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अमेरियुवना तरावा सार्वज्ञाल्क उन्हु (उन्हों) दिनोव कारणवर्ष्यक के साथ पर साई ऑगिम आदेश हो. अगल्लाक तथे, दि देश ध्यार रुवक के अमुवल्या में ही के वा ववरे तमावता केहीय वस्तू एव सेना भर पत के दीए कानद सुरुवात वायर वापनियाम, को जिल्हा कमें कि वा व्याप्त की दाना कर उत्ते के स्वार्थ के अभिने प्रार्थक की दाम का कारणवर्ष के की वा द्योरी के सारकों के सार्वण वर्षना वस्त्री का उद्दश्य के अभिने अगिया करफ की दाम का कारणवर्ष के की बाद द्योरी के सारकों के सारकों के सार्वण कर का स्वार्थ का अपने क्रम के अभिने अगियर की काम के सार्वज्या कि वा की दिना के सारकों के सारकों के सारकों के सारकों के सारकों का उद्दश्य के

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्या आदेशक्त देवा हो। संदेश कोई अवस्थित विकासिति के दिन्दा के के प्रकार होता साथ भाषाती से प्राहित्तका के साथसा अभिने सारक राज स्वरता है? अन्य प्राहरूपत अप्रयाहण्डी प्रयोग विकास स्वरताल की प्राहर प्राहर प्राहरूपते के the styrophysics of the styro कि देवे स्वीधिक हिंदू रहे.

- (4) द्वीमा इत्यक अवस्त्रेश कमान् अवस्त एवं इंडलम अनियत्व त्यायाम्यलपण का गर्नते भगोल, क्यांद्वेच क्रमान तुल्ला आमित्रिया ६ १२ वर्ष भेगाः देवाद के उत्यात । दिया अभिनेत्रा १९९४ में भाषा 85 के अंतर्भन भोगन्दीक्षित जना की ता रक्षती है ? Accent to Charton Statistics के Service Case Republics Sciences ander Section 950 of 0004, 2011 हा Decor Section Statistics का सामग्रह कर , अन्य का अनुस्तर कर का
- 01 ৰ ভিৰম মৃত্যুইনৰ ওঁ বাৰ্টিমিৰ বহা। মাৰ্থ টেনা ব্ৰুজ জাতীন কৰালে মুক্ত গুঁঁ নৈচেৰ প্ৰথিক জাইলে। আৰু আশিক্ষা নি নিৰ্বাণ (৪. ইয়ে ৪০টন পাও, পাই ৫. টুক্টা বঢ়ু ডিক্টা, চাঁ বা নিচাঁ মাৰ্চিয়া। Dig control of Control is Sector is control for Appendix Path and Affect is S.K. Faram, New Delling, 25 meters (Mathing Collaboration and Mathin).
- 101 মানেৰৰ শীৰ্ষ্য এটা, লাগৰা পাঁচ প্ৰশাস হৈ প্ৰথম প্ৰশাসনি হৈছে হৈছে ক্ৰম ক্ৰম ক্ৰম ক্ৰম হৈছে হৰু জা উন্নয়ন মেটাইজ জোহাইকাৰত (টিইউল, জি বাইজে উটাই উইজে – ম্বিটিং বিৰ, মতু নো ইকা প্ৰথম মেটাইজিক ক্ষেত্ৰ হ'ব বিৰোধ হৈছে হ

