



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



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक पर, डी.द्वारा

DIN-20220264SX0000666A10

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.L.O. No.	दिनांक/ Date
	V2/19/BVR/2021	04/AC/HKM/BVR-2/2020-21	31-03-2021

अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-016-2021-22

आदेश का दिनांक / Date of Order:	17-01-2022	जारी करने की तारीख / Date of issue:	02.02.2022
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श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम।
द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :
घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

M/s. Shree Ram Vessels Scrap Pvt. Ltd. (3rd floor, "Shree Ram House", Khargada Street Khargate Bhavnagar-364001)

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर 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, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

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) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए। /

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) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, 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/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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 fee of Rs. 1000/- 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/-.



- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 of the Finance Act 1994, shall be filed in Form 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.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल हैं

- (i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समस्त विचाराधीन स्थगन अर्जों एवं अपील को लागू नहीं होगा।/

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.

- (C) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामले में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

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:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/

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) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /

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) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

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

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं।/

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) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /

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

जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।

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.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding 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) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /

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) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। /

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.

उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /

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

The present appeal has been filed by M/s. Shree Ram Vessel Scrap Pvt. Ltd., 3rd Floor, "Shree Ram House", Khergada Street, Khargate, Bhavnagar-364 001 (hereinafter referred to as "the appellant") against Order-in-Original No. 04/AC/HKM/BVR-2/2020-21 dated 31.03.2021 passed by the Assistant Commissioner, Central GST Division, Bhavnagar-2 (hereinafter referred to as "the adjudicating authority").

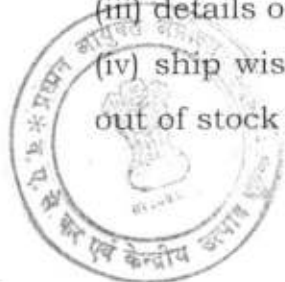
2. Briefly stated, the facts of the case are that the appellant are engaged in the ship breaking activities and manufacturing of goods and materials obtained by breaking up of ships, boats and other floating structures etc. (hereinafter referred to as the "goods") falling under Chapter 72 to 81 of the First Schedule to the Central Excise Tariff Act, 1985 and holding Central Excise Registration No. AADCS9504RXM001.

3. The appellant had vide letter dated 02.06.2016 intimated to the Range Superintendent that during the Financial Year 2016-17 (i.e. April 2016 to March 2017), they will pay CVD in respect of vessel imported for breaking purpose and simultaneously they will also avail Cenvat Credit in respect of the said CVD. They further intimated that they will reverse the Excise duty on non-excisable goods cleared as mandated under Rules 6 (3)(i) of Cenvat Credit Rules, 2004.

3.1. Subsequently, the appellant vide letter dated 11.04.2017 intimated that during the Financial Year 2017-18 (i.e. April 2017 to March 2018), they will not pay CVD in respect of the vessels imported by them for breaking purpose and will pay the excise duty of excisable goods cleared by them, through PLA. They further intimated that accordingly they were not liable to make reversal of duties under Rule 6 (3)(i) of Cenvat Credit Rules, 2004 on clearance of non-excisable goods.

3.2. The Range Superintendent, vide letter dated 11.05.2017, asked for details of

- (i) ships imported during the Financial Year 2016-17,
- (ii) ship-wise details of goods lying in stock (as on 31.03.2017),
- (iii) details of Turnover during the Financial Year 2016-17, and
- (iv) ship wise details of Excisable/ Non-excisable goods likely to emerge, out of stock lying as on 31.03.2017.



3.3. The appellant vide their letters dated 11.08.2017 and 16.02.2018 submitted the required information. It was observed that the appellant had cleared non-excisable goods valued at Rs. 1,46,19,278/- during the period 01.04.2017 to 10.05.2017 as detailed in Para 5 of the SCN. The Range Superintendent vide letter dated 23.04.2018 requested the appellant to pay/reverse the duty amount payable under Rule 6 (3)(i) of Cenvat Credit Rules, 2004 on the clearance of the non-excisable goods cleared by them during the period 01.04.2017 to 20.05.2017 along with interest at appropriate rate.

