



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा

GST Building, 7<sup>th</sup> Floor,,

Near Polytechnic,

Ambavadi, Ahmedabad-

380015

सातवीं मंजिल, पॉलिटेक्निक के पास,

आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

टेलीफैक्स : 079 - 26305136



क फाइल संख्या : File No : V2/20 & 21/GNR/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-10 & 11-18-19**

दिनांक Date : **25.06.2018** जारी करने की तारीख Date of Issue: **18/7/2018**

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :  
PLN-AC-Cex-11/2017 दिनांक : 27-03-2018 से सृजित

Arising out of Order-in-Original: PLN-AC-Cex-11 & 12/2017, Date: 27-03-2018 Issued by: Assistant Commissioner, CGST, Div: Palanpur, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

**M/s. Duke Plasto Technique pvt Ltd**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

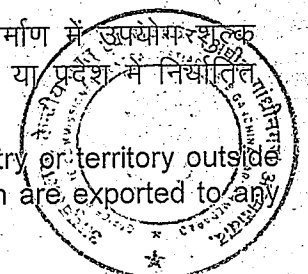
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोगित कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (C) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- एबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any

nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्त कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

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

→ आगे बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

S No	Appeal No	Period involved	Duty involved (Rs)	Penalty involved (Rs)
1	20/GNR/18-19	March-16 to August -16	4,74,369/-CENVAT 6,46,948/- CEX duty	4,74,369/ 6,46,948/-
2	21/GNR/18-19	Sept-16 to March -16	12,657/-CENVAT 68,994/- CEX duty	12,657/- 68,994/-

The appeals mentioned at Sr.No.1 and 2 mentioned above have been filed by M/s Duke Plasto Technique Pvt Ltd, Palanpur [hereinafter, referred to as "the appellant"] against Orders-in-Original No.PLN-AC-CEX-11/2017 dated 27.03.2018 and PLN-AC-CEX-12/2017dated 27.03.2018 [*impugned orders*] passed by the Assistant Commissioner of CGST, Palanpur Division, Gandhinagar CGST Commissionerate [*adjudicating authority*].

2. Briefly stated, the facts of the case are that the appellant is engaged in manufacture of PVC pipes, submersible pumps and electrical motors; that the appellant were purchasing completely manufactured S.S submersible pump and availing Cenvat credit thereon; that the said submersible pump was cleared by them along with electrical motors as pump set, by availing concessional rate of duty under notification No.12/2012-CE dated 7.03.2012. Based on Show Cause Notice dated No.V.39, 84 & 85/15/21/Off/OA/15 dated 29.05.2015, two further periodical show cause notices dated 09.02.2017 and 24.05.2017, covering the period of March 2016 to August 2016 and September 2016 to March 2017 were issued to the appellant, alleging they had availed Cenvat credit on bought out submersible pump under which no manufacturing activities was done and short paid central excise duty, by availing notification No.12/2012 *ibid* wrongly on clearance of said bought out submersible pump along with electric motors as Pump set. Vide the impugned orders, the adjudicating authorities has ordered for reversal of Cenvat credit taken wrongly and confirmed central excise duty short paid with interest and also imposed penalties as mentioned in the table above, under Rule 15 of Cenvat credit Rules, 2004 as well as under Section 11 AC of the Central Excise Act, 1944.

3. Being aggrieved, the appellant has filed the appeals mentioned at Sr.No.(1) and (2) of the above table to set aside the recovery of Cenvat credit/demand of duty with interest and penalty imposed thereof on the grounds that:

- The pump sets cleared by the are customized as per the demand of customer; that the electrical motor is manufactured depending upon the configuration of pump as per the requirement and pump sets are then tested together to ensure the customers demand are met with; that the activities under taken by them are clearly amounted to manufacture and accordingly, the submersible pumps are their inputs.
- The law makes no distinction between a manufactured items cleared as an assembled integral unit or cleared as part in an unassembled form, because whether an item is fully put together or cleared as parts is merely a matter of convenience of packing and transport; that what is relevant for the purpose

of classification/valuation and duty of the product under the law; the product cleared by the appellant was a pump set and not merely the components like pumps and motors as erroneously understood by the department.