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- 111 थी । एकुन्द, बेल्टीर प्रान्तव युवक एक भारत्य गर्माच्य गर्भवन्छन (वावद) के प्रसिद्ध मंत्र के प्राप्ते के प्राप्ते के स्टलोक 90 में रहे में समझान के सार पर के के सामगढ़ के प्राप्त के समझान के दिने के सार के साम के साथ कर के साथ के साथ क उनके देखना अधिकेंग के 10 के देश 'गय, '55 के साथ गैरे, जो की किस्ताच अधीनियम, 1994 के भार 83 के के नेट साइनेस का सी किस के 20 कि 10 कि ने अधीन के पति के भारति के विक्रांग के उसकि करने भेमत कर के असलेंगे के 10 के 10 के 10 कि 10 कि 10 कि जो के साथ के करनेना कि दिन है, 10 दर्शांक ज़ान में का स्ट्रांग विक्रांग्रेस है, अने दुर्गात के के 10 के 10 की रहा जाते के निर्माल कि के साम करने से सबसेत हम साथ कि ज़ान नशम अन्य में जिल्हाल में।
 - केनदेश अभय सारक पर व्यापा का तत्क तानिक निर्णय एक्स्ट्रिक वा विषय साम्रिक ह
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 - स्ति सिंह के से प्रति के साथ के सिंह ताफ के पर अनकीत हैये दल 2011 के नेद बना में में अने कि ताफ के पर अनकीत हैये दल न हुआई पुरुष्ट कि इस होगी न अनकोन में कर मानई की प्रायक्तियम 2 तुरुष के अन्ति ही दून किये। उपासीय

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- राजे अपने के दियों सुवासक के सामयों में, यह मुखरापन भिर्दी आत के मिर्स के तमने से अनव पर के घाराव्यत के देशन जा किसी के गानकरक से या किस लिसे रेग कहर पुरु से सुरुप मद्रार पूर्व प्रायमक के दौरान का किसे महत्र पुरु में दी मध्यप्र के नाम के बसेकर जा के रहे जा दिस्सा साम्प्रेयों के लिसी क्वार सुरू से साल के सुरुद्धन ... क जमरें में ! In case of simplex of grode in here the lock objects in a pass from a case () as we reference in to approximately of Long out reactions, we refer in the organized processing of the passing in a waveborn, in in provide when it are a turners of references.
- পদলা বা বাছৰ মন্দ্ৰী মন্দু আ মাই দী নিখাল কৰা হ'ব কৰা ও জিনিবলৈ বা বৰ্ণমান কৰে। প্ৰথম মধ্য মধ্য মধ্য বুঁ বুঁ ক কন্দ্ৰীৰ আগত কৰে বা দুন টেইসমাৰ কালম্পৰ ও মৌ মানৰ কি বছৰ কিয়া প্ৰযু জিলি কৰা কিয়াত কি নহা হ'ব <u>.</u>

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- িয়া এই মান্দার মানসাল্যা এখনা নামক মিন্দা প্রায়া ও এবং জীয়ার আগ্রানা এই এবে জিল্লার কিন্তু কথা ট্রান্ট্র বিষয়ের চারিটেরে সেন্সার্চার ও রাজনের প্রায়ের রাজনের চিল্লারা চার্টা প্রায়ার সেটটেরের চুর্ত্বাহারে বের্টিটাও,
- प्रिंग के स्वाध के अन्तर्यक करने के प्रयोग के लिए को भूपरेंग गरेन हुआ गरियोंकेल पर हुस्सा दिसिया मंत्रकार के त्या सहय की नहीं है और दिसे लोग के लाकको है कि कि के एपक भिक्त करींकिंग ता है. जि मंत्रकार के त्या सहय की नहीं है और दिसे लोग कार्या संसाय प्रयोग के एपक भिक्त करींकिंग ता है. जि मंद्रकार के तथा 10 के तब की तर की रहे है से प्रारंग कार्या संसाय प्रयोग का बेग्रू से मुस्ति एक स्वाध संत्र प्रथल की तथा 10 के तब की तर की पूर्व के संराध के प्रारंग के साय प्रयोग के लाख के प्रारंग के एक का साथ कि में प्रारंग कि प्रारंग के कि तम की रहे के कि प्रारंग के साथ के स्वाध के लाख के साथ के प्रारंग के प्रारंग का साथ कि प्रारंग के प्रारंग के कि के कि कि की कि स्वाध के कि स्वाध के स्वाध के साथ के साथ के साथ के साथ कि सिंह कि की से प्रारंग के सिंह के प्रारंग के कि स्वाध के स्वाध के साथ के कि लोग के के साथ के कि कि कि कि कि दिस कि की से कि कि साथ के कि का कि के के की का कि स्वाध के के कि कि को के कि को की के की की कि कि सिंह कि की से कि की साथ के कि का कि के की का कि स्वाध के की का कि कि को की कि की की की कि कि कि कि
- असीम्स आमेरन की या पति। प्रपन्न इंडला करन्छ के प्राप्त केन्द्राना कपाइन समस्त (त्रपीता निराम को, 2000, के सेवल 9 में असमेग विभिन्नेत के इस आदश के अनेता के 2 अह के उसकेन की आणि वाहित। 29रोक जावेदन के तथा के पहिन व अनेक पहिन की की वरिका संग्रेज की जाते दाहित। सब है अस्त्रीत 29रोक जावेदन के तथा के पहिन व अनेक पहिन की की वरिका संग्रेज की जाते दाहित। 29रोक जिसमेग के तथा के पहिन का कि 20 सह के न्द्रत कि पिरत पुरुष की जवाननों के सरावन के तीन पर 1-1 ार्ड्ड मों प्रति समय की जाती झाउंछ ्

