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

सातवीं मंजिल, जी.एस.टी. भवन, रेस कोर्स रिंग रोड, राजकोट
7th Floor, GST Bhavan, Race Course Ring Road,
Rajkot - 360 001
Telephone No. 0281 - 2477952/2441142
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अपील आदेश संख्या :

क	अपील / फाइल संख्या :	मूल आदेश सं. :	दिनांक :
	Appeal / File No.	O.I.O. No.	Date
	V2/309 & 310/RAJ/2018	49/Asst.Comm./DEMAND/2013-17	27.02.2017

ख अपील आदेश संख्या (Order-in-Appeal No.):

RHV-EXCUS-000-APP-155-17-18 दिनांक (Date) : 02.07.2018

जारी करने की तारीख / Date of Issue: 02.07.2018

Passed by Shri P. A. Verma, Commissioner, Appeals, GST & Central Excise, Rajkot/Gandhidham

ग अपील आदेश के विरुद्ध अपील करने वाले का नाम एवं पता / Name & Address of the Appellant & Respondent :

1. M/s Swanalliance Ship Recyclers P. Ltd (Plot no. 47, Ship Breaking Yard Along, Dist : Bhavnagar
2. Shri Kamal Kumar Thomke, Director of M/s Swanalliance Ship Recyclers P. Ltd

कोई व्यक्ति इनमें से किसी भी व्यक्ति को व्यथित महसूस करता है तो वह इस आदेश के विरुद्ध अपील इस आदेश के जारी होने की तारीख से 3 महीने के भीतर 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 अधिनियम, 1962 की धारा 129 (A) (1) के अंतर्गत अपीलीय न्यायाधिकरण को अपील दायर करने के लिए जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना है, वहाँ रुपए 5 लाख या उससे कम, रुपए 5 लाख से ऊपर किन्तु 50 लाख से कम या रुपए 50 लाख से ऊपर है तो क्रमशः 1000 रु., 5000 रु. या 10000 रु. के निर्धारित जमा शुल्क के भुगतान के साथ उच्च अपीलीय प्राधिकारी को अपील की जा सकती है।
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 129 (A) (1) of the Customs Act, 1962 in cases where the amount of duty demanded, interest demanded and penalty imposed is Rs. 5 Lakh or less, Rs. 5 Lakh or more but not exceeding Rs. 50 Lakh or more than Rs. 50 Lakh respectively is to be accompanied by a fee of Rs. 1000, Rs. 5000 or Rs. 10000 respectively.

(B) सीमा शुल्क अपीलीय न्यायाधिकरण के समक्ष अपील दायर करने के लिए जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना 50 लाख रुपए से अधिक है, वहाँ रुपए 10000 का निर्धारित जमा शुल्क भुगतान करना होगा।
The appeal to the Customs, Excise & Service Tax Appellate Tribunal in cases where the amount of duty demanded, interest demanded and penalty imposed is more than Rs. 50 Lakh, a fee of Rs. 10000 is required to be paid.

(C) अपील ज्ञापन सीमा शुल्क (अपील) नियम, 1982 के नियम 3 के अंतर्गत निर्धारित प्रपत्र CA-3 में चार प्रतियों में दायर किया जाना चाहिए। इसके साथ जिस आदेश के विरुद्ध अपील की गई है उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ।
The appeal memorandum should be filed in four copies in the form CA-3 as prescribed under Customs (Appeals) Rules, 1982 under Section 3 thereof. One copy of the order appealed against should be attached with each copy of the memorandum.

(D) अपील ज्ञापन में जिन मांगों, दंडों, ब्याज या जुर्माने का विवाद है या जिसमें दंड लगाया गया है, उसका भुगतान किया जाना चाहिए। इस आदेश के विरुद्ध अपील करने के लिए जहाँ शुल्क या शुल्क और दंड विवाद में है या दंड लगाया गया है, वहाँ अपील पर स्टे के आवेदन के साथ 7.5% शुल्क का भुगतान किया जाना चाहिए।
The appeal memorandum should be filed in four copies in the form CA-3 as prescribed under Customs (Appeals) Rules, 1982 under Section 3 thereof. One copy of the order appealed against should be attached with each copy of the memorandum.

