



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, पोलिटेकनिक के पास,

आम्बावाडी, अहमदाबाद-380015



☎ : 079-26305065

टेलीफैक्स : 079 - 26305136

क फाइल संख्या : File No : V217/GNR/2019-20/15177 TO 15181

ख अपील आदेश संख्या : Order-In-Appeal No. : AHM-EXCUS-003-APP-025-20-21

दिनांक Date : 13-07-2020 जारी करने की तारीख Date of Issue: 23/07/2020

आयुक्त (अपील) द्वारा पारित

Passed by Shri Akhilesh Kumar, Commissioner (Appeals) Ahmedabad

ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : AHM-CEX-003-ADC-JN-021-18-19 दिनांक : 31-Jan-19 से सृजित

Arising out of Order-in-Original: AHM-CEX-003-ADC-JN-021-18-19, Date: 31-Jan-19  
Issued by: Additional Commissioner, CGST, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

**M/s. Lubi Industries LLP**

**A/1, Lubi Industrial Park, Vadsar-Khatraj Road Vadsar, Kalol, Gandhinagar**

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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 प्रक्रिया 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 उपयोग शुल्क 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- ए0बी/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, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 100/- fee of Rs.100/- for each.





(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 13 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते 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 बशर्ते 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."

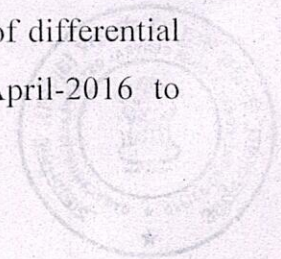




ORDER-IN-APPEAL

M/s. Lubi Industries LLP, A/1, Lubi Industrial Park, Vadsar-Khatraj Road, Village-Vadsar, Taluka-Kalol, Distt-Gandhinagar (hereinafter referred to as the “*appellant*”) has filed the present appeal against the Order-in-Original No. AHM-CEX-003-ADC-JN-021-18-19 dated 31.01.2019 (hereinafter referred to as the “*impugned order*”) passed by the Addl. Commissioner of CGST & Central Excise, Gandhinagar Commissionerate (hereinafter referred to as the “*adjudicating authority*”).

2. The facts of the case, in brief, are that the appellant is engaged in the manufacture of various type of pumps like Sewage pump, Drainage Pump, Monoblock Pump, Submersible pump etc. classified under Chapter 8413 of the Central Excise Tariff Act, 1985 (hereinafter referred to as “*CETA*”). It was observed by the Department that the appellant was clearing the Sewage pump / Drainage pump alongwith Monoblock pump / Submersible pump on payment of concessional rate of duty @ 6% as provided vide Srl. No.235 of Notification No.12/2012-CE dated 17.03.2012, as amended, by classifying the products under Chapter 8413 of CETA for the period April-2016 to March-2017. It was further noticed that prior to April-2016 (i.e. upto March-2016), the appellant was paying excise duty at full rate. But from April-2016 they started paying duty at concessional rate in view of the said Notification. It was the contention of the Department that benefit of concessional rate of duty under serial no. 235 of Notification No.12/2012-CE dated 17.03.2012 was available to power driven pumps primarily designed for handling water. It was alleged that there is wide difference between power driven pumps and sewage / drainage pumps cleared by the appellant. Based on the above view, it appeared to the Department that the appellant is liable to pay excise duty at full rate on clearance of Sewage pump / Drainage Pump. The short payment of differential excise duty was ascertained at Rs.63,69,295/- for the period April-2016 to March-2017. The appellant vide their letter dated 22.01.2017 conveyed that they had paid the differential duty under protest under provisions of Rule 233B of erstwhile Central Excise Rules, 1944. Subsequently, a Show Cause Notice dated 11.4.2018 (hereinafter referred to as “*SCN*”) was issued by the Addl. Commissioner of Central GST & Central Excise, Gandhinagar Commissionerate proposing (i) denial of benefit of concessional rate of duty on clearance of Sewage pump / Drainage pump; (ii) demand of differential central excise duty amounting to Rs.63,69,295/- for the period April-2016 to





March-2017 along with interest under Section 11A(1) and under Section 11AA of the Central Excise Act, 1944 respectively; (iii) vacation of protest lodged by the appellant towards payment of duty and appropriation of the payment made by the appellant towards their duty liability. Penalty under Rule 25(1) of Central Excise Rules, 2002 read with Section 11AC(1)(a) of the Central Excise Act, 1944 was also proposed to be imposed upon the appellant.

