- 68

केन्द्रीय उत्पाद शुल्क एवम सेवा कर आयुक्तालय , भावनगर
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
प्लॉट नं. 6776–बी/1, 'सिध्धि सदन' बिल्डिंग,
PLOT NO. 6776/B-1, "SIDDHI SADAN" BUILDING,
नारायण उपाध्याय मार्ग, भावनगर–364001
NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.
दूरभाष : (0278) 2523627 फैक्स : 0278-2513086

रजिस्टर्ड डाक पावती द्वारा
By R.P.A.D.

फाईल सं. V/15-71/Dem/HQ/2010-11
F. No.

आदेश की तारीख : 14/02/2012
Date of Order :
जारी करने की तारीख : 14/02/2012
Date of Issue :

पारितकर्ता
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 : 4/BVR/Commissioner/2012

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 विरूद्व सीमा शुल्क , केंद्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय प्राधिकरण , ओ–20 , मेघाणी नगर , नया मानसिक अस्पताल संकुल , अहमदाबाद को केंद्रीय 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 केंद्रीय 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. केंद्रीय 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 विरूद्व 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 दस्तावेज चार प्रतियों में भेजनी चाहिए । उक्त अपील व्यक्तिगत रूप से रजिस्ट्रार के समक्ष प्रस्तुत की जाए या पंजीयक के नाम से रजिस्ट्री डाक द्वारा भेजी जाए । पंजीयन 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) जहां पर मांगा गया शुल्क ब्याज और दण्ड रूपए 50,00,000/- (रूपए पचास लाख) से ज्यादा हो , रू. 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) जहां 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) जहां 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 रू. 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.

To,

M/s. Pipavav Shipyard Limited
Post Ucchaiya, Tal. Rajula,
Distt. Amreli – 365 560

विषय : कारण बताओ नोटिस संख्या :

Subject: Show Cause Notice F. No. V/15-71/Dem/HQ/2010-11 dated 06.12.2010 issued to M/s. Pipavav Shipyard Limited, 100% EOU, At Pipavav Port, Post Ucchaiya, Tal. Rajula, Distt. Amreli – 365 560.

BRIEF FACTS OF THE CASE :-

M/s. Pipavav Shipyard Limited, 100% EOU, at Pipavav Port, Post Ucchaiya, Ta: Rajula, Distt.: Amreli (hereinafter referred to as the "said Noticee"), are engaged in the manufacturing of Ship falling under CETSH No. 89.01 at Pipavav Port and having Central Excise Registration (ECC No. AABCP1491LXM001) in terms of provisions of Rule 9 of the Central Excise Rules, 2002 (hereinafter referred to as "CER, 2002"). The said Noticee is also availing CENVAT credit on inputs, capital goods and input services in terms of the provisions of the CENVAT Credit Rules, 2004 (hereinafter referred to as "CCR, 2004"), read with the provisions of the CER, 2002, to be utilised in or in relation to their manufacturing activities of ship building.

2. Further, the Noticee is an Export Oriented Unit established in view of the Letter of Permission F.No. KASEZ/100%EOU/II/39/2005-06 dated 04/04/2006 issued by the Development Commissioner, Kandla Special Economic Zone, Ministry of Commerce, Gandhidham. The said Noticee is required to export their entire production, except the reject and sales in domestic tariff area to the extent which is permitted by the Development Commissioner, Kandla Special Economic Zone, Gandhidham.

3. The said Noticee has filed monthly return for the month of November-2009 to January-2010, in the form of ER-2, with the jurisdictional Superintendent of Central Excise Range Office declaring that they have availed CENVAT Credit as per the following details.

Sr. No.	Month	Amount of CENVAT Credit availed (₹)			Total CENVAT Credit availed (₹)
		Inputs	Capital Goods	Input Services	
1	Nov.-2009	NIL	4,944/-	74,79,986/-	74,84,930/-
2	Dec.-2009	NIL	NIL	31,63,336/-	31,63,336/-
3	Jan.- 2010	NIL	25,284/-	44,13,883/-	44,39,167/-
	Total	**NIL**	**30,228/-**	**1,50,57,205/-**	**1,50,87,433/-**

4. The Noticee was requested by the Central Excise, Range Office, Mahuva vide letter dated 27.08.2010 to provide the documents on the basis of which CENVAT credit was taken by them during the period from November-2009 to January-2010. In reply, the Noticee vide their letter dated 15.10.2010 provided the documents on the basis of which CENVAT credit was taken by them. On scrutiny of the documents, it was found that the Noticee had taken the CENVAT credit of ₹ 30,228/- on the capital goods and of ₹ 1,50,57,205/- on Input Services.

5. A show cause notice F.No. V/15-71/Dem/HQ/2010-11 dated 06.12.2010 was issued to the said Noticee asking them as to why (i) the CENVAT Credit amounting to **₹ 1,50,87,433/-** should not be recovered from them under Rule 14 of the CCR, 2004 read with Section 11A of Central Excise Act, 1944 (herein after referred to as "CEA, 1944"), (ii) interest should not be charged on the above said demand amount at applicable rate and recovered from them under Rule 14 of the CCR, 2004 read with Section 11AB of the CEA, 1944, and (iii) Penalty should not be imposed on them under Rule 15 of the CCR, 2004 read with Section 11AC of CEA, 1944 for the contravention of provisions of the CEA, 1944, CCR, 2004 and CER, 2002.

