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केन्द्रीय उत्पाद शुल्क एवम सेवा कर आयुक्तालय , भावनगर
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX

प्लॉट नं. 6776-बी/1, 'सिद्धि सदन' बिल्डिंग,

PLOT NO. 6776/B-1, "SIDDHI SADAN" BUILDING,

नारायण उपाध्याय मार्ग, भावनगर-364001

NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.

दूरभाष : (0278) 2523627 फ़ैक्स : 0278-2513086

रजिस्टर्ड डाक पावती द्वारा

By R.P.A.D.

फ़ाईल सं. V/15-08/Adj/DRI/HQ/2010

F. No.

आदेश की तारीख : 30/06/2011

Date of Order :

जारी करने की तारीख : 30/06/2011

Date of Issue :

परितकता

Passed by

श्री एन के भुजबल

SHRI N. K. BHUJABAL

आयुक्त, केन्द्रीय उत्पाद शुल्क एवम सेवा कर, भावनगर

Commissioner, Central Excise and Service Tax, Bhavnagar

मूल आदेश संख्या Order-in-Original No : 13/BVR/Commissioner/2011

1. आदेश की यह प्रति जिसको जारी किया गया है उनके व्यक्तिगत उपयोग के लिए निःशुल्क भेजी जा रही है ।
1. This copy of order is granted free of charges for private use of the person(s) to whom it is issued and sent.
2. यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है , तो इस आदेश के विरुद्ध सीमा शुल्क , केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय प्राधिकरण , ओ-20 , मेघाणी नगर , नया मानसिक अस्पताल संकुल , अहमदाबाद को केन्द्रीय उत्पाद शुल्क अधिनियम की धारा 35-बी की उपधारा 1(a) की शर्तों के आधार पर अपील कर सकता है । धारा 35-बी (1) (परंतुक) (a) से (d) के अंतर्गत मामले जैसे कि हानि , छूट , बॉण्ड के अंतर्गत निर्यात , शुल्क क्रेडिट के मामले , आवेदन के पुनरीक्षण के मामलों में आवेदन भारत सरकार के संयुक्त सचिव , राजस्व विभाग , वित्त मंत्रालय , नई दिल्ली को बंधनकर्ता रहेगा ।
2. Any person(s) deeming himself aggrieved by this Order may appeal against this order to The Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad, O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad, in terms of the provision of Section 35B(1)(a) of the Central Excise Act, 1944. If the case covered under the category specified in Section 35B(1) (Proviso) (a) to (d), i.e. Loss, Rebate, Export under Bond, duty credit cases, the Revision application shall lies to the Joint Secretary to the Government of India, Department of Revenue, Ministry of Finance, New Delhi.
3. अपील फॉर्म E.A.-3 में केन्द्रीय उत्पाद शुल्क (अपील) नियम , 2001 के नियम 3 के उपनियम 2 में विनिर्दिष्ट व्यक्ति द्वारा की जानी चाहिए ।
3. The Appeal should be filed in form EA.-3. It shall be signed by the person as specified in Rule 3(2) of the Central Excise (Appeals) Rules, 2001.
4. केन्द्रीय उत्पाद शुल्क अधिनियम , 1944 की धारा 35-B के अंतर्गत अपील इस आदेश की प्राप्ति के तीन माह के अंदर दर्ज करवानी होगी ।
4. The appeal should be filed within three months from the date of communication of this order. (Section 35B of the Central Excise Act, 1944).
5. यह अपील चार प्रतियों में दाखिल की जाए और जिसके विरुद्ध अपील की गई है , उस आदेश की समान संख्या में प्रतियां संलग्न की जाए (इन में से कम से कम एक प्रति अधिप्रमाणित होनी चाहिए) । उक्त अपील के समर्थक सभी दस्तावेजों चार प्रतियों में भेजे जाए । उक्त अपील व्यक्तिगत रूप से रजिस्ट्रार के समक्ष प्रस्तुत की जाए या पंजीयक के नाम से रजिस्ट्री ऑफ़ द्वारा भेजी जाए । परन्तु उक्त रजिस्ट्रार के कार्यालय में प्राप्ति की तारीख नियत अवधि में होगी ।



5. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (One of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the Register or sent by Registered Post addressed to the Registrar. But the date of receipt in office of the said Registrar in time or otherwise will be the relevant date for the purposes of limitation of time.

6. फीस का भुगतान न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के पक्ष में रेखांकित बैंक ड्राफ्ट द्वारा अधिनियम के प्रावधानों के अंतर्गत करना अपेक्षित है। यह ड्राफ्ट जहाँ पीठ स्थित है, किसी राष्ट्रीयकृत बैंक की किसी शाखा के नाम पर जारी किया जाए और उस उक्त अपील प्रपत्र के साथ डिमाण्ड ड्राफ्ट संलग्न किया जाना चाहिए।

6. The Fee is required to be paid as under through a cross Bank Draft in favour of the Assistant Registrar of Bench of the Tribunal on a branch of any Nationalized Bank located at the place where the Bench is situated and it shall be attached to the form of appeal.

- (क) जहाँ पर मांगा गया शुल्क ब्याज और दण्ड रूपए 50,00,000/- (रूपए पचास लाख) से ज्यादा हो, रु. 10,000/- (रूपए दस हजार)
- (a) Where the amount of duty and interest demanded and penalty is levied is more than ₹50,00,000/- (Rupees Fifty Lakhs), ₹ 10,000/- (Rupees Ten Thousand);
- (ख) जहाँ पर मांगा गया शुल्क ब्याज और दण्ड रूपए 5,00,000/- (रूपए पांच लाख) से अधिक हो लेकिन, रूपए 50,00,000/- (रूपए पचास लाख) से कम हो 5,000/- (रूपए पांच हजार)
- (b) Where the amount of duty and interest demanded and penalty levied is more than ₹5,00,000/- (Rupees Five Lakhs) but not exceeding ₹ 50,00,000/- (Rupees Fifty Lakhs), ₹ 5,000/- (Rupees Five Thousand);
- (ग) जहाँ पर मांगा गया शुल्क ब्याज और दण्ड रूपए 5,00,000/- (रूपए पांच लाख) अथवा कम हो, रूपए 1,000/- (रूपए एक हजार)
- (c) Where the amount of duty and interest demanded and penalty levied is ₹ 5,00,000/- (Rupees Five Lakhs) or less, ₹ 1,000/- (Rupees One Thousand);

7. इस आदेश की प्रतिलिपि पर न्यायालय शुल्क मुद्रांक अधिनियम, 1970 की अनुसूची 1 मद 6 के अंतर्गत निर्धारित 50 पैसे का न्यायालय शुल्क मुद्रांक (कोर्ट फी स्टाम्प) लगाया जाना चाहिए।

7. The Copy of this order attached therein should bear a Court fee stamp of 50 paise as prescribed under schedule 1 of Article 6 of the Court fee stamp Act, 1970.