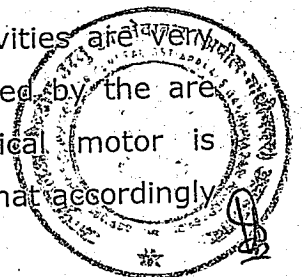
- Demand of differential duty on electric motors is erroneous as the differential duty is demanded on the value of the pump set which included inter-alia electric motor as well as bought out pump; the differential duty could have been demanded only on the assessable value of electric pumps.
- The bought pump is being a part of new manufactured commodity i.e pump sets, the said goods are eligible for taking Cenvat credit and the final product cleared by availing concessional rate of duty is proper and correct. Therefore, the whole demand with interest is not sustainable.
- Penalty imposed equal to duty amount is not correct.
- The appellant has relied on certain case laws in favour of their arguments.

5. A personal hearing in both the appeals was held on 12.06.2018. Shri Paresh M Dave, Advocate appeared for the same and reiterated the grounds of appeal. The learned Advocate further relied on citation in case of [i] M/s Rane NSK Steering System Ltd [2007 (218) ELT-354 (P&H)]; [ii] M/s Creative Enterprises [2009 (235) ELT 785-Guj]; [iii] M/s Ajinkya Enterprises [2013 (294) ELT 2013-Bom; and M/s Vishal Precision Steel Tubes & Strips Pvt Ltd [2017 (349) ELT 686-Kar], wherein it has been held that when duty is paid, CENVAT credit cannot be denied.

6. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandums as well as at the time of personal hearing.

7. It is mainly alleged in the impugned orders that since there is no manufacturing activities undertaken on the bought out goods viz. Bare pumps/submersible pump, it cannot be considered as their input and no Cenvat credit on such goods is admissible to the appellant; that when no manufacturing activities is undertaken on the said bought goods and cleared as such with their own manufacturing goods i.e electric motor, concessional rate of duty under the notification *supra* is not admissible to them. The adjudicating authorities have relied on Hon'ble Supreme Court's decision in the case of M/s Delhi Cloth & General Mills [1977 (1) ELT-J 199]; M/s Kores India Ltd [2004 -174- ELT 7] and Hon'ble High Court of Allahabad in case of M/s Honda Siel Power Products Ltd [2016-332-ELT 222] wherein it has been held that "manufacture" means bringing into existence a new substances known to the market and not merely producing some change in a substance; that a process amounts to manufacture only when due to it original identity of products undergoes transformation and it becomes a distinct and new product.

8. On other hand, the appellant has contended that their activities are well within the meaning of "manufacture" as the pump sets cleared by the are customized as per the demand of customer and the electrical motor is manufactured by them depending upon the configuration of pump; that accordingly



they had taken cenvat credit correctly and cleared the final goods on concessional rate of duty.

9. From the facts of the case, I observe that the issue involved in these cases are as to whether the appellant is eligible for [i] availing Cenvat credit on bought out goods viz. submersible pumps which said to be not undergone any manufacturing activities while clearing with goods viz. electric motors manufactured by them; and [ii] eligible for the benefit of reduced rate of Excise duty as granted under Notification No. 12/2012-C.E., dated 17.3.2012, more specifically under Sr. No. 235, while clearing the submersible pump and electric motor in a single package.

10. The factual matrix which is undisputed that the appellant are manufacturer of submersible pumps and electrical motors falling under Chapter Heading No. 84 during the material period. It is also undisputed that the appellant is also purchasing Bare pumps/Submersible pumps from various manufacturers on payment of duty in fully manufactured condition; that after necessary testing and painting, such bought out goods are cleared along with their own manufactured electric motors in their packaging as a "Pump Set", by classifying under chapter 8413 of Central Excise Tariff Act and availing concessional rate of duty under Notification No.12/2012-*ibid*.

11. The term "manufacture" , as per Hon'ble Supreme Court's judgment in case of M/s Delhi Cloth & General Mills means bringing into existence a new substance known to the market and not merely producing some change in a substance. The decision of M/s Kores India Ltd mandates the term "manufacture" that for a process to be called as manufacture, a new and distinct product/article should be emerged during the process. In the instant case, the appellant undertakes the activities of testing, repainting on the bought out goods which do not bring out any change in the original character. Further, it is an admitted fact by the appellant that they had not undergone any process on the bought out goods except testing and painting; that such bought out goods duly tested and painted are repacked with their own manufactured goods.