6.1 It had been alleged in the show cause notice that they had wrongly availed CENVAT Credit on inputs, capital goods and input service on the following grounds :-

6.2 The said Noticee is exclusively engaged in manufacturing of final products which are chargeable to NIL rate of duty. The final product intended to be manufactured by the Noticee i.e. ship is classifiable under CETH 8901 2000, 8901 3000 and 8901 9000 and chargeable to "Nil" rate of duty. Thus, the final product is exempted goods in view of Rule 2(d) of the CCR, 2004. Sub-rule (1) of Rule 6 of the CCR, 2004 does not allow Cenvat Credit of input or input service if used in the manufacture of exempted goods or for provisions of exempted services. Further, sub-rule (2) and sub-rule (3) of Rule 6 of the CCR, 2004 are not applicable to the Noticee in the instant case, as the final products intended to be manufactured by the Noticee are only "Ship" and falling under CETH 8901 2000, 8901 3000 and 8901 9000 which are chargeable to "NIL" rate of duty and therefore, fall under the category of "exempted goods" as per the definition given in Rule 2 (d) of the CCR, 2004 ibid and therefore, the provisions of Sub-rule (1) of Rule 6 of the CCR, 2004 are applicable to the said Noticee.

6.3 The Noticee had taken CENVAT Credit without documents/ without original documents as pointed out in "Remarks" column of the **Annexure-IV** attached to show cause notice. Further, the Cenvat Credit had been taken on the basis of documents which were not proper documents for taking the CENVAT credit as pointed out in the "Remarks" column of the Annexure-IV as much as the documents were not original documents and some of the documents were not available at all.

(a) Sub-rule (2) of Rule 9 of CCR, 2004 provides that no credit under Sub-rule (1) shall be taken unless all the particulars as prescribed under the CER, 2002 or Service Tax Rules, 1994, as the case may be, are contained in the said documents.

(b) Sub-rule (5) of Rule 9 of CCR, 2004 provides that the manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input of capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(c) Sub-rule (1) of Rule 4A of Service Tax Rules, 1994 provides that every person providing taxable service, not later than fourteen days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, shall issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of such taxable service provided or to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely (i) the name, address and the registration number of such person; (ii) the name and address of the person receiving taxable service; (iii) description, classification and value of taxable service provided or to be provided; and (iv) the service tax payable thereon.

(d) Sub-rule (6) of Rule 9 of CCR, 2004 provides that the manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(e) Sub-rule (2) of Rule 11 of the CER, 2002 provides that the invoice shall be serially numbered and shall contain the registration number, address of the concerned Central Excise Division, name of the consignee, description, classification, Time & Date of Removal, Mode of Transport and Vehicle Registration No., Rate of Duty, Quantity and Value of Goods and the duty payable thereon. In case of proprietory concern or the business owned by Hindu Undivided Family, the name of the proprietor or Hindu Undivided Family, as the case may be, shall also be mentioned in the Invoice.

(f) The Sub-rule (5) of Rule 11 of CER, 2002 provides that the owner or working partner or Managing Director or the Company Secretary or any person duly authorized for this purpose shall authenticate each folio of the Invoice Book, before being brought into use.

6.4 The Noticee had availed CENVAT Credit on the goods which have been utilised for fabrication of Goliath Crane, Jib Crane, Gantry Crane, EOT Crane etc. and which have been produced within the factory of production and which are basically not the excisable goods being immovable in nature. Sub-rule 4 of Rule 6 of the CCR, 2004 provides that "No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods or in providing exempted services, other than the final products which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made in a financial year".

6.5 The said Noticee had availed CENVAT Credit on capital goods received in factory and also availed CENVAT credit on goods which have been utilised for manufacturing of certain other capital goods viz. goliath crane etc. within the factory of production. Further, the Noticee has also availed CENVAT credit on the "Input Service" as described in the documents listed in **Annexure-IV**. However, as per the provisions of sub-rule 4 of Rule 6 of the CCR, 2004, the said Noticee is not eligible to avail CENVAT credit on these goods as the final product Ship is chargeable to "NIL" rate of duty by tariff itself and thereby are exempted goods as per the dentition of exempted goods provided in CCR, 2004 as discussed above.

6.6 The Noticee appeared to had wrongly availed CENVAT Credit in contravention of the provisions of Rule 3, Rule 4, Rule 5, Rule 6, Rule 7, Rule 7A of the CCR, 2004 as well as provisions of CER, 2002 and CEA, 1944 with sole intention to encash the same by way of filing refund claim for which they are not eligible and rendered themselves liable for penalty under Rule 15 of the CCR, 2004 read with provisions of Section 11AC of the CEA, 1944.

DEFENCE REPLY :-

7.1 The Noticee submitted written reply to show cause notice vide letter dated 20.01.2011 wherein they inter-alia denied all the allegations and stated that the credit has been correctly availed. They submitted that the show cause notice did not give the quantum of inadmissible credit under each of three reasons advanced for denial of Cenvat Credit. Out of Cenvat Credit of ₹ 1,50,87,433/- sought to be denied, ₹ 30,228/- pertained to credit availed on inputs used for Capital Goods and ₹ 1,50,57,205/- pertained to input service received by them.