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- अन्योक्तम कार्यप्रत के साथ कि अभिनित निर्धालित प्राप्त कार्यप्रतम भी की साले आहे. सिर्ह सल्पन कार्य साख लाख साथ का रसर प्रसार कि सार का 2007 का मुप्लाक लिया। कार्य हॉन यहि सलप्त इन्हें 10% स्वारं करने का साथ ही जा रथके 10000 के का रनापत के ना सप 116 के साथ करने का साथ ही जा रथके 10000 के का रनी कि साथ के साथ 116 के साथ करने का साथ का साथ कि सरकार का रनी कि साथ के ना सिर्फ 2007 कि बाल्टर दिस व्याप्रधार तरफ स्वारं का साथ करने का साथ के साथ कि साथ करने के साथ के साथ के साथ के साथ तरफ स्वारं का साथ करने का साथ के साथ कि साथ करने के साथ साथ स्वार्ट के साथ के साथ के का साथ के साथ 1:: 1
- ाग करें जिस स्थानमान भारत अभिनेतन, 1975, के इन्होंने , यो उन्होंने सूल आदशा रह स्थापत आदेश की भोध तो किंगीदेश भारत केंद्रों के स्वायत्वल अपने विकेश केंद्र की कोई क्या का थि। तिक स्थाप की अनुवार केंद्रा के 2000 के 16 के 16 के दे कारत के हाल है कि उन्हेंने की दिया को प्रतिनिधान अपनेति की सी जिस्ता के राज्य के अनुवार की प्रति के 16 के दे का कोई के तिनेत के कि उन्हेंने की दिया को प्रतिनिधन के दिया के की जिस्ता के राज्य के अनुवार की दिया के 16 के दे के 16 के कि उन्हेंने के कि जिस की सी के निर्णाण प्र के दिया के की जिस्ता के राज्य के अनुवार की दिया के 160 के की कि को कि कि कि कि कि कि कि की की कि जिसके की नेता कि की जिस्ता के अनुवार की की कि 11
- 911 तोगत तकर, केन्द्रीय उता च १९२४ र । श्री, वस अपलिक प्रयोध भेगवणा ,वार्य विदिन्न विभावरको, 1982 विभागित र । अन्य संग्रेतियेस सामानी वर्षे सांस्वेण-का वार्या क्रमा विभयत हो। पेरा ते प्राप्त सामानित क्रिया जिति है। र Astronomy also mailer to the mice as a sine base and attact details? (Contern contrained to the Castally, Backe and Service Homes and Attact and Castal and Attact 1982.
- ात्रच अध्यक्षेत्र अभिवासे को अध्यक्ष साहित अस्त है सर्वतन व्युपंथ जिस्तुत अन्त तर्वतत्वत धनवानी के लिए 10" न्यप्रेंड की गई के से स्वर्थन के साथ के स्वर्थन के साथ के स्वर्थन के साथ के स्वर्थन के साथ के साथ के साथ के सा अग्रेज की स्वर्थन के साथ की साथ कि साथ के साथ के साथ के साथ के App links and ready the togeth for may recently contract and the model we will be the sub<u>stant state</u>

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CORDER-IN-APPEAL ::