12. I observe that the issue involved in the instant case has already been decided by me vide OIA No.AHM-EXCUS-003-APP-0148 to 150-17-18 dated 16.11.2017 in case of the appellant for the demand covering the period of April 2010 to February 2016. The gist of the order is as under:

*"12. I further observe that the Hon'ble High Court of Allahabad has decided a similar issue in case of M/s Hond Siel Power Products Ltd [ 2016 (332) E.L.T. 222 (All.)], wherein it has been held that :*

*"Placing bought out P.D. Pump and own manufactured I.C. Engine in a single carton - Whether amounting to manufacture - A clear finding of fact, based on evidence and relevant material, recorded in adjudication order that aforesaid bought out item and*

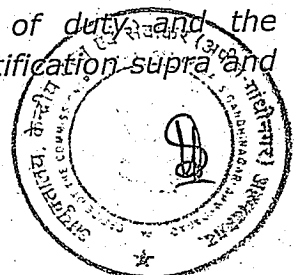
own manufactured item complete in all respects including carrying respective user manuals - These items also carrying logo and label of respective manufacturers in their individual packing - Tribunal erred in setting aside adjudication order without considering and discussing aforesaid factual finding and evidence - Tribunal ignoring fact of clearance of own manufactured item on payment of duty while not paying any duty when same merely placed in carton along with bought out item - Merely putting together one bought out item with own manufactured item in one carton, not amounting to manufacture as no new item coming into existence -"

13. From the admitted facts by the appellant, it is apparent that no manufacturing process took place in respect of the bare pumps/submersible pump in the factory of the appellant, except testing and painting; that such bought out pumps were not used within the factory of production for the manufacture of pump set. Therefore, in view of definition of "manufacture" as defined in the Hon'ble Supreme Court's judgment and clear finding of Hon'ble High Court of Allahabad supra, I am of the considered opinion that clearing of own manufactured electric motors by placing them in a carton containing bought out pump does not amount to manufacture of pump sets.

14. The appellant has relied on Hon'ble Tribunal's judgment in case of M/s Walchandnagar Industries Ltd supra. Since the said case speaks the issue relating to inclusive of value of bought items and supplied to the customers in terms of their purchase order, hence not applicable to the facts of the instant case. Further, the appellant has cited CBEC's Circular dated 26.06.2006 which is also not relevant to the facts of the instant case as the said circular clarifies the classification of power driven pump. Further, in the instant case, the bought out bare pump/submersible pump and electric motors manufactured by the appellant are separate products and merely packed together cannot be termed as power driven pump.

15. Now, the question arises regarding availment Cenvat credit on bought out goods viz. bare pumps/submersible pumps and concessional rate of excise duty availed by the appellant under Notification No. 12/2012-C.E., dated 17.3.2012, on clearance of bought out goods along with electric motors manufactured by them as a "Pump Set".

16. As per Cenvat Credit Rules, Cenvat credit on inputs can be availed when it used in the manufacture of final products. As already discussed above, the process of bought out goods are not amounts to manufacture. In the circumstances, the said bought out goods cannot be considered as their inputs within the definition of inputs given under Rule 2 of Cenvat Credit Rules. Therefore, the credit taken on such goods are not eligible to the appellant and the adjudicating authorities have rightly denied the same and ordered for its reversal with interest. Further, the appellant are manufacturing and clearing electrical motors, by paying rate of duty under Central Excise Tariff Act. However, while clearing the said electrical motors along with bought pumps, declaring as "pump set", the appellant pays duty at concessional rate of duty under notification No.12/2012-CE supra. When the bought pump are not their inputs and also not undergoes any manufacturing activities, the electric motors are not eligible for concession rate of duty. Accordingly, the benefit of the notification supra is not available to the appellant in respect of electrical motors cleared with bought out Pumps as Pump Sets. Therefore, I hold that the appellant should have discharged the duty liability on the electric motors at full rate of duty and the adjudicating authority has rightly denied the benefit of notification supra and demand the short payment of duty with interest."