8. उक्त अपील फॉर्म के साथ शुल्क / दण्ड की अदायगी का प्रमाण संलग्न किया जाना चाहिए।

8. Proof of payment of duty, penalty etc. should also be attached in original to the form of appeal.

9. अपील पर रु. 5 (रूपए पांच) का न्यायालय शुल्क मुद्रांक (कोर्ट फी स्टाम्प) लगाया जाना चाहिए।

9. Appeal should bear a Court Fee Stamp ₹ 5/-.

10. पूर्ण जानकारी हेतु केंद्रीय उत्पाद शुल्क (अपील) नियम, 2001 एवम CEGAT (कार्यविधि) नियम 1982 देखें।

10. Please refer to the Central Excise (Appeals) Rules, 2001 and the CEGAT, Procedure Rules, 1982 for complete details.

Fe,

1. M/s. Modest Infrastructure Limited,
Ramsar Yard, Ferry Road,
Near Lakadiya Pool, Old Port,
Bhavnagar.
Gujarat.
2. Shri Mehulbhai V. Patel
3. Shri Kevat J. Vanani
4. Shri Kishore D Gambani



विषय : कारण बताओ नोटिस संख्या :

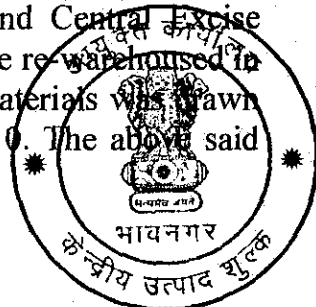
Subject: Show Cause Notice F. No. DRI/AZU/Misc-12/2010 dated 31.08.2010.

BRIEF FACTS :-

M/s. Modest Infrastructure Limited, Ramsar Yard, Ferry Road, Nr. Lakadiya Pool, Old Port, Bhavnagar-364002 (hereinafter referred as Modest) is engaged in the activities of ship building and repairing for the purpose of which they are having a ship building yard at the above address. Modest had been granted license bearing No. 01/PBW/BVR/2005-06 on 16th February 2006 for Private Bonded Warehouse (PBW) by the Assistant Commissioner of Customs & Central Excise, Bhavnagar in terms of provisions of Section 58 of the Customs Act, 1962 for storage of duty free raw materials imported and procured indigenously for manufacture of ships/ vessels under bond for which permission was also granted under Section 65 of the Customs Act, 1962 (hereinafter referred as the "Act"). Modest is holding Central Excise License No. AADCM1665KXM001 dated 17th February 2006 issued by the Assistant Commissioner of Central Excise, Central Excise Division, Bhavnagar. So far as the sourcing of raw materials is concerned, Modest has been importing the duty free raw materials like steel plates, ship spares/components etc. The duty free imported raw materials and the indigenously procured inputs would be re-warehoused and stored in the bonded premises of Modest in terms of Section 58 of the Customs Act, 1962 as above. Thereafter, the raw materials so received and re-warehoused in the bonded premises of the Modest would be issued with permission of the Central Excise Officer for use thereof in the manufacturing of vessels/ ships under bond in terms of Section 65 of the Customs Act, 1962. Once the Ship/Vessel is complete, the same after trial is exported from Bhavnagar Port to the various overseas parties with whom Modest would be having ship building contracts.

2. On receipt of intelligence regarding diversion of the duty free imported raw materials by Modest, the Ship Building Yard of Modest at the above address was visited and searched on 04.03.2010 by the officers of the Directorate of Revenue Intelligence (DRI), Jamnagar. As a result of said search and investigation, Show Cause Notice F. No. DRI/AZU/Misc-12/2010 dated 31.08.2010 was issued to M/s. Modest and others. It has been alleged that following anomalies and irregularities were noticed during the search operation :-

- a. **Removal of Re-Warehoused Goods:** Duty free imported raw materials as per the list given in the Panchanama dated 04.03.2010, after being re-warehoused in the PBW of Modest, were removed illegally therefrom without any permission of the concerned Central Excise Officer or without any cover of the statutory documents, to the other premises named as Warehouse-2, falling outside the bonded and registered premises of Modest. On being asked, the Director Shri Mehul Patel, admitted the fact that the Warehouse-2 was outside the PBW premises as well as out side the Central Excise registered premises. This was also apparent from the ground plan details provided by Shri Mehul Patel along with the PBW License and Central Excise Registration Certificate at the material time. Verification of the premises revealed that certain raw materials i.e. Ship's Spare Parts and Components were illicitly removed to Warehouse-2, which was outside the bonded and Central Excise registered premises of Modest, after the same were re-warehoused in the PBW of Modest. Inventory of the said raw materials was drawn during the course of Panchnama dated 04.03.2010. The above said

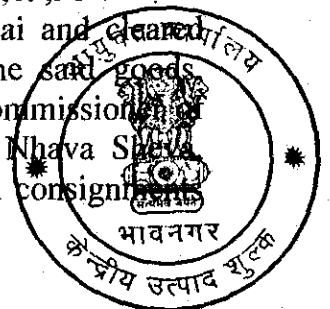


goods collectively valued at ₹ 37,94,31,475/- availing exemption of the Customs Duty thereon to the tune of ₹ 10,62,68,989/- were further placed under seizure under the reasonable belief that the same were liable for confiscation in terms of Section 111 of the Customs Act, 1962 as described under the Panchnama dated 04.03.2010. Thereafter, the seized goods were handed over to Modest under Supratnama dated 04.03.2010 for safe custody thereof.