3. The adjudicating authority after hearing the appellant, confirmed the demand of differential duty of central excise amounting to Rs.63,69,295/- alongwith interest for the period April-2016 to March-2017; denied the benefit of concessional rate of duty on the product Sewage Pump / Drainage Pump; vacated the protest lodged by the appellant and appropriated the amount paid by the appellant towards their liability and imposed penalty of Rs.63,69,295/- upon the appellant as proposed under the SCN on the grounds that :

- (a) the concession from payment of duty was granted for the product power driven pumps primarily designed for handling water i.e. clean water whereas the product Sewage Pump / Drainage Pump are designed for other liquid / sludge containing hard materials and the term 'water' can not be said to include 'sewage' or 'waste'.
- (b) the appellant's contention towards Revenue Para-5 of Final Audit Report No.193/2013-14(Excise) dated 05.05.2014 (hereinafter referred to as 'FAR') was that the said pumps are not for handling water. The said goods are assessed to duty at the effective rate throughout the country and no concession is admissible to such pumps.
- (c) the above contention of the appellant raised towards audit's Revenue Para-5, was accepted by the Department and no notice was issued to them in this respect. Therefore, concessional rate of duty is not applicable to the clearance of the products in question/dispute.
- (d) Despite, the appellant cleared the products in question under concessional rate of duty which were not admissible for concession.
- (e) the appellant has interpreted the wordings of the said Notification beyond the meaning in normal course and there is no room for assumption or presumptions for the words the legislature has chosen to employ in the Act or Rules.
- (f) it is settled law that unless the term and expression has been defined in the statute itself, it should not be understood in the scientific and technical sense but in the popular sense that is to say in the sense in which it is understood by those dealing in them. Reliance is placed on the case of (i) M/s. Indo International Industries reported at 1981(8)ELT 325(SC) (ii) M/s. Delhi Cloth & General Mills Co. Ltd. reported at 1980(6)ELT 383(SC).
- (g) Reliance is also placed on the findings of the Authority for Advance Ruling under GST, Gujarat in the case of M/s. Aqua Machinerics Pvt. Ltd. reported in 2018(14)GSTL 103(AAR-GST) wherein it has been held that  
*"10.3. In common parlance, when one refers to 'water', it is understood in the sense of clear or raw water and not in the sense of 'sewage'. In commercial parlance also, 'pumps primarily designed for handling water' and 'other pumps or pumps designed for handling sewage' are distinctly known".*





(h) the onus of proving that the goods fall within an exemption notification is on the assessee in view of the case of M/s. Matson Laminates reported at 2005(181)ELT 382(SC) and in case of M/s. Meridian Industries Ltd. reported at 2015(325)ELT 417(SC).

(i) reliance is also placed in the case of M/s. Honda Siel Power Products Ltd. reported at 2015(323)ELT 644(SC) wherein it has been held by the Apex Court that Exemption Notifications are to be construed strictly and benefit of doubt goes to Department.

(j) even for sake of arguments, if accepted that the audit has taken the different stand earlier, the same can not bar the department to take a different stand for the different tax period. For this reliance is also placed in case of M/s. Bharat Sanchar Nigam Ltd. reported at 2009(002)STR 161(SC).

(k) they themselves have submitted before the audit that pumps for water and sewage/drainage are different and therefore the benefit of notification has been claimed with intention to evade duty.