13. I observe that the above OIA as well as the decision of Hon'ble High Court of Allahabad in case of M/s Hond Siel Power Products Ltd are still operative. Hence, I follow the same in the instant case also. Therefore, recovery of CENVAT credit taken on bought items and denial of benefit under concessional rate of duty under notification 12/2012-CE in respect of electric motors is correct.

14. The appellant relies on various case laws viz., [i] M/s Rane NSK Steering System Ltd [2007 (218) ELT-354 (P&H)]; [ii] M/s Creative Enterprises [2009 (235) ELT 785-Guj]; [iii] M/s Ajinkya Enterprises [2013 (294) ELT 2013-Bom; and M/s Vishal Precision Steel Tubes & Strips Pvt Ltd [2017 (349) ELT 686-Kar]. On perusal, I observe that the said case laws are relating to admissibility of CENVAT on inputs on duty paid by the assessee treating the activity as manufacturing activity. However, in the instant case, the decision of Hoda Siel Power Products *supra* is squarely applicable as the activity carried by the said assessee by placing bought out P.D. Pump and own manufactured I.C. Engine in a single carton and the Hon'ble Court has held that merely putting together one bought out item with own manufactured item in one carton, not amounting to manufacture as no new item coming into existence. Therefore, the case laws relied on by the appellant are not applicable to the instant case.

15. The appellant further contended that the differential duty demanded/confirmed by the adjudicating authority is erroneous and not correct. The differential duty has been demanded on the value of the pump set which included inter-alia electric motor as well as bought out S.S pump; that the differential duty could have been demanded only on the assessable value of electric motors and not on the value of pump set which admittedly included bought out S.S pump. I find merit consideration in the said argument. Since the appellant is not eligible for taking CENVAT credit on bought items and held the said goods as non-manufacturing, no duty is payable on such goods while clearing with their own goods. From the facts of the case and findings narrated in the impugned order, I observe that the adjudicating authority has failed to mention clearly that the demand in question ~~is~~ pertained to the assessable value of electric motors only. Therefore, I remand the case to the adjudicating for the said limited purpose and re-determine the duty accordingly on electric motors.

16. Further, I observe that the adjudicating authority has imposed penalty equal to the CENVAT credit wrongly taken and duty short paid under Rule 15(1) of CENVAT credit Rules, 2004 and under Section 11 AC of Central Excise Act, 1944. I further observe that the impugned show cause notices for the relevant periods were issued on the basis of earlier show cause notice dated 29.05.2015 and also on the basis of information given by the appellant. In the impugned show cause notices and in the impugned orders, there is no discussion regarding suppression of facts, fraud or collusion or any willful mis-statement. In the circumstances, penalty equal to duty/wrongly taken CENVAT under Section 11 AC (e) of CEA/Rule 15(1) of CCR



read with Section 11 AC is not correct and acceptable. However, since the appellant has contravened the provisions of CEA and CCR and short paid central excise duty/ taken CENVAT credit wrongly, penalty under Section 11AC(a) of CEA/Rule 15(1) of CCR read with Section 11 AC(a) is imposable. Accordingly, the appellant is liable for penalty not exceeding ten percent of the CENVAT credit taken wrongly and duty to be determined.

17. In view of above discussion, both the appeals are disposed of accordingly.

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स )

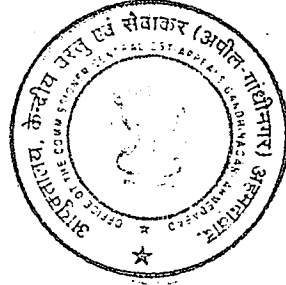
Date: /06/2018.

Attested

*Mohanan V.V.*  
(Mohanan V.V)  
Superintendent (Appeal)

By RPAD

To  
M/s Duke Plasto Technique Pvt Ltd  
At Badarpur, Deesa Highway, Palanpur.



Copy to:-

1. The Chief Commissioner, CGST Zone, Ahmedabad.
2. The Commissioner, CGST, Gandhinagar
3. The Additional Commissioner, Gandhinagar.
4. The Addl./Joint Commissioner, (Systems), CGST, Gandhinagar
5. The Dy. / Asstt. Commissioner, CGST, Division -Gandhinagar
6. Guard file.
7. P.A