7.2 With regard to denial of credit on the ground that the unit is exclusively engaged in the manufacture of final products which are exempted, it is submitted that the allegation is based on the assumption that their shipyard is engaged in the manufacture of ships which are chargeable to nil rate of duty. The fact of them being registered as the service provider under the category of 'Ship Management Service' / 'Ship Repair Service' has been completely lost sight of while issuing the notice. Since, the shipyard is engaged in providing above mentioned taxable output service, they are entitled to avail Cenvat credit of inputs services, goods and inputs required for providing such output service. They are not hit by the prohibition under sub-rule (1) and sub-rule (4) of Rule 6 of Cenvat Credit Rules, 2004 on account of credit availed in respect of inputs and services used in manufacture of exempted goods as made out in the show cause notice in view of the fact that they are also engaged in providing taxable service under the head "Ship Management Service" for which a registration has been issued to them. Input services in question have been used entirely for the purpose of setting up a shipyard, which is necessary for rendering the output service of ship repair / refit, the entire quantity of input services is to be considered as required for use for the purpose of rendering a taxable output service. No part of Cenvat Credit of input service is liable to be disallowed only for the reason that besides providing taxable service, the same shipyard will be used for producing ships and vessels attracting nil rate of duty.

7.3 It is submitted that 100% Export Oriented Unit (EOU) has been established for the purpose of exporting the entire finished goods and prohibitions under Rule 6(1), 6(2), 6(3) and 6(4) are not applicable in view of sub-rule (6) of Rule 6 of the CCR, 2004. They quoted sub-rule (6) of Rule 6 of Cenvat Credit Rules, 2004 to say that the provisions of sub-rule (1), (2), (3) & (4) shall not be applicable in case the excisable goods removed without payment of duty are either – cleared to a unit in a Special Economic Zone; or – cleared for export under bond in terms of the provisions of Central Excise Rules, 2002. Thus, it is clear that credit cannot be denied in respect of the goods which are cleared for export under Bond and even exempted goods can be cleared under Bond. Accordingly, the credit in respect of inputs used in the manufacture of finished exempted goods meant for export cannot be denied. In support of this argument, they placed reliance on decision of Hon'ble Bombay High Court in the case of Repro India Ltd. Vs. Union of India [2009 (235) ELT 614 (Bom)] wherein it was held that even under provisions of CCR, 2004, the exempted goods can be exported under Bond and credit of inputs used in the manufacture of such exempted export goods cannot be denied.

7.4 With regard to the allegation that the credit has been taken without original documents i.e. on the zerox copy of the invoices, they denied the same and submitted that it may be possible that the documents could not be produced

when called for verification by the department for the reason that same were with their Account department. They submitted that they have now collected the same for verification. They requested to undertake the verification of the documents before passing any order denying Cenvat credit on the ground that the Cenvat credit was taken without documents. They further submitted that they had received the material / services / capital goods and taken Cenvat credit on the basis of valid documents. The department can also verify the genuineness of the receipt of material / services / capital goods on the basis of other financial records maintained by them. They have paid the Cenvat Credit / Service Tax as shown in the documents and taken a credit. To deny the Cenvat credit on procedural lapses or non-production of documents when called for by the department is legally not tenable. In this regard, they relied upon the decision of CESTAT Kolkatta in the case of Vijayshree Textiles Pvt. Ltd. Vs. Commissioner of Central Excise, Kolkata-II

7.5 With regards to the allegation for denial of the Credit taken on the goods viz. using HR plates, MS flats, MS Coils, Wire rope, rail, welding electrodes utilized for fabrication of Goliath Crane, Jib Crane, Gantry Cranes, EOT Crane etc. on the ground that they are immovable in nature being embedded to the earth, it was submitted that the contention is clearly untenable and cannot be a basis for denying Cenvat Credit of ₹ 30,228/- for the period November-2009 to January-2010. They submitted that Cenvat Credit Rules do not contain any bar against availment of cenvat on goods which are used for manufacture / fabrication of capital goods which ultimately become immovable / embedded to the earth. Thus, the notice for denying credit on this reason is factually untenable and devoid of merits. It is settled law laid down by Tribunal in the following amongst other decisions that Modvat / Cenvat Credit Rules neither explicitly nor by implication provide that credit would not be permissible if the goods in respect of which credit has been availed become immovable property. The concept of goods is movable or not is relevant only for determination of their liability to duty and not eligibility to cenvat credit. Thus, the proposal to deny credit on the ground that the crane becomes immovable goods is clearly untenable. They relied on following decisions :-

(i) United Prosperous Ltd. Vs. CCE [2002 (15) ELT 650]
(ii) Mahalaxmi Glass Works Vs. CCE [1999 (113) ELT 358]
(iii) CCE Vs. Nava Bharat Ferro Alloys [2004 (166) ELT 72]
(iv) KCP Ltd. Vs. CCE [2009 (237) ELT 500].

PERSONAL HEARING :-

8. The personal hearing in the matter was held on 05.07.2011 wherein (1) Shri Prabhakar Shetty, Advocate, (2) Shri Hemant Patel, Dy. CFO of the Noticee and (3) Shri Dharmesh Shah, Manager-Regulatory of the Noticee remained present and reiterated their written submission already filed by them. They requested for 10 days time to file further written submission, which was granted.