4. Being aggrieved with the impugned order, the appellant preferred the present appeal on the grounds that :

(i) benefit of the said Notification had not been restricted to power driven pumps primarily designed for handling only "clean water" and accordingly the word "water" occurring in the said Notification was to be construed without adding an adjective like "clean" for qualifying nature of water handled by PD pumps;

(ii) the admissibility of benefit of the said Notification for sewage pump / drainage pump had become conclusive by virtue of views of the audit officers and the decision of the audit committee;

(iii) Central Government has allowed the benefit of Notification to "power driven pumps primarily designed for handling 'water'" and has never been restricted to power driven pumps primarily designed for handling only "clean water", irrespective of the fact whether a PD pump was for handling clean water or sewage water or drainage water or any other kind of water

(iv) there is no dispute that sewage pump / drainage pumps are classified under heading 8413 . One of the groups is for pumps 'primarily designed for handling water' and sub-heading 84135021 to 84137010 fall under this group of pumps. Sub-heading 84137010 covers 'primarily designed to handle water' and thus all pumps primarily designed to handle water are classified under this sub-heading. Sewage pump / drainage pumps are pumps primarily designed to handle water. Therefore denial of exemption benefit is illegal.

(v) there is no evidence on record that the sewage pump / drainage pumps were known as pumps used for other liquid / sludge containing hard materials and not known as pumps for handling water among the people using, purchasing and selling the same. Thus in common parlance, sewage and drainage water are also known and identified as water only, though such water may contain impurities and hence not fit for human consumption or potable purpose.

(vi) prior to April-2016, they were paying excise duty at full rate on the goods under question. It was only after insistence of audit officers and range and division office that they change cleared the goods at concessional rate;

(vii) The letter dated 01.09.2014 issued by the Dy. Commissioner (Audit) clears that the audit committee in the MCM had concluded that reduced rate of excise duty was allowed for sewage pump / drainage pump and jurisdictional





Asstt. Commissioner was directed to initiate action against them for not availing benefit of the exemption Notification.

(viii) since the exemption of duty has been availed on being insisted by the Department, the imposition of penalty is unjustified. Reliance is placed in case of M/s. Hindustan Steel Ltd. reported at 1978(2)ELT (J159)(SC) wherein the Apex Court has held that penalty should not be imposed merely because it was lawful to do so.

5(i). Personal Hearing in the case was held on 26.06.2020. Shri Amal P. Dave, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum and also submitted a written submission during the course of hearing for consideration.

5(ii). In the written submission, it is submitted that para-5 of the Final Audit Report No.193/2013-14 dated 05.05.2014 has not been considered according to which they were conveyed to pay the duty at concessional rate; that at that time also they had submitted that the sewage and drainage pumps are not meant for handling water and they were rightly discharging the duty at full rate, however the Department did not accept their stand and recovery was initiated by the Department in that respect; that they had started paying duty at concessional rate pursuant to the audit objection; that though they acted as per the direction of the Department, then also severe penalty is imposed upon them. He requested to set aside the impugned order.

6. I have carefully gone through the facts of the case, grounds of appeal in the Appeal Memorandum, as well as oral and written submissions made at the time of personal hearing. It is observed that the issue to be decided in the present appeal is whether the sewage pump / drainage pump cleared by the appellant attract full rate of excise duty or concessional rate of duty in view of Notification No.12/2012-CE dated 17.03.2012. The demand pertains to the period April-2016 to March-2017.

7(i). Records of the present case reveal that the appellant was initially clearing the products in question at full rate of duty. Subsequently, audit of the appellant firm was conducted for the period June-2009 to January-2012 and it appeared to the audit team of the Department that since the concessional rate of duty is applicable to entire chapter heading irrespective of any sub-head in view of Srl. No.235 of the Notification No.12/2012-CE dated 17.03.2012, concessional rate of duty is applicable also to the product Sewage Pump / Drainage Pump cleared by





the firm. The audit officers contended that the appellant was mis-utilizing cenvat credit by debiting excess amount of duty and collecting it from the customers. The extra duty so collected by them was required to be recovered under Section 11D of the Central Excise Act, 1944 and credited to the Govt. Account. The appellant at that relevant time submitted that the products in question were not meant for handling water, however the audit team incorporated Revenue Para-5 in their FAR No.193/2013-14(Excise) dated 05.05.2014 which was approved by the Audit Committee whereby the submission of the appellant was not considered. Accordingly, a letter no.VI/1(b)-04/IA/14-15/AP-VII dated 01.09.2014 in respect of the said Final Audit Report was also issued by the Dy.Commissioner of Central Excise(Audit), Ahmedabad-III, to the Dy.Commissioner of Central Excise, Kalol Division conveying as under :