[illegible]

[illegible]

16. [illegible]

[illegible]

[illegible]

17 [illegible]

[illegible]

18. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
[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-110 001, 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) [illegible]
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) [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.

(iii) [illegible]
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) [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.

(v) [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.

(vi) [illegible]
[illegible]
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) [illegible]
[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.

(E) [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.

(F) [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.

(G) [illegible]
[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. Marinelines Ship Breaking Pvt. Ltd., Plot No. 47, Alang Ship Breaking Yard, Alang, Dist.: Bhavnagar (hereinafter referred to as "Appellant No. 1") and Shri Kamal Kumar Khemka, Director of Appellant No. 1 (hereinafter referred to as "Appellant No.2"); filed appeals against the common Order-in-Original No. 43/AC/BUR/CRV/PARIKH/2016-17 dated 27.02.2017 (hereinafter referred to as "the impugned order"); passed by the Assistant Commissioner, Central Excise Hqrs. 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) On the basis of information it is noticed that the appellant no. 1 had availed CENVAT credit of Rs. 2,82,16,342/- on 01.05.2014 on 55% of the CVD of Rs. 3,31,67,866/- as per notification contained vide Notification No. 30/2014-Cus(NT) dated 01.03.2014 in respect of Bill of Entry No. SBVV/130/2014-15 dated 26.09.2014 filed on the import of vessel namely MV 'CITY OF BERUT' and the same was reflected in the Cenvat credit account in their monthly return. However, the appellant no.1 again availed Cenvat credit of Rs. 15,50,834/- of CVD on 01.01.2015 and Cenvat Credit of Rs. 41,48,291/- on 31.01.2015 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 27101930. The appellant no.1, reversed the Cenvat Credit of Rs. 41,48,291/- on 28.02.2015. However after initiation of enquiry against the appellant no. 1 they reversed the Cenvat Credit of Rs. 15,50,834/- vide Cenvat Account Entry no. 12 dated 20.05.2015 under protest. The Appellant has taken such credit keeping reliance upon the High Court judgment (2012) TIOL 552- Gujarat High Court 2012 (286) E.L.T.347(Guj.)-GTH-Customs Gold Control, Reference No. 14 of 2004) dated 05.07.2012 in the case of M/s Adiya 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 Custom & Tariff Act, 1975. The appellant no.1 has availed Cenvat credit of additional duty of Customs (CVD) amounting to Rs.15,50,834/- paid on Bunkers (Fuel Oil, M.C.O. (K.S.D. Oil) & Lube Oil etc. classifying under Chapter 27101930) and also utilized amounting of Rs. 83,745/- out of it.

(ii) 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.SBVV/130/2014-15 filed on the import of vessel namely 'MV CITY OF BERUT' 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) read with Rule 3(a) and Rule 2(k) of the Cenvat Credit Rules, 2004 and accordingly the appellant no.1 had been issued show cause notice dated 26.04.2016 by the Joint Commissioner, Central Excise & Service Tax, Bhavnagar.

(iii) Subsequently, on the basis of information that the appellant no.1 had wrongly availed Cenvat credit of the additional duty of customs (CVD) paid on Fuel oil, MCC (HSD Oil) & Lub oil etc. contained in the ship imported for breaking purpose, an inquiry conducted and statement of Shri Kunal Kumar Khemka, Director of the appellant No.1 (appellant No.2) recorded on 14.02.2016. On scrutiny of the documents produced by the appellant no.2, it was noticed that in ER-1 return for the month of January 2015 an amount of Rs.17,87,123/- was declared against the Details of Cenvat credit taken on inputs or imported inputs out of which Rs. 11,16,291 reversed by the appellant on 28.02.2015 and remaining amount of Rs. 15,50,824/- reversed under protest on 30.03.2015 after initiation of enquiry against them. 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.

(iv) On the basis of investigation carried out including statement of appellant no.2 dated 14.05.2015 it was noticed that the appellant no.1 had wrongly availed Cenvat credit of Rs.15,50,824/- in violation of provisions of Rule 3(1) and Rule 3 read with Rule 2(k) of the Cenvat Credit Rules, 2004 and wrongly utilised the Cenvat credit of Rs. 89,745/- as per the provision of Rule 14(2) of CCR etc. on total wrong availment of Cenvat credit of Rs.16,50,824/-, accordingly show cause notice No.V(15)-07/Demo/HQ/2015-16 dated 28.04.2016 was issued by the Joint Commissioner, Central Excise, I.C., Dhanagar.