9.1 The Noticee submitted further written submission dated 20.07.2011 and interalia stated that the credit on input service was mainly availed for the purpose of setting up ship building / ship repair yard and the balance input credits are also in relation to activities which were used for the purpose of setting up the ship building / ship repair unit.

9.2 The fundamental premise on which the show cause notice proceeded, that they are engaged in the manufacture of final products which are chargeable to Nil rate of duty, is factually incorrect. The Ship building yard is capable of manufacturing all kinds of ships and vessels and they would be manufacturing all kinds of ships and floating structure including those falling under Chapter Heading 8903 and 8907 of the CETA on which Excise duty was leviable at the relevant point of time. In fact, with effect from 1st April, 2011, almost all the vessels and floating structure falling under Chapter 89 have been brought under the Excise net.

9.3 It was submitted that the Central Excise certificate and letter of approval granted to them by the competent authority is for manufacturing all kinds of ships, vessels and floating structure and not restricted or limited to ships which were chargeable to Nil rate of duty. Thus, the presumption that they are engaged exclusively in the manufacture of final products which are chargeable to Nil rate of duty is completely untenable and bad in law.

9.4 The notice overlooked the fact that the ship building facility for which various input services in question have been availed of would also be used for rendering taxable service under the head of ship management service / ship repair service. They had obtained the necessary registration with the Service Tax authorities for this purpose. In view of the above, the notice was completely unjustified in contending that they were not eligible to credit as the goods manufactured by them were chargeable to nil rate of duty.

9.5 So far as the allegation in the notice that credit in respect of input services specified in Annexure IV wherein the remarks column that credit has been availed of without cover of documents or the same has been availed on the strength of Xerox copies of invoice, was not admissible is concerned; it was submitted that all credits have been availed only on the strength of valid duty paying documents. Perhaps, copies of some of these documents could not be produced for verification as called for by the department during investigation, however, they have located originals of such documents. They submitted that, if desired, such original documents can be produced for verification. Photocopies of the said documents were said to be annexed, but the same were not found annexed with their reply.

9.6 As regards allegation that Credit on capital goods which were used for fabricating Goliath Crane, JIB Crane, Gantry Crane, EOT Crane, which though produced in the factory are not excisable goods being immovable in nature is concerned, it was submitted that the credit availed on capital goods is only to the tune of ₹ 30,229/- and the said credit was availed of on the items which are all classifiable under Chapter 82, 84, 85, 90 of other specified heads, which are eligible to capital goods or the same are parts, components and accessories of specified capital goods. The notice had not appreciated this fact and made aforementioned allegation. Even if, the capital goods are made immovable for their smooth functioning, the same do not cease to be capital goods. The cranes in question have been fabricated in the factory are all classifiable under Chapter heading 84.26 of CETA, 1985 which is one of the specified headings of which credit can be availed. This being the case, the proposal to deny credit on capital goods is clearly untenable and bad in law.

9.7 With regards to the proposal to penalize under Rule 15 read with Section 11AC is concerned, it was submitted that for the reasons stated in the reply as also in this submission, there is no infirmity in the credit availed by them and consequently, neither they are liable to interest nor any penalty is imposable on them. It was also submitted that for imposing penalty under Rule 15 of Cenvat Credit Rules read with Section 11AC, there has to be fraud, suppression, and wilful misstatement with an intention to evade payment of duty and notice does not contain any such allegation and consequently, the proposal to penalize can be invoked only if there is fraud, suppression, wilful misstatement with an intention to evade payment of duty is clearly not applicable in the present case. In the instant case, except for capital goods credit to the tune of ₹ 30,229/-, balance entire credit in respect of input services to which provisions of Rule 15 read with Section 11AC did not apply. Thus, no penalty under the said provisions can be imposed even if inadmissible input service credit had been availed of.

DISCUSSION & FINDINGS :-

10. I have carefully gone through the subject show cause notice, submissions made by the Noticee in their written reply to show cause notice as well as subsequent to personal hearing and submission made during the course of personal hearing. I have also perused other evidences available on record. It is observed that the show cause notice proposes, on the following grounds, to deny the Cenvat Credit amounting to ₹ 1,50,87,433/- taken by the Noticee on Capital Goods and Input Services during the period from November - 2009 to January – 2010 :-

(i) the Noticee is exclusively engaged in the manufacture of such a final products which are chargeable to NIL rate of duty;

(ii) the Noticee has taken / availed Cenvat Credit on the goods utilized for fabrication of Goliath Crane, Jib Crane, Gantry Crane, EOT crane etc. which have been produced within the factory of production and which being immovable in nature, are not the excisable goods.

(iii) the Noticee has taken Cenvat Credit without documents or without original documents as per reason shown in "Remark" column of Annexure-IV annexed to the show cause notice;

11.1 The show cause notice proposes to deny entire Cenvat credit availed by the Noticee on the ground that they are exclusively engaged in the manufacture of exempted final products in as much as their final product "Ship" was classifiable under CETSH Nos. 89012000, 89013000 and 89019000 and was chargeable to NIL rate of duty during the period covered by the show cause notice.