M/s. Matinglines Ship Breaking Pol. Ltd., Pipt No. 47, Aleng Ship Breaking Yard. Nang, Dista Busynagar (bereive9er microsof to se "Appellant No. 1") and Shri Kama' Kuma: Kreinka, Director of Appel ant No. 1 (herowattor referred to sa "Appellant No.2") files appeals sgainst the common Order-p-Original No. 49/AC/RURADBVR/RR/2050-17 desed 27.02.2017 (*horohafter referred to* as "the impogned order") passed by de-Assistant Commissioner, Central Excise, Hura, Division, Bhavnager (heroissifier referred io as the lower adjuticating such align. Since, the same involved in both the appeals. 9F9 almilar. The suid appeals are brong taken up sciamonly in this single ration

2. Driefly stated, the tacts are their (-

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On the posis of information if its rolliced that the appellant no. 1 hort system 35 GENVAL productof Re. 2,82.16 0424 on 01/08.2014 to, 85% of the CVD of Rs. 3,31,67,866/ iss per restriction contained vide No?Pication No. 3/2011/206(MI) deted 93-03.2031 in respect of Bill of Entry No. 8HW130/2014-15 Valed 36-09.2014. filter on the import of vessel nappely MV 'CITY' OF DERUT' and the same was reflected in the Cerval credit account in their monthly return. However, the appellant no.4 again. avalied Gerwal credit of Rs. 15,53,634/ of CVD on D1 C1 2015 and Cenyet Credit of Rs. 41,46,291/ jun Git.01.2016 (ion the page) of worksheet prepared by them in respect of econo referred Bill of Entry and had taken credit of duty assessed considering burker. (fuel & oil) contained in the Tenks engine room as classified under Chapter 27100000. The appellation tout, reversed the Central Credit of Ro. 41,48,291/- on 28.32,2015. However after initialize or ongury against the appallant (or 1 they reversed the Conver-Gradit of Ra. 15,50,85/2- vide Cenvet: Account Entry no. 12 pated 30.03/2016 under profess. The Appellant has taken such creat keeping reliance upon the High Court. judgment (2012)(11) TM 552- Gujarat Righ Court 2012 (288) EU(347)(60,0)-GH-Custome Gold Control Reference No. 14 of 2004) datad 05,37,2012 in the case of Mis-Fillys Holding (P) Lto, wherein the burkers containing air ware to be treated as part of the vessel's machinery and were classifiable under Heading No. 85.08 of the schedule. to the Custon's Tarif' Ack, 1975. The appellant notificas available Converticed in additional duty of Customs (CVIC) antounting to Hs 15,50,834/- paid on Burkers (Fuel-OI, M.C.O. (H.S.D. Oi) & Lube OI etc. classifying junder Chapter 27(00000) and also utilized accounting of Rs. 89,745A out of I).

<u>:0</u>: Line said Cervat credit evaluat by the Appellant no 1 on the basis of a fworksheet. showing details of differential dulies" prepared by themselves albedred to the Bill of Entry No.SBV/100/2014-16 filed on the import of vessel namely 'MV COY OF BERUT. and it was alleged that the appellant no.1 bad availed canvat credit under dispute was on the basis of reproper cenvatable documents by contravening the provisions of Rule. $\mathcal{E}(1)(\mathbf{c})$ read with Rule 3(a) and Rule 200 of the Cenvet Credit Hules, 2004 and accordingly the appallant no.1 had been issued show cause notice dated 28.84.2018 by the Joint Commissioner, Central Excise & Service Lax, Shavnagar,

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V24169/08-2200-4 v2-11:4/3vR/2017

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Subsequently, on the casks of information that the appeliant no.1 that wongly ii i availed Cerval credit of the additional duty of pusions (CVII) paid on Fuel bill MCC (HSD Gli) & " ub cillers, contained in the ship imported for breaking purpose, an inquiry conducted and etstement of Shri Kumal Kumal Khemke, Birecor of the appellant No. I (appa) and No X; recorded on 14.03 2016. On sometry of the popularity produced by the appeliant no.2. If was noticed that in CRVT return for the month of January 2015, an amount of Rs 93,67,125/ was declared against fair. Benails of Cenval prediff : fairm on monts on imported inputs on of onion Rev 41,46.291 reversed by the specificition. 28.02.2015 and remaining second of Rs 10,50,954/ reversed unter protect on 00.00.2013 siter Milletion of anguity spains! them, if he epocliant No 2 is his stated wat clearly agreed that immediately alter ") such ng ot a vessel at their ship breaking plot, althe fuels & one ward removed from the vessel and acto out without storing the same any the same were not used in the process of obtaining goods and meterials by broaking up. of enjoy fait were directly sold in the open market