- b. **Diversion of the goods not Re-Warehoused:** The six import consignments as detailed below were shown by Modest to have been received and stored in the bonded premises which were not yet re-warehoused and some items were even shown issued for manufacture under bond without getting the re-warehousing certificate thereof:-

Sr. No	Description of import goods	Warehousing B/E Nos./Date	Quantity	Status found on verification
01	Welding Electrodes CHE40 for Hull No. 310	888410/ 08.02.2010	22 PLT/22MT S	Found kept in the open ground opposite Warehouse-1
02	Panama Chock JIS2017 AC for Hull Nos. 309/310/313/314	856434/ 16.01.2010	20 Pcs.	Found kept stocked in Warehouse-2
03	Supply of various Pumps Complete in all respects for Hull No. 309 & 314	872986/ 29.01.2010	9 Pkgs.	Found kept stocked in Warehouse-2
04	Security Devices; Latching Non Indicating term Y ; TM520 Timer MOD Assy; K2214 Metal D/Gang Backbox for Hull No. 308	416880/ 08.02.2010	01 Pkg.	Found not available.
05	Power Steering Gear for Vessel hull Nos. 308 and 313.	871329/ 28.01.2010	6 Pkgs./2 Sets	One no. of Pkgs. For Hull no. 308 found not available. Remaining found stored in Warehouse-2.
06	Bifurcated Fan Model for Vessel Hull Nos. 308 & 313.	845610/ 11.01.2010	4 PLTs/12 Nos.	2 Nos. of Fans found not available. Remaining stocked/stored in the open ground opposite Warehouse-1

The above six consignments totally valued at ₹ 1,01,89,385/- were imported at JNPT, Nhava Sheva, & Air Cargo Complex, Mumbai and cleared under the Warehousing Bills of Entry. After warehousing of the said goods Modest had filed the Shipping Bills in the name of the Deputy Commissioner of Customs, Bond Department, JNCH, Taluka-Udan, Dist.-Raigad, Nhava Sheva A/C Modest Infrastructure Ltd. On passing the Shipping Bills, six consignments



were allowed to be removed therefrom under transit bond under the provisions of Section 67 of the Customs Act, 1962 for re-warehousing in the PBW of Modest at Bhavnagar. Based on the above, the said goods were removed therefrom on the strength of the Shipping Bills (meant for "Export of Duty Free Goods Ex-Bond") for warehousing the same into the PBW of Modest at Bhavnagar against undertaking given by Modest in terms of Section 59 (1) of the Customs Act, 1962. The said goods were required to be re-warehoused in the PBW of Modest under permission of the proper officer of Customs under Section 60 of the Customs Act, 1962. During panchanama proceedings on 04.03.2010, the goods covered under above six consignments were lying / deposited outside the PBW of Modest, scattered all over the yard, including the premises of Warehouse-2, as the same were not re-warehoused till that time. Out of the six consignments as mentioned above, three imported consignments covered under the Bs/E Nos. 872986/29.01.2010, 856434/16.01.2010 & 888410/08.02.2010 were found physically available and the same were within prescribed period of warehousing. However, the goods covered under B/E 416880/ 08.02.2010 were not physically available. In addition to this, it was also noticed that partial goods covered under Bills of Entry No. 871329/ 28.01.2010 and 845610/11.01.2010 were also not available physically. During investigation, no entry was found in the re-warehousing register and the issue register maintained by Modest in respect of the above said goods. Neither any ex-bond bill of entry was found filed nor was the requisite permission from the proper officer of the Customs was obtained.

3. Statement of Shri Mehul Patel, one of the Directors of Modest was recorded on 04.03.2010 wherein he, interalia, stated that they maintained (1) In-bond Bill of Entry Register (2) Steel Material Register-Hullwise for imported as well as indigenous steel materials (i.e. for steel plates, bulb plates, flat bars) and (3) Register showing details of re-warehousing of imported duty free materials received in the plant.

- On being asked about the practice of imports of the raw materials and practice of re-warehousing the same, he stated that when they sign any contract for building of a ship or any floating structure, they would send requisition of materials required for manufacturing the said item to their Mumbai office, in terms of their agreement with the buyers and their Mumbai Office would then arrange to import the required materials at JNPT, Air cargo Mumbai; that on importation of the goods, their Mumbai office was sending them the documents and their CHA would submit checklist showing details of items, duty to be paid etc., and then based on these details they would request the Central Excise authority at Bhavnagar to issue the Space Certificate; that the said Space Certificate so issued by the Central Excise at Bhavnagar would then be sent to their Mumbai Office wherefrom the imported goods would be cleared and transported to their building Yard at Bhavnagar under cover of the Bill of Entry and the Transport Documents. The Shipping Bill of the goods would be sent by Customs in sealed cover to the jurisdictional Central Excise Range Office at Bhavnagar; that thereafter, they would get the consignment of imported goods examined by the local Central Excise officer (proper officer of Customs appointed in terms of Section 62 of the Customs Act, 1962) who after inspection and verification would re-warehouse the goods and then they would file the in-bond bill of entry for placing the goods in bonded warehouse; that they would also file issue application simultaneously to get the goods ex-bonded for use in manufacture of their product;