11.2 The definition of "exempted goods" as per Rule 2(d) of CCR, 2004 is as follows :-

Rule 2(d) :- "exempted goods" *means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty;*

11.3 As the final products viz. "Ship" was chargeable to Nil rate of duty during the relevant period, the same was "exempted goods" as provided under Rule 2(d) of CCR, 2004.

11.4 I observe that sub-rule (1) and (4) of Rule (6) of CCR, 2004 restricts availment of Cenvat Credit on Input, Input Service or Capital Goods which is used in the manufacture of exempted goods. The text of relevant portion of Rule 6 of CCR, 2004 reads as under :-

> ***RULE 6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services :-***
>
> *(1) The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services, except in the circumstances mentioned in sub-rule (2).*
>
> *(2)* *** *** ***
>
> *(3)* *** *** ***
>
> *(4) No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods or in providing exempted services, other than the final products which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made in a financial year.*

11.5 I observe that Rule 6(1) of CCR, 2004 stipulates that the Cenvat credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services, except in the circumstances mentioned in sub-rule (2). Rule 6(4) of CCR, 2004 stipulates that the Cenvat credit shall not be allowed on capital goods which are used exclusively in the manufacture of exempted goods or in providing exempted services.

11.6 Further, I observe that following explanation has been inserted in Rule 6(3) of the CCR, 2004 vide Notification No. 27/2005-C.E. (N.T.) dated 16.05.2005.

> *"**Explanation III**. – For the removal of doubts, it is hereby clarified that the credit shall not be allowed on inputs and inputs services used exclusively for the manufacture of exempted goods or exempted services."*

11.7 Thus Explanation III in Rule 6(3) of CCR, 2004 clarifies that the credit shall not be allowed on inputs and inputs services used exclusively for the manufacture of exempted goods or exempted services. I find that these provisions are already contained in the main provisions of Rule 6 of CCR, 2004.

11.8 I also find that the issue of admissibility of Cenvat Credit on inputs used in exempted products has been considered by the Hon'ble CESTAT in the case of Aurobindo Pharma Ltd. V/s. Commissioner of Central Excise, Visakhapatnam – I [2011 (265) E.L.T. 358 (Tri. Bang.)]. The relevant portion of the said decision is reproduced below :-

"5.2 .....

Though Rule 3 of CCR allows credit of duties specified in the sub-rule (1) and paid by a manufacturer, the scheme also places certain restrictions on the above right. As per Rule 6(1) of CCR, credit shall not be allowed on such quantity of input or input service used in the manufacture of exempted goods or for provision of exempted services, except in circumstances specified in sub-rule (2). As per sub-rule (2), where a manufacturer or provider of output service avails of CENVAT credit and manufactures such final products or provides such output services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable. As per sub-rule (3) the manufacturer or provider of output service opting not to maintain separate accounts shall follow either of the following two conditions, as applicable to him, namely :-

> *(a) if the exempted goods are.....*
>
> *(b) if the exempted goods are other than those described in condition (a), the manufacturer shall pay an amount equal to ten percent of the total price, excluding sales tax and other taxes, if any, paid on such goods, of the exempted final product charged by the manufacturer for the sale of such goods at the time of their clearance from their factory;*

Condition (c) restricts the CENVAT credit that can be utilized by a service provider to 20% of the service tax payable on the output service.

Explanation I to this sub-rule (3) lays down that the amount payable as per conditions (a) and (b) can be paid from the CENVAT credit or otherwise. Explanation II lays down that in case of failure of the assessee to pay the amount as prescribed under conditions (a) and (b), the same shall be recovered as provided under Rule 14 along with interest. Explanation III clarifies that no credit shall be allowed on inputs and input services used exclusively for the manufacture of exempted goods or services. The Explanation reads as follows :

> *For the removal of doubts, it is hereby clarified that credit shall not be allowed on inputs and input services used exclusively for the manufacture of exempted goods or provision of exempted services.*

We find that the explanation does not say anything inconsistent with the CENVAT scheme of allowing credit of duty paid on inputs that go into production of goods or services that suffer duty so that there is no cascading effect of goods or services having to suffer double taxation. A position that informed the legislative policy all along is reiterated by expressly denying credit where the final products or services are not subject to tax. We note that the Explanation has been issued for the removal

of doubts. The Explanation is in the nature of a clarification and so applies retrospectively. Exceptions to the Rule 3 are specified in sub-rule (6) of Rule 6 of CCR. Therefore an assessee which uses inputs exclusively for the manufacture of exempted goods and services but makes clearances in any manner specified in sub-rule (6) of Rule 6 shall be entitled to credit on exclusive inputs used for the production of exempted final products or provision of exempted services. However, in cases not covered by such exceptions, taking of credit on inputs by such assessees shall be irregular in view of the sub-rule (3) of Rule 6 of CCR. Such credit involved can be recovered along with interest as provided in Rule 14 of CCR. There is no justification to collect 10% of the sale price of exempted goods manufactured using exclusive inputs. There is no legal sanction for such recovery.....

11.9 As the Noticee has been engaged in the manufacture of exempted goods viz. ships, Cenvat credit on input services and capital goods is not admissible to the Noticee in view of the provisions of sub rule (1) and (4) of Rule 6 of CCR, 2004 and Explanation III of Rule 6(3) of CCR, 2004.