3.4. The appellant vide their letter dated 07.05.2018 stated that they were not liable to pay the duty amount payable under Rule 6 (3)(i) of the Cenvat Credit Rules, 2004 on non-excisable goods cleared by them. It was stated that the first ship imported by them in the F.Y. 2017-18 was M. T. STOLT HILL and the date of permission granted for cutting of ship was given on 10.05.2017. It appeared to the Range Superintendent that the non-excisable goods cleared by the appellant pertained to the ship imported prior to April-2017, and they were availing the benefits of CENVAT credit on CVD paid on ship imported. Hence, they were liable for reversal of duty @ 6% of the value of exempted goods, on such clearances under Rule 6 (3)(i) of Cenvat Credit Rules, 2004. Subsequently, Show Cause Notice dated 01.03.2019 was issued to the appellant for demand of Central Excise duty amounting to Rs. 8,77,157/- under Section 11A(4) of Central Excise Act, 1944 read with Rule 14 (1)(ii) of Cenvat Credit Rules, 2004 along with interest under Section 11AA of Central Excise Act, 1944 read with Rule 14 (1)(ii) of Cenvat Credit Rules, 2004. It was also proposed to impose penalty under Section 11AC of the Act ibid read with Rule 15 (2) of Cenvat Credit Rules, 2004.

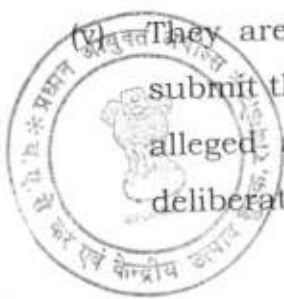
4. The said Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority, wherein, he confirmed the demand under Section 11A (4) of the Act, read with Rule 14 of Cenvat Credit Rules, 2004 along with interest under Section 11AA of the Act read with Rule 14 (1)(ii) of Cenvat Credit Rules, 2004. He also imposed penalty of Rs. 8,77,157/- under Section 11AC of the Act read with Rule 15 (2) of Cenvat Credit Rules, 2004.

5. Being aggrieved by the impugned order, the appellant filed this appeal on the following grounds:

- (i) The Assistant Commissioner has not at all dealt with the pleas made before him. The Assistant Commissioner has not recorded any finding on the arguments raised before him and has also cursorily and mechanically dealt with the pleas of the appellant. The findings are absolutely baseless and self-serving in nature.



- (ii) They had not intentionally cleared the impugned goods without payment of Central Excise duty as governed under Rules as the impugned goods were nothing but non-excisable goods which are exempted goods provided under Explanation-1 to Proviso of Rule 6 (1) of the Rules. Hence, on clearance of the non-excisable goods no payment of Central Excise duty is required to be made by the appellant. The appellant has only to reverse the amount which is required to pay equal to 6% of value of exempted goods as provided under Rule 6 (3)(i) of the Rules and the said amount is not duty. Hence, the findings of the adjudicating authority are far from the legal provisions. The authority has completely ignored the provisions of Rule 6 (3)(i) of the Rules.
- (iii) They had neither taken nor utilized any CENVAT credit in the month of April-2017 & May-2017. It can be ascertained from the respective ER-1 that CENVAT credit available in the credit account of the appellant is Zero during the relevant period. Thus, the appellant has not to pay any amount as provided under Rule 6(3)(i) of the Rules as amended w.e.f. 01.06.2016 as such amount payable was 6% of value of exempted goods and shall be maximum up to Cenvat credit available in the credit account at the end of period to which such payment relates. Since, no amount is available in the credit account of the appellant at the end of the month of April-2017 & May-2017, the appellant is not liable for any payment of amount as demanded and ordered under the impugned order.
- (iv) The department has not produced any evidence regarding removal by fraudulent means, in absence of which, findings of removal by fraudulent means with a clear intention to evade duty are not sustainable. In any event, the demand of duty on the basis of data received from the appellant and is not corroborative with any evidence, is unjust, improper and unreasonable. They further submit that if the appellant had cleared the goods by fraudulent means and evaded the Central Excise duty, then the purchasers to whom the appellant had sold the non-excisable goods were also committed an offence. However, there is no such case against any purchaser that they have purchased the non-excisable goods from the appellant by fraudulent means which proves that the appellant had not cleared any exempted goods viz. non excisable goods by fraudulent means.
- (v) They are not liable for payment of any interest and penalty. They submit that no evidence was adduced in the SCN to establish that the alleged acts or omissions had been committed by the appellant deliberately or contumaciously or in flagrant violation of provisions of



law or with intention to evade duty. They said that no penalty was imposable when there was no malafide intention to evade payment of duty.

- (vi) The appellant also contended that the demand of amount liable for reverse under rule 6(3) of the CENVAT Credit Rules, 2004, is not central excise duty, hence the same amount along with interest and imposition of penalty, can not be recovered under the provisions of the Central Excises Act, 1944

6. Personal hearing was held in virtual mode on 01.12.2021. It was attended by Shri Sarju S. Mehta, Chartered Accountant, on behalf of the appellant. He reiterated the submissions made in grounds of appeal.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, record of hearing and material available on record. The issue to be decided in the case is whether the impugned order passed by the adjudicating authority confirming the demand by way of reversal of 6% of the value of non-excisable goods cleared by the appellant as per Rule 6 (3)(i) of the Cenvat Credit Rules, 2004 is legal and proper or otherwise.