- Shri Mehul Patel was further asked that during visit of the officers of DRI on that day it was observed that there were number of items which were imported duty free by Modest and were removed and stored in a warehouse (as detailed in Panchanama dated 04.03.2010) which was not approved for such storage by the Central Excise authority, upon which he stated that there were a number of items which were imported duty free by Modest and after re-warehousing of the same were removed and stored in Warehouse-2 which was neither coming under the PBW nor under the approved ground plan by Central Excise for manufacture under bond which was mistake on their part; that Warehouse-2 was not approved for such storage by the Central Excise authority. He further stated that against their request for allotment of additional land, Gujarat Maritime Board (GMB) allotted them 17415 Sq. Mtrs. of land in December 2008 on lease basis on which they constructed Warehouse-2 two months back; that they had requested the Central Excise, Bhavnagar vide their letter dated 06.02.2009 for approval of the additional land which was not permitted till date; that meanwhile on receipt of imported materials in their yard, due to shortage of space, they were compelled to store the goods in newly built warehouse shed which was yet to be approved. Then on further being asked whether they had intimated their jurisdictional Central Excise authority about the said removal and storage of the duty free imported materials in Warehouse-2 shed, he stated that they did not inform their jurisdictional Central Excise authority as they were expecting approval of the warehouse during that period;
- On further being asked whether he was aware of the fact that such unauthorized storage of duty free imported goods outside the approved warehouse premises was in violation of the relevant Sections/ Regulations of the Customs Act, 1962 and the licensing conditions and permission granted to them, he agreed to the above fact and further deposed that they did not have any malafide intention behind the same;
- He was further asked about non-maintenance of many records prescribed under the relevant rules/ regulations which were also required as per the licensing conditions applicable on Modest for which he agreeing to the same assured to improve the record keeping and maintenance in future;
- He was further asked about the duty free imported goods covered under six Bills of Entry recovered from their office and recorded under Panchanama dated 04.03.2010 which were not warehoused and out of which some were not found available, however were shown as it issued for manufacture under bond without re-warehousing thereof. Shri Mehul Patel, in reply deposed that he had not informed the concerned Central Excise authority for inspection and re-warehousing of the goods covered under the said six Bills of Entry as he was expecting the permission of the additional land incorporating the Warehouse-2 and on receipt of such permission he was to immediately inform the department. He further stated that they were required to obtain re-warehousing certificate within 120 days of importation and there was still time left to get the certificate in this respect. Further, as regarding issue and use of the imported goods without re-warehousing thereof, he stated that it was done without his knowledge.

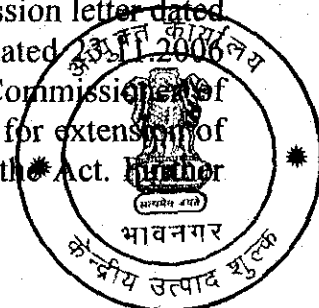
4. Vide letter F.No. VIII/48-60/Cus.T/Reg/05-06 dated 09.03.2010, Deputy Commissioner of Central Excise, City Division, Bhavnagar informed DRI that Modest had filed an application on date 06.02.2009 with their office for expansion of their PBW i.e. allotment of Additional Land of 17415 Sq. Mtrs. Area



(215m * 81 m) for further expansion of Ship Building / Repairing Yard to facilitate size of business as per the approval accorded by the Gujarat Maritime Board (GMB), Gandhinagar. He further informed that party's request for approval and granting necessary permission was considered and accepted by him on 03.07.2009 however intimation letter was issued only on date 04.03.2010 which was enclosed with the said letter. Application of Modest dated 06.02.2009 and Order of GMB No. GMB/JSP & PJ CELL/2(2)/4/10103 dated 18.12.2008 for allotment of land area of 17415 Sq. Mtrs. were also sent along with his letter. It was observed that the Deputy Commissioner of Central Excise, Central Excise City Division, Bhavnagar vide his letter F. No. VIII/48-60/Cust.T/Reg/05-06 dated 04.03.2010 had granted permission for use of additional land of 17415 Sq. Mtrs. and approved the revised ground plan submitted by Modest showing entire ship yard, with reference to the letter dated 06.02.2009 of Modest. The said letter however did not mention anything about extension of the bonded area approved under PBW License. The said letter was claimed to have been received by Modest on 05.03.2010. The Deputy Commissioner of Central Excise, Central Excise City Division, Bhavnagar, vide letter F. No. V/15-28/DRI-offence/Modest/09-10 dated 19.03.2010 further intimated that Modest had applied for inclusion of additional premises on 06.02.2009 and the range officer had verified the same on 17.06.2009 and he had accorded sanction on 03.07.2009, however the same was not intimated to the party, neither any letter to that effect was sent to Modest. Contrary to the above, Shri Mehul Patel, Director of the company neither during the proceedings of Panchanama dated 04.03.2010 nor during recording of his statement contended that any verification was made by the Range Superintendent as stated in the letter dated 19.03.2010 of the Deputy Commissioner of Central Excise, City Division, Bhavnagar or any such approval was given for the same.

5. The Commissioner of Central Excise, Bhavnagar, vide letter No. V.Misc/15-04/Adj/2010 dated 23.03.2010 addressed to the Additional Director General, DRI, Zonal Unit, Ahmedabad, informed that party had applied for approval of additional premises on 06.02.2009 and after getting verification report dated 17.06.2009 from the Range Superintendent, the Deputy Commissioner of Central Excise, City Division, had approved the additional premises on 03.07.2009 but there was some lapse and said fact was not communicated to the party. However, no documents relating to the verification reports dated 17.06.2009 and approval dated 03.07.2009 were sent as the "proof of claim of having verified and approved the application dated 06.02.2009" of Modest for approval of additional land. Moreover, Ground Plan incorporating the additional land area of 17415 Sq. Mtrs. as mentioned in the said two letters was not enclosed with the said letters.

6. It is observed in the SCN that the application of Modest dated 06.02.2009, was for allotment of Additional Land and in connection to which revised ground plan (showing entire ship yard in Ground Plan) was enclosed with the said letter for granting necessary permission for shipbuilding and repairing. The said letter or application of Modest did not have any request for extension of the PBW, neither such mention of PBW was there anywhere in the said application. The request of Modest made vide said letter dated 06.02.2009 was acceded to by the department vide letter F. No. VIII/48-60/Cust.T/Reg/05-06 dated 04.03.2010, wherein permission was granted for the additional land and nothing relating to the extension of PBW was mentioned in permission letter dated 04.03.2010. This was entirely contradictory to the earlier letter dated 04.03.2010 of Modest, vide which they specifically requested the Deputy Commissioner of Central Excise, City Division, Bhavnagar to grant the permission for extension of the bonded premises and the area approved under Section 65 of the Act.



the Revised Map of the site plan of the Bonded Premises was discussed and sent enclosed with the application. Then in response to the said application dated 23.11.2006 of Modest, approval was granted by the Deputy Commissioner of Central Excise, City Division, Bhavnagar, for extension of the Bonded Premises vide amendment issued through letter No. VIII/48-60/Cus (T)/Reg/05-06 dated 23.01.2007. Hence it was quite apparent that the permission letter dated 23.01.2007 was meant for extension of the PBW viz. area approved under Section 58 & 65 of the Customs Act, 1962, but the permission letter issued on 04.03.2010 by the jurisdictional Central Excise, was never for extension of the area approved under Section 58 & 65 of the Customs Act, 1962.