12.1.1 It is the contention of the Noticee that prohibitions under Rule 6(1), 6(2), 6(3) and 6(4) is not applicable to them in view of sub-rule (6) of Rule 6 of CCR, 2004. They have also relied upon the judgement of Hon'ble Bombay High Court in the case of Repro India Ltd. V/s. Union of India [2009 (235) ELT 614 (Bom.)] wherein it is held that even though Rule 6(1) of the CCR, 2004 provides that no Cenvat credit will be available in respect of the inputs used in the manufacture of exempted products, Rule 6(6)(v) of the Cenvat Credit Rules creates an exemption inter alia in respect of the excisable goods removed without payment of duty for export under bond in terms of Central Excise Rules, 2002.

12.1.2 I find that the contention of the Noticee is not tenable in as much as during the period covered by the SCN, the Noticee has not made any removal of excisable goods without payment of duty either to a unit in a SEZ, or to an EOU, or to a unit in an EHTP or STP, or supplied under Notification No. 108/95-CE dated 28.08.1995, or for export under bond etc. as provided under Rule 6(6) of CCR, 2004.

12.1.3 The judgement of Hon'ble Bombay High Court in the case of Repro India Ltd. V/s. Union of India (supra) relied upon by the Noticee is also not applicable in the facts of the present case in as much as in the case of Repro India Ltd., the unit was manufacturing both dutiable as well as exempted final products whereas in the present case, the Noticee is engaged in the manufacture of exempted final products viz. ship only. Further, the Noticee has not made any export under bond during the period covered by the SCN.

12.2.1 The Noticee has also contended that w.e.f. 01.04.2011, all the vessels and floating structure falling under Chapter 89 have been brought under the excise net. They have also submitted that their ship building yard is capable of manufacturing all kinds of ships and vessels including those falling under Chapter heading 8903 and 8907 of the CETA on which Excise duty was leviable at the relevant point of time.

12.2.2 I find that the eligibility of Cenvat Credit has to be determined with reference to the time of receipt of inputs, input service or capital goods by the assessee. The period covered by this SCN is from November - 2009 to January - 2010 during which "ship" were chargeable to Nil rate of duty and hence were exempted goods. Subsequent levy of Central Excise duty w.e.f. 01.04.2011 on ships would not make the Noticee entitled to avail Cenvat Credit on inputs, input service or capital goods received during prior period when the "ship" were chargeable to Nil rate of duty. This is for the simple reason that the law do not allow to avail and accumulate Cenvat credit when the final products are exempted and to utilise such accumulated Cenvat Credit in the event of final products subsequently becoming taxable. For the same reason, Cenvat credit can not be allowed to the Noticee merely on the ground that their ship building yard is capable of manufacturing of dutiable ships and vessels when in fact they have not manufactured such dutiable ships and vessels during the period covered by the SCN.

12.2.3 I rely on the decision of Hon'ble CESTAT in the case of Commissioner of Central Excise, Indore V/s. Surya Roshni Ltd. [2003 (155) E.L.T. 481 (Tri. – Del.), wherein it has been held as follows :-

> ***5.*** *We have considered the submissions of both the sides. Rule 57Q(2) of the Central Excise Rules, 1944 provides that the manufacturer of the final product shall be allowed credit of the duty paid on the capital goods. Sub-rule (1) of Rule 57Q mentions that the provisions of sub-section "AAAA" shall apply to goods described in the Table given below the sub-rule. Rule 57R(1) bars the availment of credit of the duty if the capital goods are used in the manufacture of final products on which no excise duty is payable. The credit is availed of as and when the capital goods are received by the manufacturer. When the impugned machine was received, it has been used in the manufacture of bulbs which were exempted from the payment of whole of the duty of excise leviable on them. The classification list may contain details of goods which are liable to pay duty. But it cannot be claimed therefrom that the machine was also meant to be used in the production of final goods chargeable to duty. The declaration mentioned in sub-rule (2) of Rule 57T to the effect that the capital goods in question shall not be used exclusively for production of an exempted final product has not been brought on record. The availability of Modvat credit is to be looked into at the time of receipt of the capital goods. If the capital goods are exclusively used in the manufacture of exempted products, Modvat credit will not be available to the manufacturer. Subsequently, the exempted product becomes dutiable on account of withdrawal of exemption or the manufacturer puts the capital goods to other use would not revive the question of Modvat credit which stands determined at the time the capital goods was received. The decision of the single Bench of the Tribunal in Kailash Auto Builders case is not applicable to the facts of the present matter as the Appellants therein "have made their intention clear that they would be using the said capital goods in the manufacture of excisable final products once the factory starts working to its full capacity." Further, the facts are also different in the case of Bhaskar Industries Ltd. inasmuch as in the said matter the Respondents "had a project to set up a composite mill for spinning, weaving and processing" meaning thereby for manufacture of excisable goods which are chargeable to duty. We observe that the Respondents therein "kept the option of availing the Modvat credit on*

capital goods in abeyance for about a year, till implementation of the third phase, namely, the fabric processing. The assessee submitted the required declaration under Rule 57T of the Central Excise Rules with the clear intention that it shall be availing the credit on implementation of the third phase as the final product of third phase was dutiable." In view of this, the Respondents are not entitled to Modvat credit. Accordingly, we set aside the impugned Order and allow the Appeal filed by the Revenue.