On the basis of investgation carried out including statement of appellaut 00.2 the second dated 14.06.2016 it was inchered that the appellant rist 1 lad wrengly evalled Central emote of Rs. 15,50 924/Lis violation of provisions of Rule S(1) and Rule Circled with Rule 2(k) of the Central Credit Hulds, 2014 and wrongly utilised the Central credit of Rat 89 /45.4zs per the provision of Rule 14(2) of COR but at total wrong availment of Central cristif of Rs.45.50-8249 . accordingly ehrow cause holice NO.V/15-C7/Den/H5/2016-17 Sateri 26 04 2016 clast sated by the Joint Commissioner, Central Extise, I.C., Bhavnegar,

 $\langle v \rangle$ With reference to the above mattérned show cause notice, the lower stijudiesting sufformy with the impligned order centimed the domand of Gerwal credit. of Re.15 50,834A and Re.89,745A index the provisions of RUb 14 of Coovet Crofts Rulps, 2004 mad with Section 117.(4) of the Central Excise Act, 1644. He ordered to recover the centeric of Central credit of Hs. 89,7456 wrongwild lacd by appellenting 1. out of Rs. 15,50,824/ wrongly systled Cenvat aredit. The also ordered to appropriate the Gernvet credit of Rs. 16.63.8344 - already debred by the appellant no 1. He imposed equivalent emotent of demend selpenally, at on the appellent notif under the provisions. of Rule 15 of Central Credit Rules, 2004 read with Section 11AC of the Central Excise Apt, 1944and also imposed gersonal genality of Rs.5 (200) upon appoint no.2 uncerthe provisions of Rule 16A of Cenvet Credit Rules, 2004. Being approved with the Impligned articlifier specifiants have filled the present expected.

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

impupped order passed by the acjudicating authority is not proper and legal as E) the same has been passed by ignoring the provisions of Section 4 of the Centry Excise. Act, 1544 (I) The experients have relied upon the decision of the clorible Gujarat shipt Fourt in the case of M/e. Friga Holding (P) Ltd. Vs Commissioner of Gustams, as mouthed to 2018 (268) ELT 317 (Ouj) whereig it is dearly held that 'Bunkars tying Inside. . بر بر ا

the argue room' are classifiable under chapter heading 8908 of the Costoms Tariff Act. 1976) and not under phapter 27 of the Customs Tariff Act, 1976; this view has also been saken by the IDCET vide liteir leber //.No./-Y3/4/5/854/97/82/PC 2(A) dated 25 no 2013; In view of this flips had reworked out the daty liability by consistenting the above montrance softed (sws, that the appoint interated vice feller dated 29.02.2019). adarecsed to the jurisdictional Range superiodent reporting laveling the Central cropit under dispute; that they clorified the grounds that disputed Cerval crodit had been taken on the cases of BU of activitiesd with the partium Challen reart with the secaration mentioned on the reverse page of the relevant Sill of Entry, therefore had legally availed the Convet credit order uispute under the provisions at Rule 3 of the Central Credit Rules, 2004; that they had evalued Central credit under dispute on the bunkers ying marks the ongline room which was classified under chapter as us of the Customs TariT Act. 1975 read with Central Bease. Farth Act, 1985 and also filed. one area on an are bill of eatry first Prey would ovailed Cerwal credit of the pands failing. under phapter 09.08 of the said flant Acts, accordingly the said flats & cits were nothing but the "liab input" as specifical under Rule 2(k) of the Convet Croft Rules, 2064; the proper document was the bill of entry lead will: working our dury liability of study burkers under chapter ind.09.06 instead of chapter 97 and accordingly sighblinkers was the light notif for everingent of such central predill as provided under provisions of Rule 3(1)/vii) of the Cenves Credit Rules, the appel ant have refred span the various oftenens viz. (i)Claus "Headonces bit ValUOI- 2014(505) ELT 497; (ii) Kersta Stale Electronic Corporation vs. CCC — 1996 (94) ELT 44; fiii) Indian O1 Consonation into its CCH - 2006 (205) EL7 533; (V) RCH Electric Ltd va CCH ForidaLad-1 - 2018 (344) ELT 459 (Tu, Chan) & (v) CCE vs CMS Computers - 2005 (182) EI, I Z0 (8G-3 Member Ronah) & (9) S. Kamara HM, vs GCF (2003) 211 FL1 124. (CESTAID.