8. Before taking up the issue on merits, the issue of limitation in filing appeal is to be decided. It is observed that the impugned order was issued on 31.03.2021 and received by the appellant on 05.04.2021. The appeal was filed by the appellant on 14.06.2021 and paid Rs. 65,787/- as 7.5% deposit of the duty as per Section 35 F(i) of the Central Excise Act, 1944 on 25.06.2021. Hence, it is observed that the appeal is filed beyond 60 days as per Section 35 of the Act. I also find that the CBIC vide its Circular No. 157/13/2021-GST dated 20.07.2021 has clarified that the extension of timeline, granted by the Hon'ble Supreme Court vide its Order dated 27.04.2021, is applicable in respect of any appeal which is required to be filed before the appellate authority under GST Laws. Further, the Hon'ble Supreme Court vide its Order dated 23.09.2021 in Miscellaneous Application No. 665/2021, has directed that the period from 15.03.2020 to 02.10.2021 shall stand excluded in computing the period of limitation for any appeal. Thus, the timeline for filing of appeal has been extended up to 02.10.2021 by the Apex Court. Therefore, looking in to the facts and circumstances of the case, I hereby condone the delay in filing the present appeal.

9. It is observed from the case records that the appellant is engaged in the Ship Breaking activities and while breaking up of ships, they had obtained excisable and non-excisable goods in their registered premises. They had vide



their letter dated 02.06.2016 given an intimation to the jurisdictional Range Superintendent that they will pay the Counter Veiling Duty (CVD) (Additional Customs Duty) in respect of ships imported for breaking during the period 2016-17 and that they will avail CVD paid on such import as CENVAT credit facility as provided under the CENVAT Credit Rules, 2004. They further intimated that they will pay 6% of the amount of non-excisable goods obtained from such imported ships, as per Rule 6 (3)(i) of Cenvat Credit Rules, 2004. Subsequently, they had informed Range Superintendent vide letter dated 11.04.2017 that they will not pay the CVD on the ship imported during 2017-18 hence they were not liable for payment of an amount of 6% on the value of non-excisable goods obtained during the breaking of ship as provided under Rule 6 (3)(i) of Cenvat Credit Rules, 2004. In response to this intimation, the Range Superintendent had obtained information in respect of ships imported during 2016-17, the stock in respect of excisable and non-excisable goods obtained from breaking of ships, available as on 01.04.2017 and other related information from the appellant, which culminated in issuance of the impugned SCN demanding Rs. 8,77,157/- towards an amount of 6% of the value of non-excisable goods cleared during the period 01.04.2017 to 20.05.2017. These are undisputed facts.

10. It has been contended by the appellant that they have only to reverse the amount which is required to pay equal to 6% of value of exempted goods as provided under Rule 6 (3)(i) of the Rules and the said amount is not duty. As regards the contention of the appellant it is observed that as per Explanation III to Rule 6(3) of the said rule, I find that the amount dues on account of application of Rule 6(3) of the CENVAT Credit Rules, 2004 can be recovered under Rule 14 of the said rules as provided under Rule 6(3) of the said rules. The text of said explanation is as under:

Explanation III. -

If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (3), (3A), and (3B), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

From the above legal provisions, it is apparent that the amount in question demanded from the appellant is nothing but CENVAT credit stated to be availed by them wrongly and that the provisions of Cenvat Credit Rules and Central Excise Act are applicable in the present case. Hence, the contention of the appellant is not acceptable and is rejected being devoid of any merit.

11. As regards another contention of the appellant that they had neither taken nor utilized any CENVAT credit in the month of April-2017 & May-2017 and that as per provisions under Rule 6(3)(i) of the Rules as amended w.e.f. 01.06.2016, such amount payable was 6% of value of exempted goods and shall be maximum



up to Cenvat credit available in the credit account at the end of period to which such payment relates. As no amount is available in the credit account of the appellant at the end of the month of April-2017 & May-2017, they are not liable for any payment of amount as demanded and ordered under the impugned order. I find that the appellant has wrongly interpreted the provisions of Rule 6(3)(i) *ibid* as the said rule provide that the assessee has to pay an amount equal to 6% of value of exempted goods subject to maximum total of opening balance of credit account available at the beginning of period relating to payment made and the credit of inputs and input services taken during that period. The legal provisions effective from 01.04.2016 vide Notification No. 23 /2016- Central Excise (N.T.) Dated 01/04/2016, is mentioned as below:

(i) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period;

From the legal provisions discussed above, it is apparent that for quantification of reversal, the opening balance of credit available at the beginning of period to which payment relates and credit taken during the period is to be added so as to arrive at maximum amount of reversal. It is observed that the appellant had intimated to make reversal during the FY 2016-17 for clearances made by them. It is also apparent from the SCN that first ship imported during F.Y. 2017-18 was M. T. Stolt Hilt and the permission for its cutting was given on 10.05.2017. Hence, I find that the adjudicating authority was correct to come to a conclusion that the non-excisable goods cleared between 01.04.2017 to 10.05.2017 pertained to ships imported earlier. This has not been disputed by the appellant. Further, for such imports made by the appellant during F. Y. 2016-17, the appellant had already availed CENVAT on CVD paid by them. Hence, they were liable to reverse CENVAT credit in respect of clearances of non-excisable goods made by them. As no such import was made by them till the period of demand in F.Y. 2017-18, taking recourse to the ER-1 returns for April, 2017 and May, 2017 to claim that they were not liable for payment of any amount as there was no availment of CENVAT credit of inputs/input services during April-17 to May-2017, is considered to be wrong interpretation of legal provisions. They were anyway not liable for availment of CENVAT during 2017-18 as per their own declaration to the Range Superintendent. Their contentions are, therefore, not acceptable and is rejected.

12. Further, as regards the contention of the appellant that they had not cleared any exempted goods viz. non excisable goods by fraudulent means as there was no corroborative evidences produced by the department, I find that



the information in respect of exempted clearance made by the appellant were given to Range Superintendent when it was called for. Further, in ER-1, they had not declared any clearance of exempted goods, hence this action of appellant amounts to mis-declaration/suppression of information and attracts the demand of duty under Section 11A(4) of the Central Excises Act, 1944. The relevant portion of the Section 11(4) is as under:

(4) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of

- (a) fraud; or*
- (b) collusion; or*

(c) any wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty

by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice.

On perusal of the records in light of the legal provisions above, it is apparent that the appellant had suppressed the information pertaining to the clearance of non-excisable goods in the relevant returns. Hence, the extended period of limitation has been rightly invoked and confirmed in Para-27 & 28 of the impugned order by the adjudicating authority.

13. When the demand is confirmed, it is natural that it is required to be paid along with interest under Section 11AA the Central Excise Act, 1944. The findings of the adjudicating authority at Para-29 of the impugned order is self-speaking.

14. As regards the penalty imposed under Section 11AC of the Act, I find that the adjudicating authority has correctly relied upon the citation in the case of Goodyear India Ltd vs. CCE New Delhi [2002 (149)ELT 618 (Tri. Del)]. Besides that, in the following judgements, it has been held that penalty under Section 11AC is imposable:

- (1) Analogics Tech India Ltd. Vs. Commr. Of Cus. C .Ex. & ST Hyderabad-III (2017 (357) ELT 966 (Tri. Hyd.)
- (2) Rastriya Chemicals & Fertilizers Ltd. Vs. C.C.E. & S. T., LTU, MUMBAI (2014 (313) E.L.T. 209 (Tri. - Mumbai)

I find that the appellant had contravened the provisions of Cenvat Credit Rules, 2004 read with Section 11 A(4) of the Central Excise Act, 1944 and, therefore, penalty under Section 11AC of the Act read with Rule 15 (2) of Cenvt Credit Rules, 2004 is imposable in the case.



dm

15. In view of the discussions made above, I do not find any merit in the appeal filed by the appellant and the same is rejected. Accordingly, I uphold the impugned order.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

16. The appeal filed by the Appellant is disposed off as above.

सत्यापित / Attested :

[Signature]

एन. सी. गजरीया
N. C. Gajariya

अधीक्षक
Superintendent

सेवा में,

[Signature]
17/01/2022
(अखिलेश कुमार)
आयुक्त(अपील्स)

Date :

17/01/2022

F. No. V2/19/BVR/2021

By RPAD

To	
M/s. Shree Ram Vessel Scrap Private Limited. Plot No. 78, Ship Breaking Yard, Post Manar, Taluka Talaja, Dist. Bhavnagar, Gujarat 364081.	श्री राम वेसल स्कैप प्राइवेट लिमिटेड। प्लॉट नंबर 78, शिप ब्रेकिंग यार्ड, पोस्ट मनार, तालुका तलाजा, जिला भावनगर, गुजरात 364081.

प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
 - 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
 - 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मण्डल -1, भावनगर, को आवश्यक कार्यवाही हेतु।
- ✓ गार्ड फ़ाइल।