7. So far as the allotment of land by Gujarat Maritime Board to Modest, at the Ramsar Yard near Old Port Bhavnagar is concerned, the same was done in a number of steps based on the applications of Modest filed with GMB from time to time, purportedly for expanding the Ship Building Yard. In response to the various applications of Modest, the orders for allotment of Land were issued by the GMB as detailed hereunder in chronological order:-

- a. The land area of 118 Sq. Mtr. was allotted to Modest by the GMB through their Order No. GMB/POT/Old Port/1810 dated 24.01.2006, and on which they secured the License for PBW and Central Excise Registration.
- b. Further land area of 11460 Sq. Mtr. was ordered to be allotted to Modest by GMB vide Order No. GMB/JSP & PJ CELL/2(2)/4/8391 dated 24th November 2006 subject to the terms and condition stipulated in the said Order. Thereafter, allotment and possession of the land admeasuring said area of 11460 Sq. Mtr. to Modest was completed on 21.04.2007, when "Land Lease and Possession and waterfront usage agreement" was signed between GMB and Modest.
- c. Vide Order No. GMB/JSP & PJ CELL/2(2)/4/1284 dated 10th May 2007; the approval for allotment of additional land admeasuring area 38536 Sq. Mtr. was accorded by GMB to Modest subject to the terms and condition of the earlier allotment by signing a Supplementary Agreement with GMB. Pursuant to the approval for allotment of the said area of 38536 Sq. Mtrs., the possession of the land was completed on 02.08.2007 when "Land Lease and Possession and waterfront usage agreement" was signed between GMB and Modest.
- d. Allotment of an additional area admeasuring 17415 Sq. Mtrs., to Modest was approved vide Order No. GMB/JSP & PJ CELL/2(2)/4/10103 dated 18th December 2008 of the GMB, subject to the terms and conditions of the earlier allotment by signing a Supplementary Agreement with GMB. Pursuant to the approval for allotment of the said area of 17415 Sq. Mtrs., possession of the land was completed on 26.12.2008 when "Land Lease and Possession and waterfront usage agreement" was signed between GMB and Modest.

For all the Orders of GMB so issued as detailed above, conveying the approval for allotment of the land area /additional land area, Modest was entitled to take possession of the specified land, only on or after the date on which they entered into/executed agreement with the GMB.



8. The seized goods detailed and described in the Panchnama dated 04.03.2010 were further released provisionally to Modest vide letter F. No. V/15-28/DRI Case/Modest/09-10 dated 21st April 2010 by the Deputy Commissioner of Central Excise, City Division, Bhavnagar on execution of the B-11 Bond for ₹ 86,51,31,940/-, on furnishing the Bank Guarantee of ₹ 3,79,43,147.59 and on tendering an undertaking for claim of insurance of all the imported items.

9. Further statement of Shri Mehul Vamanbhai Patel, one of the Directors of Modest was recorded on 11.03.2010 wherein on being asked about the goods covered under the 6-B/Es which were lying in the unit without being re-warehoused from which Modest had issued certain raw materials for manufacture without completing the statutory obligation of re-warehousing, he stated, inter alia, that due to engagement in some other works related to provisional assessment and ex-bonding of the Hull No. 304, they could not complete the re-warehousing formalities of the goods in their unit by that time on 04.03.2010 and meanwhile due to immediate requirement in their yard, they issued the duty free imported goods without the same being re-warehoused;

- On being asked about the 6 nos. of Hulls under construction at his Yard at that time, he assured to provide the details within five days;
- He was further asked about the mode of payment in respect of vessels built/sold by them, upon which he stated that after signing the ship building contract they were receiving payments in various stages which were arranged and made to them as per the contract signed with their buyers through banking channels;
- He was further asked as during visit to Modest on 04.03.2010, it was found that a number of goods received and re-warehoused in the unit were not utilised even after one year, so whether they have got the warehousing period extended for further period from their jurisdictional Central Excise authority for those unutilized raw materials upon which he replied that in September 2009, they had applied for extension of one year up to September 2010 but had not received the same till date and on receipt of the permission from the jurisdictional Central Excise office, in respect of their application in September 2009, the same would be produced by him.

10. Statement of Shri Kevat J. Vanani, one of the directors of Modest was recorded on 20th April 2010 wherein on being asked about the original permission given to Modest for Private Bonded Warehouse under Section 58 of the Customs Act, 1962, he stated that the first original permission given for Private Bonded Warehouse under Section 58 of the Customs Act, 1962, was presented by them on the date of visit of DRI officers on 04.03.2010, according to which they were granted license for PBW bearing No. 01/PBW/BVR/2005-06 dated 16.02.2006 for area of Length 15.35 mtrs. x Breadth 7.70 mtrs..

- He was then asked whether the area approved under the Rule 9 of CER, 2002 was the same as approved under License given for PBW, he replied that the area under the PBW was only 15.35 mtrs. x 7.70 mtrs., which was less than the area approved under the Central Excise License, though he did not have the exact idea of the area approved under Central Excise License but he would provide the same shortly;