4. The personal heating in the matter was fixed on 28.01 2018 and again on 20 (2,2018) which was lattenized by Shri N.K. Maru, Consultani (Authorised Representative) on behalf of the appellant No. 1 & 2. He has referated the submission made in the experient memorandum and requestor to grant 10 days true limit to file forther written submission. However, to further written submission has been received from the expectants on their consultants.

5. In surgeoned of Ream's Notification No.23/2017-C.Ex (NT: detert 17,10.2017) read with Broard's Order No.05/2017-ST (lated 16,11.2017). The restant appears have been taken on hand for passing Order-In Append.

6. I find that in case of instant appeal, the important was received by the expetiants on 29.02.2017 and that thing of appeals is 27.04.2017. Hence, both appeals have been hind within the supulated time partial and there is no delay of sting the appeals. Since appealant, no. 1 already debited Cenves predit of Rs. 19,50-8047. Vide.



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debit every no. 12 or 30.06.2018 and Rs. 375 by appalant no. 2 vide SBI chairs no. 25 dated 15-04-2017, hence the condition of pro-seposit also etend totaled.

I neve gone through the tomognationder, appeal memorandum and written 7. submissions made by the appollants. The issue to be decided in the present expects is whether Convert Cruchi of Re. 16,50,8344 evelled on the CVD paid on fuel oil. Methre Gas Oil (HSB), Luce of am. classified order Chapter 27100000 - by Die spisialit no.4 is contact or allowings and whether intered idelego and penalty imposed vide injugated projects named on parentice?

In the instant case, I find that the appoint not 1 have evaluat GENVAT credit of E. Ra. 15.50,524/- or the GVO paid on Fuel of, Mapre Gas OT (HSD). Lup of an the worksheet prenaration the case of Pth of Entry No. SPY/130/2014-16 dated ds.ba.2014 fled on import of the vecse, namely MV folly of Seculi. Frict to available tot $- {igar G}$ [Na Convex credit, appellabling, 1 and taken Cenves, Credit of Rs. 2.82(19,642/- or 01.05.2014 in respect of CVD paid on import of ship M.V. "Golden" dessilled uncer-Heading No. 89 39 of the schedule to the Costonie Tertifi Act, 1975. Szid Cenva: Ciedi. being restricted to 85% of total CV i of Rs (0,01,97,298/- on Bih of Eatry No. SBY/133/2014-15 dated (03.09.2014) as per Natification No. 3/2011-CH(N1) dated 3h 93.2015.

) fire that the experient point bare taken such credit, keeping reliance upon the É. jungment [2012 (11) TMI 532 - Gujaret High Court – 2016 (288) ELT 347 (G0[.) – CH-Gustoms Gold Control Reference No. 14 of 2004) dated 25.07 2012 transacted by the Henible Figs Court of Objects at all Altmediated in the base of Mile, Pitya Houling (P) Latversus Commissioner of Customs, Preventive, Jaminaget, wherein the burkers 👔 👔 coolaining off when to be troated as part of the vesse/s machinery and were class, able Under Feating No. 89.09 of the Schedule to the Customs Tar 5 Act, 1975. That appeliant have prepared workshoot and awared credit of duty assessed considering. surver (hiel A all) contained in the Terks engine room as classified under 125 27 index their respective sub-heading 27100000. I find that have (urighten) of Hubisle High Court of Gujarut pronounced on 05.07,2012 and Bill of Eatry No., SHW1307014-15 called 2B 09.2014 filed on the import of vessel hamely MV "Dity of Berufi aller ispse of almost two years of each judgment. According to the said judgment dated 00.07,2012, the drover mentilities elasted to assess to duty of CVD of the bunkers lying inside live engine. room under the Chapter Heading No. 85.09 of the Customs Tar Mact, 1975 read with the provisions of the Chapter Heading No 89,08 of the Central Excise Terlif Act, 1935. insised of under Ghapler 27 on which Appellant hes puid duty. Therefore, on this ground the Appellant rout is not engine to take Central Credition work sheet prepared by them. Moreover, the Appellant no 1 strasdy availables severat the Cenvat Grastit of CVD. as per restriction convained vide Notification No. 5/2011-CE(NT) datas 101-08.2011 in respect of the said Hills of Edgy. I also find that as ponithe said High Court (udgment, ongles department tarks (bunkers) containing of were to be treated as part of the -f.t.s