(v) With reference to the above mentioned show cause notice, the lower adjudicating authority vide the impugned order confirmed the demand of Cenvat credit of Rs.15,50,824/- and Rs.89,745/- under the provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944. He ordered to recover the amount of Cenvat credit of Rs. 89,745/- wrongly utilised by appellant no.1 out of Rs. 15,50,824/- wrongly availed Cenvat credit. He also ordered to appropriate the Cenvat credit of Rs. 15,50,824/- already debited by the appellant no.1. He imposed equivalent amount of demand as penalty upon the appellant no.1 under the provisions of Rule 15 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 26A of Cenvat Credit Rules, 2004. 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. (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 2018 (362) E.L.T. 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.-01/49/88/97/82/PC 2(A) dated 25.06.2013; in view of this they has rightly worked out the duty liability by considering the above mentioned issue, that the appellant intimated vide letter dated 20.02.2015 addressed to the jurisdictional Range superintendent regarding availing the Cenvat credit under dispute; that they 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; that they had availed Cenvat credit under dispute on the bunkers lying inside the engine room which was classified under chapter 8908.00 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 of the goods falling under chapter 89.08 of the said Tariff Acts, accordingly the said fuels & oils were nothing but the 'like 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 'like 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)Clarion Hazaribagh (P) Vs UOI- 2014(305) ELT 497; (ii) Kerala State Electronic Corporation vs CCE – 1996 (84) ELT 44; (iii) Indian Oil Corporation Ltd. vs CCE – 2006 (205) ELT 583; (iv) BCH Electric Ltd vs CCE Faridabad-1 – 2016 (344) ELT 439 (Tri.-Del.) & (v) CCE vs CMS Computers – 2005 (182) ELT 70 (SC)-3 Member Bench) & (vi) S. Kumars Ltd. vs CCE (2017) 2 GLT 124 (CESTAT).

4. The personal hearing in the matter was fixed on 23.01.2018 and again on 29.02.2018 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 requested to grant 10 days time limit to file further written submission. However, no further written submission has been received from the either from the appellants or their consultant.

5. In compliance of Board's Notification No.23/2017-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 on hand for passing Order-in-Appeal.

6. I find that in case of instant appeal, the impugned order was received by the appellants on 20.02.2017 and date of filing of appeals is 27.04.2017. Hence, both appeals have been filed within the stipulated time period and there is no delay of filing the appeals. Since appellant no. 1 already debited Cenvat credit of Rs. 10,50,000/- vide

debit entry no. 12 on 20.03.2015 and Rs. 275 by appellant no. 2 vide SDI challans no. 03 dated 15.04.2017, hence 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. 15,50,624/- availed on the CVD paid on fuel oil, Marine Gas Oil (HSD), Lube oil etc. classified under Chapter 27100020 by the appellant no.1 is correct or otherwise and whether interest thereon and penalty imposed vide impugned orders is correct or otherwise?

8. In the instant case, I find that the appellant no. 1 have availed CENVAT credit of Rs. 15,50,624/- on the CVD paid on Fuel oil, Marine Gas Oil (HSD), Lub oil etc. on the worksheet prepared on the basis of Bill of Entry No. SBYI/3/2014-15 dated 08.04.2014 filed on import of the vessel, namely M/V "City of Surat". Prior to availment of this Cenvat credit, appellant no. 1 had taken Cenvat Credit of Rs. 2,02,19,042/- on 01.09.2014 in respect of CVD paid on import of ship M.V. "Golden" classified under Heading No. 89.06 of the schedule to the Customs Tariff Act, 1975. Said Cenvat Credit being restricted to 65% of total CVD of Rs. 3,31,87,298/- on Bill of Entry No. SBYI/3/2014-15 dated 08.04.2014 as per Notification No. 39/2011-CE(NT) dated 30.08.2011.