12.2.4 The above decision of Hon'ble CESTAT has been maintained by Hon'ble Supreme Court [2003 (158) E.L.T. A273 (S.C.)]. Similar view has been held by the Larger Bench of Hon'ble CESTAT in the case of Spenta International Ltd. V/s. Commissioner of Central Excise, Thane [2007 (216) E.L.T. 133 (Tri.–LB)].

12.2.5 The above decisions have been rendered in the context of eligibility of Cenvat Credit on capital goods which have been used exclusively in manufacture of exempted goods. The ratio laid down therein is applicable with greater force in case of Cenvat Credit availed on inputs and input services which are immediately consumed whereas capital goods can be used for a longer period of time. Therefore, the contention of the notice is not found supported by law.

12.3.1 The Noticee has submitted that the show cause notice has overlooked the fact that various input services availed would also be used for rendering taxable services under the head of ship management service/ ship repair service and they have obtained necessary registration with the Service Tax authorities for this purpose.

12.3.2 I have perused the Service Tax Registration No. AABCP1491LST002 dated 17.02.2009 issued for the premises Pipavav Shipyard Limited, at Port of Pipavav, Rajula, Distt. Amreli (Gujarat) for taxable services of (i) Transport of goods by Road and (ii) Ship Management Service. I have also perused the Service Tax Registration No. AABCP1491LST001 dated 24.03.2009 issued for the premises Silk House, 209, Bank Street Cross Lane, Opp. S.B.S. Road, Fort, Mumbai (Maharashtra) for taxable services of (i) Scientific and Technical Consultancy, (ii) Manpower Recruitment Agency, (iii) Consulting Engineer, (iv) Management Consultants, (v) Test, Inspection, Certification, (vi) Input Service Distributor and (vii) Advertising Agency.

12.3.3 I have also gone through the definitions of input, input service and capital goods, relevant portion of which are reproduced below :-

Rule 2(k) of CCR, 2004 :-

"input" *means –*

(i) *all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final products or not and includes lubricating oils, grease, cutting oils, coolants, accessories of the final products cleared along with the final products, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;*

केन्द्रीय उत्पाद शुल्क भावनगर

(ii) *all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;*

Explanation 1. – .....
Explanation 2. – .....;

Rule 2(l) of CCR, 2004 :-
"input service" *means any service, -*
(i) used by a provider of taxable service for providing an output service, or
(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,
and includes .....;

Rule 2(a) of CCR, 2004 :-
"Capital Goods" means –
(A) *the following goods, namely :-*

(i) .....;
(ii) .....;
(iii) .....;
(iv) .....;
(v) .....;
(vi) .....; and
(vii) .....,

used –
(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or
(2) for providing output service;

(B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of Section 65 of the Finance Act;

12.3.4 From the above definitions, it is observed that in the context of excisable goods, the definition of "input" provides that "input" means goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Similarly, definition of "input service" provides that "input service" means any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal. In the context of output service, the definition of "input" provides that "input means goods used for providing any output service. Similarly, the definition of "input service" provides that "input service" means any service used by a provider of taxable service for providing an output service.

12.3.5 Thus, the 'manufacturer' can avail Cenvat Credit of Central Excise duty and Service Tax paid on inputs and services used in or in relation to the manufacture of final products whether directly or indirectly. As against this, the 'output service provider' can avail Cenvat Credit of Central Excise duty and Service Tax paid on inputs and services used for providing output service. The definitions of "input" and "input service" reveal that inputs and input services used in or in relation to the manufacture of final products whether directly or indirectly are eligible for Cenvat credit. However, in case of "output service", there should be direct nexus of "input" and "input service" with the "output service" as the phrase 'in or in relation to" and "whether directly or indirectly" are absent in those portions of definitions of "input" and "input service" which pertain to "output service". It would therefore mean that "input" and "input service" should have direct nexus with 'output service' so far as eligibility for Cenvat Credit is concerned. In other words, "input" or "input service", to be eligible for Cenvat credit, should be utilized directly for providing 'output service'.

12.3.6 In the instant case, the Noticee has shown the Cenvat credit availed on "input services" in their ER-2 return indicating that those services have been used by them in or in relation to manufacture of final products whether directly or indirectly. Had those services been used for providing 'output services', the Noticee would have shown the Cenvat credit of Service Tax paid on such "input services" in their respective ST-3 returns. As already discussed, the criteria to qualify the services used as "input service" are different in case of Manufacturer and Output Service Provider. Therefore, if the service received were qualified as 'input service' for providing 'output service' viz. Transport of Goods by Road or Ship Management Service, the Noticee should have shown the same as Cenvat Credit in the relevant ST-3 returns filed with the jurisdictional Service Tax authorities.

12.3.7 Further, sub-rule (6) of Rule 9 of CCR, 2004 provides that the manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit. Therefore, had the "input services" been used for providing "output services" by the Noticee, they, as an Output Service Provider should have maintained records for the receipt and consumption of input service. For the same reason, the claim of the Noticee that as the input service in question have been used entirely for the purpose of setting up a shipyard, which is necessary for rendering the output service of ship repair/refit, the entire quantity of input services is to be considered as required for use for the purpose of rendering a taxable output service is not tenable in as much as the Noticee has not proved this fact in terms of the sub-rule (6) of Rule 9 of CCR, 2004.