- He was further asked to provide details as to when the PBW area was got extended by them upon which he deposed that their PBW area of 15.35 mtrs. x 7.70 mtrs., was extended to area of 124 Mtr. X 92.42 Mtr. = 11460 Sq. Mtr., by the Deputy Commissioner of Central Excise, City Division , Bhavnagar;
- Then the permission given for extension of the PBW vide letter F.No. VIII/48-60/Cus (T)/Reg/05-06 dated 23.01.2006 of DC, C. Ex., City Division, Bhavnagar to area of 124 Mtr. X 92.42 Mtr. = 11460 Sq. Mtr. was shown to him and after perusing the same he was asked to explain whether the said land as discussed in the above said permission letter, was available to Modest at the material time or not , upon which he stated that at the time when the above permission for extension of PBW area was given, the land approved was under their possession however he could not provide the details as he had not joined the company at the material time as he had joined the company in the month of July, 2007;
- Shri Kevat Vanani was further shown the application dated 06.02.2009 of Modest under which they claimed to have requested for extension of the premises and he was asked to explain whether the said application was for the extension of the PBW area, upon which he stated that vide said letter they had applied for allotment of additional land at Old Ramsar Yard for ship building /repair. He further stated that the said application was for extension of the area of Approved Ground Plan under the Central Excise License, which was not matching with the PBW and further clarified that they were under the impression that application for extension of the area included extension of PBW;
- Shri Kevat Vanani was further shown the permission given for allotment of additional land measuring 17415 Sq. Mtr., (215 mtrs. x 81 mtrs.) vide letter F.No. VIII/48-60/Cus.T/Reg/05-06 dated 04.03.2010 and was asked to confirm whether he agreed to the fact that the same was not for extension of the PBW as lastly extended under letter F.No. VIII/48-60/Cus (T)/Reg/05-06 dated 23.01.2007 of DC, Central Excise, City Division, Bhavnagar, upon which he admitted that the said permission was not for the extension of the Private Bonded Warehouse and reiterated that they were under the impression that application for extension of the area included extension of PBW;

11. Statement of Shri Kishor Gambani, Managing Director of Modest was recorded on 25th June 2010 wherein he, interalia, stated that as the Managing Director, he had been sitting at Mumbai office of the company and mainly looking after the affairs of Marketing and banking finance etc. He further confirmed the following facts in his statement;

- (a) vide Private Bonded Warehouse License No. 01/PBW/BVR/2005-06 dated 16.02.2006 permission for private bonded warehouse was granted to Modest, for an area of 15.35 Mtrs, X 7.70 Mtrs., under Section 58 of the Customs Act,1962 and also permission under Section 65 of the Customs Act, 1962 was meant only for the said area of PBW;
- (b) .Vide letter F. No. VIII/48-60/Cus (T)/Reg/05-06 dated 23.01.2006 of the Deputy Commissioner of Central Excise, City Division, Bhavnagar PBW area was extended to 124 Mtrs. X 92.42 Mtr.



- In response to letter of Modest bearing No. MIPL/CE/218/08 dated 23.11.2006, GMB vide their letter No. GMB/JSP & PJ CELL/2(2)/4/8391 dated 24th Nov. 2006, offered Modest a land area of 11460 Sq. Mtrs. subject to the acceptance of terms and condition which was finalized through land lease agreement between GMB and Modest on 21.04.2007. Hence the ownership of the land of area of 11460 Sq. Mtrs. was granted to Modest only from the date of lease agreement i.e from 21st April 2007. Under the circumstances, Shri Kishor Gambani was asked as to whether he agreed to the fact that the permission given under letter F. No. VIII/48-60/Cus (T)/Reg/05-06 dated 23.01.2007 of the Deputy Commissioner of Central Excise, City Division, Bhavnagar for extension of PBW to 11460 Sq. Mtrs. was prior to the possession of the said land by Modest, upon which he explained that only after the land area of 11460 Sq. Mtrs., was sanctioned to Modest by the GMB and accordingly rent (for one year as deposit) was paid by them on the said land area, before 24th Nov. 2006, the letter of GMB dated 24th Nov. 2006 was issued to Modest conveying that the Board has sanctioned the grant of said land requested by them; that based on the said letter a lease agreement was then prepared and subsequently signed by them and GMB on 21.04.2007; that therefore the possession of the land of area 11460 Sq. Mtrs., came to Modest on 24th Nov. 2006 and hence the extension of the PBW was granted to them only after the possession of the said land in question;
- On 02.08.2007, Modest was further given another land area of 38536 Sq. Mtrs. by GMB and from that date Modest had total available land area of 49996 Sq. Mtrs. in their possession. GMB allotted additional land of 17415 Sq. Mtrs. to Modest on 18.12.2008 and this way total allotted land to Modest by GMB became 67411 Sq. Mtrs. since 18.12.2008. Further vide letter No. MIPL/CE/218/08 dated 22.01.2008 Modest had requested the Central Excise for Yard Extension permitting construction work on the land demanded by them from GMB in response to which, vide letter F. No. A.R-1/Registration/Modest/05-06 dated 05th March 2008, the Superintendent of Central Excise, AR-1, Bhavnagar directed Modest to carry out manufacturing activities only in approved area. Shri Kishor Gambani was here asked to explain the meaning of the approved area in the said letter of the Central Excise, upon which he replied that it was the area of 124 Mtrs. X 92.42 Mtrs. which was approved in terms of letter F. No. VIII/48-60/Cus (T)/Reg/05-06 dated 23.01.2007 of the Deputy Commissioner of Central Excise, City Division, Bhavnagar;
- The Superintendent of Central Excise, AR-1, Bhavnagar vide letter F. No. A.R-1/Registration/Modest/05-06 dated 25th June 2008 supplied the revised ground plan duly verified by the Central Excise authority to Modest and they were requested to built up pakka boundary wall for safety of the imported goods/ duty free material obtained by them and storing in the yard for use in manufacturing of vessels. However it could be seen that the land of total area of 67500 Sq. Mtrs. as shown in the revised ground plan provided under said letter of Central Excise was possessed by Modest only from 18.12.2008, when additional land of area of 17415 Sq. Mtrs. was allotted to Modest by GMB under letter No. GMB/JSP & PJ CELL/2(2)/4/10103 dated 18.12.2008. Shri Kishor Gambani was therefore asked to clarify whether he agreed to the above fact, upon which he explained that in pursuance to the letter dated 10th January 2008 of the GMB, intimating them about sanction of land area of 17415 Sq. Mtrs. by the Board directing to pay one year rent as deposit, Modest complied



depositing the said amount on 11th January 2008 and therefore from the said date the said land area was deemed to be under their possession; that accordingly they intimated their jurisdictional Central Excise authority and based on which the above said letter dated 25th June 2008 was issued to them;