score's heachingry and wate classifying ancer deading No. 181.00 of the Schedulo fathe Customs Tailli Act. 1675 and to separate duty is logistic viereou. Powever other lavias containing fuol and all did not form part of the LDT of the voision and I all to be classified under their own hoading and duty had to be charged eccordingly. The Hon'de High Court vides above juggment has decided the marker of classification of engine 1000" Culter. Therefore, if appalant has found that Customs assessed Bill of Enlay under wrong classification, likey were required to raise objection at the time of assessment. But, in the instant case, bie Appellant next has prepared worksheet at their own without getting Bill of Entry aman(e4 by like Customs and had available Canyat Great of CVD on fue, and cit classified under Ghapter 27100000, Considering wis fact, it and well Central Credit is eligible on fuel and oil subject to assessed index heading no 89.08 only as cell the eard Hontole fligh Court order. Remaining part of their and bit which is not tracted as part of the vessel and assessed under sub-needing 2/100000 the Cervet Credit is not eduliasible on it.

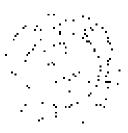
19. Further, as per jule 9(1) of the CCR (2004) the workshoet prepared by the appolant no. T is not the proper document on the basis Cenver medit was availed since the proper subject full of Entry worp ant finally assessed as partitle calculation shown in the worksheet groduced by the appeliant not 1 and or their letter dated 16.04.2016. It abo find that as per aarwe mentioned order dated 05.07.2012 of the Hunble High Court. Cerival Credit, is explote on five and oil subject to assessed under needing no. 83.08 only. Ramaining part of that and cit which is not treated as part of the vessel and assessed under sub-heading 27100000, the Cenval Credit is not admissible on it as per Rule 3 read with Rhila 2(k) of the Central Credit Rulas, 2004. I find that lower adjudicating authority has rightly observed that Nove 9 of Section XV (Base Metals and Articips of Ress Motal) of the Schodulo 4 appended to rap Central Excise Taniff Act. 1665 covers all the goods failing under 72 to 63 of the Act (Note 9 of Xection XV ogetains 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 emorith to menufacture). Therefore, IL is undoubtedly clearad from the definition of Rule 2(h) of CCR 2004 that for ship breaking, goods and materials obtained by process of breaking. of styp, boals or other floating structure can arry be considered as 'explainly goods'. Rule 2/1; of the CCR,2004 defines that "inished products' maana accesable goods. manufactured or produced from input, or by using input services. Faither Rule 3 of that CCR, 2004 states that a manufacturer or producer at final products on a proviser of output service is allowed to take credit or outlies of excise paid on hour, or much service and veceived by the manufactures for use as of in relation to the manufacture of (inst product: Further, as defined under Rico 2(k) of GCR, 2004 in put means all goods used in the factory by the manufacture of the (that product out excludes any goods which have no relationship whatsoever with the manufacture of a rinal product. From this definition, If is clear that the item which is not used in the factory by manufacture of final product cannot be considered as input, as defined, todor Aulo 2(k) of CCR, 2004 and

Page 8 of 10.

as such Cenvel Credit of dety paid on such term will not be available to the assesses under Rule 3 of Ibe CCR, 2004.

I find that the lower adjocration puthority in the implighted order has noticed that 11. in statement dated 14 03 2016, the appellant no 2 has clearly stated that immediately after beaching of the ship at their plot, all the fuels & Gis 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. It agree with condusion of the lower adjusteeung authopity that it is evident that such Fuel Git, Matthe Gas Oll and Lub cill do not form part of input in Lenn of Rule 3 of fore Convet Credit Rules, 2004 and therefore convet credit en the same not available to the appellant insit, as plabatale all para 3.5 to 3.5 of the implaned order.