**(Relevant Part Only)**

*".... In this connection, it is to inform that para no.5 has been approved by the Audit Committee in the MCM with directions to JAC to initiate necessary action immediately to recover Government dues with appropriate interest. ...."*

This clearly shows that the Departmental Audit, at the relevant time, was of the opinion that the products in question were required to be cleared at concessional rate of duty instead of full rate of duty. However, the appellant continued to clear the products in question at full rate till March-2016.

7(ii). It is further observed that, the adjudicating authority has in para-20 of the impugned order discussed this issue and came to conclusion that the contention of the appellant that they were forced to avail concessional rate of duty by audit officers is not tenable. The appellant has in the written submission challenged this finding and referred some communication from the Department in their support. It is observed in this regard that, the facts coming out of the records reveal that the Department was in knowledge and suggested to the appellant that the products in question are required to be cleared at concessional rate of duty. Subsequently, the appellant started clearing the said products at concessional rate during the period 2016-17 and the Department took the stand that the products in question do not qualify for concessional rate of duty as these pumps can not be considered to be pumps primarily designed to handle water implying clean water as is normally understood. Moreover, looking to the wordings in the said Notification, the intention of the Government was to extend the concessional rate only to the products meant to handle clean water only and not for the Sewage / Drainage pumps, cleared by the appellant.





7(iii). From the above discussion, it is clear that the Department took different stand for different period. Srl.No.235 of the Notification No.12/2012-CE dated 17.03.2012 reads as under :

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
235	8413	Power driven pumps primarily designed for handling water, namely, centrifugal pumps (horizontal and vertical), deep tube-well turbine pumps, submersible pumps, axial flow and mixed flow vertical pumps.	6%	-

Main Chapter Heading 8413 is described in the Central Excise Tariff Act, 1985 as under :

Tariff Item	Description of goods	Unit	Rate of duty
8413	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators		

This makes it clear that the Chapter Head 8413 existed in the Tariff as Pumps for liquids. The Central Government by issuing the said Notification extended the benefit of concessional rate of duty, at the rate prescribed in the said Notification, to the pumps "primarily designed for handling water". By using the word 'water', the Government restricted the extension of the concessional rate of duty only to the pumps meant for handling 'water' and none else. In common parlance, whenever the word 'water' is used, it is meant to be used for clean water and not for unclean or sewage or drainage water. The appellant in their written submission, submitted during the course of personal hearing under Para A.1, has accepted that it was their stand before the Audit Team that sewage pump and drainage pump are not meant for handling water. However, they have contended contrary to it, in their grounds of appeal and tried to contend that the said products are also meant to handle water. The adjudicating authority has relied upon the judgement of the Hon'ble Supreme Court as discussed in para-3(f) supra and the Authority of Advance Ruling as discussed in para-3(g) that any word or expression is required to be understood in common parlance. The Authority for Advance Ruling under GST, Gujarat in the case of M/s. Aqua Machinerics Pvt. Ltd. reported in 2018(14)GSTL 103(AAR-GST) has made it more clear for the word 'water' itself wherein it has been held that

*"10.3. In common parlance, when one refers to 'water', it is understood in the sense of clear or raw water and not in the sense of 'sewage'. In commercial parlance also, 'pumps primarily designed for handling water' and 'other pumps or pumps designed for handling sewage' are distinctly known".*

