.S. Enterprise,
Plot No. 51, Alang Ship Breaking Yard,
Alang, Distt. Bhavnagar.

Copy to:

1) The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad.
2) The Dy./Asst. Commissioner, Central Excise, Rural Division, Bhavnagar.
3) The Dy. / Asst. Commr. (Systems), H.Q., Bhavnagar for uploading on website.
4) F.No.V2/54/BVR/2017.
5) Guard File.