The said Appollants in their defence also contested that disputed Cernali ciedil 🦆 12 was availed in the month of Landary/2010, whereas the SCN was tabled on 20.04.2016. and the same was time barred. I find that the lower adjusticating authority in the impussed order at wara 3.9 refitiviestablished the invocation of extended parted of demand under Section 1nA(4) of the Central excise Act,1944. The appeliant nation suppressed the tasks from the department that Feel Oil, Markie Gae Oil (HSD), 145 OII on which Cerval credit were taken as impute, were not used in on in relation to mapproaction of them tinal products. The fact was came to the notice to the department only after inquiry conducted by the department. From the monthly ER-Lifetures di caano, be ascerbined whether the goods against appetiant no. 1 has taken preditiveraused in the manufacture of their final excisable product of whether Genval credit is admissible on such inputs or otherwise. It is only when investigation was us that out against the appellants. the fact of non-eligibility of Cenvat credition such gootts come to the nation to the department . In view at integoing discussion, I find that extended period of five years is connectly invoked by the lower actudicating authority under the provide to Section 11A (4) of the Central Excise Act 1944, to recover the wrangly availed Convet credit. Accordingly declared has been rightly common by the lower sojulus. Ny sufironity videnho impugnosi omori i tito, that when decread is confirmed and Cervat credit cas been wrongly taken and utilised the same, the latenest at appropriate whereas the encourter of the processing of the second term the AROHANI wide, the provisions of Sochon 11AA of the Central Excise Act, 1944 road will Rule 14 of the Cenves Cred * Rules 2004 - also find that appearant no 1 revelated the wrong availed Convertignedi; of Fig. 15.50.5344 anty attentible engling initialed system the appoints. It also proves if equals the monton on the part of appellants to take wrong Coovet small. Hence, lower adjudicating authority has highling reposed panal action against appellants under the provisions of Section 11AC of the Contral Evglag Act, 1944 (eed with Rules 15 of the Convert Crystil Rules, 2004.



12 I have also carefully gond final (in all like case laws allos by like Appeliant and and that note of them are applicable in the present as some of the case laws deal with ла 1. л 1. л

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WODQ availment of CHNVA," Credit of forthying in the engine room. Therefore, I dery as the contention made by the Appollants.

14. Due to above reasons, the continuation of the above domand stongwith the interest under Section 11AA and the paperty under Section 11AC of the Control Evelocity Act, 1944 read with Roles 15 of the Cenver Credit Hullon, 2004 appear logical.

10. In View of the above facts and circamstances, it uphold the entire demand of the impugned order. No: 40/AC/RURAL/BVR/RR/2016;17; dated 27.02.2017; confirming that Cuty, interest and penalties on motifs and reject the expents fied by the appellants.

The upped's find by the appallant stand's disposed off in ebove terms.

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19.00

(Pi A. Vesave) Commissioner (Appeals) / Commissioner COS 1 & Central Extise Kuluh (Gandhefnert)

F. No. V2/109/3VR/2017 F.Na. V2/110/8VH/2017

<u>RYR.FAG</u>

ΓD.

- W/s. Marinelines Ghip Dicakers PvL Ltd., P/ot No. 47, Alang Ship Broaking Yard. Alang, D.st., Dhavnagar
- Shri Kapal Kubrar Chemke Director of Ms. Marinelines Ship Breakere Pvt. Ltd., Plot No. 47, Alang Ship Broaking Yare, Alang, Disc. Bravnagar

<u>Coey to:</u>

The Panning! Chief Commissioner, CCS I & Control Excise, Ahmedebed.

The Pyt/Asst. Commissioner, Central Excerct, Kural Division, Sheimagar,

- 5) The By, (Ass), Conurr. (Sys.), H.Q., Rhawayar for upload (r) on wateries
- Φ₂ F.No. 02/109/BVD/2017 and F.No. V2/110/EVR/2017.

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Dato: 26.06.2019

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