- Vide letter dated 06.02.2009, addressed to the Assistant Commissioner of Central Excise, City Division, Bhavnagar Modest furnished the revised ground plan showing the entire ship yard in ground plan for approval and granting necessary permission for shipbuilding/ repairing purpose. In response to the said letter, Modest received letter F. No. VIII/48-60/Cus.T/Reg/05-06 dated 04.03.2010 from the Deputy Commissioner of Central Excise, City Division, Bhavnagar on 05th March 2010, granting necessary permission for use of additional land wherein revised ground plan sent by them was approved. Shri Kishor Gambani was therefore asked to confirm whether he agreed to the above fact that their request under letter dated 06.02.2009 was acceded to by the department only vide above letter dated 04.03.2010 which was received by them on 05.03.2010. He in reply agreed to the above said facts;
- He was further asked as to how the above said permission letter dated 04.03.2010 of the Jurisdictional Central Excise Division could be accepted as the extension of the Private Bonded Warehouse, upon which admitting to the fact that the letter dated 04.03.2010, of the Deputy Commissioner of Central Excise, City Division, Bhavnagar was not in proper format of giving extension for the PBW, as was done earlier by the department in case of extension given on date 23.01.2007 for area of 124 Mtrs. X 92.42 Mtrs., he pleaded that they had submitted the revised ground plan incorporating the whole shipyard of area of 67500 Sq. Mtrs., and then requested the Central Excise authority to give the permission for extension of the PBW to that extent;

12. Further statement of Shri Mehulbhai V. Patel was recorded on 30.07.2010, wherein he stated, interalia, that the ground plan approved under the Central Excise Registration was for the same area as of the License for Private Bonded Warehouse (PBW) dated 16.02.2006 granted to Modest under Section 58 of the Customs Act, 1962;

- He was shown the letter dated 23.11.2006 of Modest addressed to the Deputy Commissioner of Central Excise, City Division, Bhavnagar, vide which they had requested for extension of the Bonded Premises viz. premises approved under Section 58 and 65 of the Customs Act, 1962. Thereafter, against the said application of Modest, vide letter F. No. VIII/48-60/Cus(T)/ Reg/05-06 dated 23.01.2007 issued by the Deputy Commissioner of Central Excise, City Division, Bhavnagar, an extension of the PBW was granted to them from area of length 15.35 Mtr. x 7.70 Mtr. to an area of "length 124 Mtrs. x 92.42 Mtrs.". Vide letter dated 06.02.2009, Modest requested for approval of the additional land to be used in the shipyard, however nowhere in the said letter Modest had requested for extension of the PBW nor for extension of the area approved under Section 58 & 65 of the Customs Act, 1962. Accordingly, their said request letter was responded vide letter F. No. VIII/48-60/Cus.T/Reg/05-06 dated 04.03.2010 by the Deputy Commissioner of Central Excise, City Division, Bhavnagar wherein permission was granted for use of additional land and the revised ground plan submitted by them was approved. He



therefore, asked as to whether they agreed to the fact that their application dated 06.02.2009 was neither for extension of the PBW nor for extension of the area approved under Section 65 of the Act, nor the permission granted vide Deputy Commissioner, Central Excise, City Division, Bhavnagar's letter dated 04.03.2010 was for the same, upon which after perusing the said documents, Shri Mehulbhai Patel agreed to the above fact;

- He was further asked whether he agreed to the fact that vide order of the Deputy Commissioner of Central Excise, City Division, Bhavnagar bearing No. VIII/48-60/Cus(T)/ Reg/05-06 dated 23.01.2007, for extension of the PBW to an area of "length 124 Mtrs. x 92.42 Mtrs." was in force only on date 04.03.2010 and all the area approved under Section 58 & 65 of the Customs Act, 1962 and as approved under Rule 9 of the Central Excise Rules, 2002 was only according to the said permission given by the department on date 23.01.2007, upon which he agreed to the above;
- Shri Mehulbhai Patel was further asked whether the licensing conditions were also amended as a result of extension of the PBW and area of manufacture under bond vide letter of Central Excise dated 23.01.2007. As per the licensing condition no. 2 in PBW License "the stock to be held at any time in the warehouse shall not exceed ₹ 3 Crores and 100 packages approximately plus 4000 pcs. of M. S. Ship Building/ repair quality plates approx. subject to availability of space and the duty thereon should not exceed at any time ₹ 3 Crores.". He was then asked to confirm whether the above said limit was also extended as result of extension granted vide letter dated 23.01.2007. Shri Mehul Patel replied that no such limit was extended neither any amendment in the licensing conditions were made by the Central Excise department as result of the extension of the PBW vide letter dated 23.01.2007;
- Further on being asked as to whether any verification was done by the Central Excise department at their shipyard on the application filed by them on 06.02.2009, upon which he stated that till date 04.03.2010 no such verification was made by their jurisdictional Central Excise department, but vide letter dated 04.03.2010 their application for allotment of additional land was approved by the department, which was sent to them on 05.03.2010;
- He was then asked whether he agreed to the fact that the goods received in their shipyard under transit bond from JNPT which were earlier imported there and cleared under warehousing B/E Nos. 888410/ 08.02.2010, 856434/ 16.01.2010, 872986/ 29.01.2010, 416880/ 08.02.2010, 871329/ 28.01.2010 & 845610/ 11.01.2010, were not re-warehoused by 04.03.2010, still the items covered under B/E Nos. 416880/08.02.2010, 871329/28.01.2010 & 845610/11.01.2010 were brought into ship building activities without permission of the proper officer of Customs. Shri Mehul Patel, agreeing to the above facts, stated that the six consignments were not re-warehoused by the time DRI officers arrived in their shipyard on 04.03.2010 and therefore they had not made any entry in their re-warehouse register, copy of which provided by them; that he admitted that some of the items were found missing on verification which were actually utilised by them in the ship building activities, without completing the Custom's formalities; that the said six consignments were still under transit bond and no B/E was filed by them before issuance of some of the articles therefrom;



- Shri Mehul Patel was further asked whether he agreed to the fact that the imported warehoused goods as per list attached to the Panchanama dated 04.03.2010 totally valued at ₹ 37,94,31,475/- was removed from the premises of the PBW of Modest without permission of the proper officer of Customs appointed in terms of Section 62 of the Customs Act, 1962, without filing any bill of entry, and without any payment of duty thereon, upon which agreeing to the said fact he reasoned that the same was done for the storage of the goods in the premises of the shipyard as presumed by him;
- He was further asked whether as the director of the company he handled all the affairs of the company related to procedural compliance of the Central Excise & Customs, upon which he stated that he attended to all such works and besides all correspondences were being done in this regard under his supervision by another Director of the company Shri Kevat J. Vanani.