Thus, it can be safely concluded that whenever the 'word' water is referred in the present matter, it should be referred in sense of clean water only and none





else. Therefore, the adjudicating authority has rightly held that the products in question would not qualify for the concessional rate of duty and required to be discharged at full rate of duty only as the concessional rate of duty is applicable only to the pumps primarily designed to handle water which means clean water. In view of this, the adjudicating authority has rightly confirmed the demand of duty and appropriated the amount paid by the appellant under protest against their liability. It was also then required on part of the adjudicating authority to vacate the protest lodged by the appellant for appropriating it. I thus find that the adjudicating authority was right in confirmation of the said demand and in appropriation of the same. I therefore uphold the same. It goes without saying that when demand is upheld the applicable interest is also chargeable on such demand.

7(iv) The appellant informed the Department that they had paid the duty under protest under Rule 233B of erstwhile Central Excise Rules, 1944. It may be noted that Central Excise Rules, 1944 is no longer in existence as Central Excise Rules, 2002 is in existence since long. However, the concept of payment of duty under protest is still existing under proviso to Section 11B(1) of the Central Excise Act, 1944. Therefore, any assessee can pay the duty/tax under protest.

7(v). For the different stand taken by the Department, the adjudicating authority has relied upon the case of M/s. Bharat Sanchar Nigam Ltd. reported at 2009(002)STR 161(SC) under which it has been held by the Hon'ble Supreme Court that a different stand can be taken for the different tax period. I find that if the appellant was not satisfied with the stand of the Audit Team, they were required to challenge it before the proper authority to put their stand for consideration. It is pertinent to mention that the appellant failed to produce any document to show that they have challenged the said FAR before the higher authority at any point of time. Since they failed to do so, the stand taken by the audit team at that point of time became final for them.

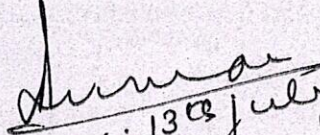
7(vi) As regards the imposition of penalty upon the appellant is concerned, it is also observed that the penalty equivalent to demand confirmed has been imposed under Rule 25(1) of Central Excise Rules, 2002 read with Section 11AC(1)(a) of the Central Excise Act, 1944. The Rule 25(1) attracts the provisions of Section 11AC and therefore the quantum of penalty will depend upon the provisions existed under 11AC of the Central Excise, Act, 1944 and in no way Rule 25(1) will overlap Section 11AC. The penalty has been imposed upon the





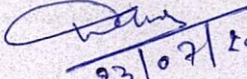
appellant under Section 11AC(1)(a) under which the maximum penalty, which can be imposed, is 10% of the duty or Rs.5,000/- whichever is higher. Here, in the case on hand, the maximum penalty can be 10% of Rs.63,69,295/- (duty), which comes to Rs.6,36,930/- only whereas equivalent penalty has been imposed under the impugned order. I, therefore, find that the adjudicating authority has travelled beyond the scope of limit prescribed under the legal provision invoked. In view of the above discussion, since the demand and the interest has been upheld, the penalty at the rate of 10% would be justified in the present matter.

8. In view of the foregoing discussion, the demand alongwith interest is upheld and penalty imposed upon the appellant is restricted upto 10% of duty amount only. The appeal of the appellant is disposed of accordingly.

  
13<sup>th</sup> July, 2020..  
(Akhilesh Kumar)  
Commissioner (Appeals)

Date: .07.2020

Attested

  
23/07/2020

(Jitendra Dave)  
Superintendent (Appeal)  
CGST, Ahmedabad.



**BY R.P.A.D. / SPEED-POST TO :**

M/s. Lubi Industries LLP,  
A/1, Lubi Industrial Park,  
Vadsar-Khatraj Road, Village-Vadsar,  
Taluka-Kalol, Distt-Gandhinagar

**Copy to :-**

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner/Commissioner, CGST & Central Excise, Gandhinagar Comm'rate.
3. The Addl. Commissioner, CGST & Cen.Excise, Gandhinagar Comm'rate.
4. The Asstt. Commissioner, System, CGST & Central Excise, Gandhinagar Comm'rate.
5. Guard File.
6. P.A. File.