12.3.8 The above contention is even otherwise not useful to the Noticee for the reason that in case it is considered that the 'input service' is for providing taxable output service, the Cenvat Credit is to be availed / taken separately in the capacity of 'output service provider' and disclosed the same before the jurisdictional Service Tax authority in as much as they are separately registered with the Service Tax Department.

13. I, therefore hold that the Noticee is exclusively engaged in the manufacure of exempted final products and hence Cenvat credit is not available to them. Therefore, the entire Cenvat credit of ₹ 1,50,87,433/- has been wrongly taken by the Noticee, which is required to be recovered from them.

14.1.1 The show cause notice also proposes to deny Cenvat Credit taken on the goods utilized for fabrication of Goliath Crane, Jib Crane, Gantry Crane, EOT crane etc. produced within the factory of production on the ground that these goods being immovable in nature, are not excisable goods.

14.1.2 The Noticee has not disputed the fact that the goods have been utilized for fabrication of Goliath Crane, Jib Crane, Gantry Crane, EOT crane etc. which become immovable and embedded to the earth. However, it is their contention that Cenvat Credit Rules neither explicitly nor by implication provide that credit would not be permissible if the goods in respect of which credit has been availed become immovable property. It is also submitted that the concept of goods being movable or not is relevant only for determination of their liability to duty and not for eligibility to Cenvat credit.

14.2.1 I find that the definition of "input" and "input service" envisages that goods and services should be used in the manufacture of final products. Definition of "capital goods" also envisages that the specified goods should be used in the factory of the manufacture of the final products. Therefore, it would be useful to look into the definition of "final products" which has been defined under Rule 2(h) of CCR, 2004 as follows :-

"Rule 2(h) of CCR, 2004 –

***"final products"** means excisable goods manufactured or produced from input, or using input service;*

14.2.2 The expression "excisable goods" has not been defined under CCR, 2004. However, as per Rule 2(t) of CCR, 2004, words and expressions used in these rules and not defined but defined in the Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts. The expression "excisable goods" has been defined under Section 2(d) of CEA, 1944 as follows :-

"Section 2(d) of CEA, 1944

***"excisable goods"** means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt;*

14.2.3 Therefore, I find that it is not only relevant but essential to determine whether the goods manufactured from input or using input service are excisable goods or not to determine the eligibility of Cenvat credit. The Cenvat credit of Central Excise duty can be taken only if the inputs have been used in the manufacture of excisable goods.

14.3.1 The C.B.E.C. vide Circular No. 98/1/2008-S.T. dated 04.01.2008 has clarified this issue in respect of eligibility of Cenvat credit of Service Tax paid on services used for an immovable property, as follows :-

Reference Code	*Issue*	*Clarification*
(1)	*(2)*	*(3)*
096.01/ 4-1-08	*Commercial or industrial construction service [section 65(105)(zzq)] or works contract service [section 65(105)(zzzza)] is used for construction of an immovable property. Renting of an immovable property is leviable to service tax [section 65(105)(zzzz)].* *Whether or not, commercial or industrial construction service or works contract service used for construction of an immovable property, could be treated as input service for the output service namely renting of immovable property service under the Cenvat Credit Rules, 2004?*	*Right to use immovable property is leviable to service tax under renting of immovable property service.* *Commercial or industrial construction service or works contract service is an input service for the output namely immovable property. Immovable property is neither subjected to central excise duty nor to service tax.* *Input credit of service tax can be taken only if the output is a 'service' liable to service tax or a 'goods' liable to excise duty. Since immovable property is neither 'service' or 'goods' as referred to above, input credit cannot be taken.*

[emphasis supplied]

14.3.2 It is well settled that Central Excise duty is levied and collected on excisable goods produced or manufactured in India. The word 'goods' includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable. Thus, the 'goods' should be known to the market as such and can ordinarily come to the market for being bought and sold. In this context, the issue of excisability of plant and machinery assembled at site has been decided by Hon'ble Supreme Court in catena of judgements. Hon'ble Supreme Court of India in case of Triveni Engg. & Inds. Ltd. Vs. Commissioner [2000 (120) ELT 273 (SC)] has held that the machine or plant should be moveable as such and not in parts to pass the test of 'goods' for the purpose of levy of Central Excise duty. The articles embedded to earth, structures, erections, installations and turnkey projects are also not 'goods' being immovable property cannot ordinarily come to the market to be bought and sold as held by Hon'ble Supreme Court in case of Quality Steel Tubes (P) Ltd. Vs. Collector [1995 (75) ELT 17 (SC)]. Central Board of Excise and Customs has also issued instructions on the excisability of plant and machinery assembled at site vide Order No. 58/1/2002-CX dated 15.01.2002 issued under Section 37B of the CEA, 1944.

14.3.3 It is observed that Goliath Crane, Jib Crane, Gantry Crane, Electric Overhead Travelling (EOT) crane etc. are mainly used for the purpose of Heavy, Medium and Light material handling i.e. lifting and transporting. These cranes run on track like railway track fitted with earth. These cranes are used in Ship building and are very huge in length and height and required to be erected at sight, stage by stage and after completion they cannot be physically moved. The structures get support from earth to lift, handle and transport heavy weight. Thus, the structure of