13. From the facts and the circumstances of the case as discussed in the foregoing Paras, it revealed that Modest have established a Ship Building Yard at the Ramsar Yard, Old Port, Bhavnagar pursuant to which they obtained the License for Private Bonded Warehouse (PBW) from their jurisdictional Central Excise authority at Bhavnagar for an area of 15.35 Mtrs. X 7.70 Mtrs. vide License No. 01/PBW/BVR/2005-06 dated 16th February 2006. The license for PBW was granted to Modest under Section 58 of the Customs Act, 1962 and they were also granted permission for manufacture under bond in terms of Section 65 of the Customs Act, 1962 on the same date i.e. on 16th February 2006. They further obtained the Central Excise Registration bearing no. AADCM1665KXM001 dated 17th February 2006, from their jurisdictional Central Excise office in terms of Rule 9 of the Central Excise Rules, 2002 for the same area for which PBW was granted to them. The license for PBW was granted to Modest subject to the strict compliance of various terms and conditions as prescribed and attached to their License. Similarly, permission to manufacture under bond was granted to Modest in the premises approved for the same subject to the compliance of the provisions of the Customs Act, 1962 and the supplementary Rules framed under Manufacturing and other Operations in Warehouse Regulations, 1966. Moreover, the license for PBW was granted to Modest subject to the condition of execution of Warehousing Bond for value of ₹ 3,00,00,000/- (Rupees Three Crores) in terms of Section 59(2) of the Customs Act, 1962 undertaking therein to:-

- observe all provisions of Customs Act and rules/regulations in respect of the goods;
- pay on demand the (i) duties , interest, (ii) warehousing rent and charges with interest;
- pay all penalties leviable for violation of provisions of Customs Act, rules and regulations.

Further, in all, Modest executed Warehousing Bonds totally of value of ₹ 83,00,00,000/- in terms of Section 59 of the Customs Act, 1962. Besides, as per Para 29 of the permission granted for manufacture under Bond, "the manufacture operations with bonded goods shall only be carried out at the places earmarked in the ground plan duly approved and licensed under Section 58 of the Customs Act, 1962".



14. Modest requested the Deputy Commissioner of Central Excise, City Division, Bhavnagar vide letter dated 23.11.2006, to extend the bonded premises approved under Section 58 & 65 of the Customs Act, 1962, in pursuance to which, the area of PBW was allowed to be extended by the Deputy Commissioner of Central Excise, City Division, Bhavnagar under letter F.No. VIII/48-60/Cus(T)/Reg/05-06 dated 23.01.2007 from earlier existing area of "length 15.35 Mtr x 7.70 Mtr" to an area of "length 124 Mtr x 92.42 Mtr". Therefore, from 23.01.2007, the PBW area of Modest was extended to an area of "length 124 Mtr x 92.42 Mtr". Similarly, the constitution of Modest had changed from private limited company to limited company and, therefore, based on their application, a fresh Central Excise Registration was issued to Modest on 22.04.2008 by the Assistant Commissioner of Central Excise, City Division, Bhavnagar.

15. The officers of DRI visited the Ship Building Yard of Modest on 04.03.2010, and the status of the bonded premises was observed to be as per the extension given vide letter F. No. VIII/48-60/Cus (T)/Reg/05-06 dated 23.01.2007 for an area of "length 124 Mtr x 92.42 Mtr". Similarly, the status of the Central Excise Registered premises of Modest was as per the approval granted by the Assistant Commissioner of Central Excise, City Division, Bhavnagar on 22.04.2008 i.e. for an area of 11460 Sq. Mtrs.(i.e. with dimension as length 124 Mtr x 92.42 Mtr). It was further noticed that the imported warehoused goods as recorded in the Panchnama dated 04.03.2010, details of which are reflected at Annexure-A to the SCN, were removed from the bonded premises of the party to a shed named as Warehouse-2 falling outside the bonded premises which was approved on 23.01.2007 and also outside the Central Excise Registered premises of Modest as approved on 22.04.2008. The said removal of the imported warehoused goods was illegal and in violation of the Warehousing Provisions in view of the following facts and the material evidences:-

- a. the premises namely Warehouse-2, where the imported warehoused goods were found stored was outside the premises notified under Section 58 & 65 of the Customs Act, 1962 in terms of the order of Deputy Commissioner of Central Excise vide letter F. No. VIII/48-60/Cus (T)/Reg/05-06 dated 23.01.2007 for an area of "length 124 Mtr x 92.42 Mtr".
- b. Similarly, Warehouse-2 was outside the Central Excise Registered Premises approved under Rule 9 of the CER, 2002 on 22.04.2008 by the jurisdictional Assistant Commissioner of Central Excise.
- c. All the warehoused goods are subject to the control of the proper officer of Customs as provided under Section 62 of the Customs Act, 1962. Any removal of the warehoused goods from the Bonded Warehouse is also subject to the permission of the said proper officer of Customs in terms of Section 62 of the Customs Act, 1962. The said permission of the proper officer of Customs was not taken by Modest. On being asked during the Panchnama proceedings on 04.03.2010, the Director of the company Shri Mehul Patel admitted that the said premises of Warehouse-2 was outside the bonded as well as Central Excise Registered premises. He also admitted that the said imported warehoused goods were removed without any permission from the proper officer of the Customs. He further admitted in his statement dated 04.03.2010, 11.03.2010 & 30.07.2010 that they have not obtained any permission from the proper officer of Customs and neither had they informed the said fact to the proper officer or to the jurisdictional Central Excise office.