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 (288) ELT 347 (Guj.) – CH-Customs Gold Control Reference No. 14 of 2004] dated 25.07.2012 pronounced by the Hon'ble High Court of Gujarat at Ahmedabad in the case of M/s. Priya Hauling (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. 89.06 of the Schedule to the Customs Tariff Act, 1975. The appellant have prepared worksheet and availed credit of duty assessed considering duties (Net A duty) contained in the Tariff engine room as classified under CTH 27 under their respective sub heading 27100030. I find that said judgment of Hon'ble High Court of Gujarat pronounced on 05.07.2012 and Bill of Entry No. SBYI/3/2014-15 dated 08.04.2014 filed on the import of vessel namely M/V "City of Surat" after lapse of almost two years of said judgment. According to 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. 89.06 of the Customs Tariff Act, 1975 read with the provisions of the Chapter Heading No 89.06 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 have Cenvat Credit on work sheet prepared by them. Moreover, the Appellant no.1 already availed 65% of the Cenvat Credit of CVD as per restriction contained vide Notification No. 39/2011-CE(NT) dated 01.08.2011 in respect of the said Bills of Entry. I also find that, as per the said High Court judgment, engine department parts (bunkers) containing oil were to be treated as part of the

vessel's machinery and were classifying under heading No. 8901.01 of the Schedule to the Customs Tariff Act, 1975 and no separate duty is leviable thereon. However other items containing fuel and oil did not form part of the LDT of the vessel and had to be classified under their own heading and duty had to be charged accordingly. The Hon'ble High Court vide above judgment has decided the matter of classification at original level. 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 no. 1 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. 8901.01 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. Further, as per rule 9(1) of the CCR, 2004 the worksheet prepared by the appellant no. 1 is not the proper document on the basis Cenvat credit was availed since the above subject Bill of Entry were not finally assessed as per the calculation shown in the worksheet produced by the appellant no. 1 under their letter dated 16.04.21 in. I also 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. 8901.01 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 that Note 9 of Section XV explains that in relation to the products of this 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 clear from the definition of Rule 2(k) of CCR,2004 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(f) 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 or duties of 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 products 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

11. I find that the lower adjudicating authority in the impugned order has noticed that in statement dated 14.03.2013, the appellant no.2 has clearly stated that immediately after breaking 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 2 of the Cenvat Credit Rules, 2004 and therefore cenvat credit on the same not available to the appellant no.1, as elaborate at para 3.5 to 3.9 of the impugned order.

12. The said Appellants in their defence also contended that disputed Cenvat credit was availed in the month of January2013, whereas the SCN was issued on 26.04.2013 and the same was time barred. I find that the lower adjudicating authority in the impugned order at para 3.8 rightly established the invocation of extended period of demand under Section 11A(4) of the Central Excise Act,1944. The appellant no. 1 suppressed the facts from the department that Fuel Oil, Marine Gas Oil (HSD), Lub Oil on which Cenvat credit were taken as inputs, were not used in or in relation to manufacture of their final products. The fact was came to the notice to the department only after inquiry conducted by the department. 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 wrongly availed Cenvat credit. Accordingly demand has been rightly confirmed by the lower adjudicating authority vide the impugned order. I find that when demand is confirmed and Cenvat credit has been wrongly taken and utilised the same, 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 appellant no.1 never see the wrong availed Cenvat credit of Rs. 15,50,924/- only after the enquiry initiated against the appellants. It also proves the malafide intention on the part of appellants to take wrong Cenvat credit. Hence, lower adjudicating authority has rightly imposed penalty upon against appellants under the provisions of Section 11AC of the Central Excise Act, 1944 read with Rules 15 of the Cenvat Credit Rules, 2004.

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 appear logical.

15. In view of the above facts and circumstances, I uphold the entire demand of the impugned order No. 40/AC/RURAL/BVR/R.T/2016-17 dated 27.02.2017 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. Vasava)
Commissioner (Appeals) /
Commissioner
CGST & Central Excise
Kutch (Gandhidham)

F. No. V2/109/BVR/2017
F.No. V2/110/BVR/2017

Date: 26.09.2019

By R.P.A.D.

To

1. M/s. Marinelines Ship Breakers Pvt. Ltd.,
Plot No. 47, Alang Ship Breaking Yard,
Alang, Dist.: Bhavnagar

2. Shri Kamal Kumar Chemka
Director of M/s. Marinelines Ship Breakers Pvt. Ltd.,
Plot No. 47, Alang Ship Breaking Yard,
Alang, Dist.: Bhavnagar

Copy to:

1) The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad
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