



आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



☎ 26305065-079 :

टेलिफैक्स 26305136 - 079 :

DIN-20211064SW00001631C1

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/16/2021 **360 703865**
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-003-APP-025/2021-22**
दिनांक Date : 27.08.2021 जारी करने की तारीख Date of Issue : 28.10.2021
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. GNR Comm'rate/AC-KCG/C.Ex./Kalol/08/
2020-21 dated 02.06.2020 passed by the Assistant Commissioner, Central GST &
Central Excise, Audit-HQ, Gandhinagar Commissionerate.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Apollo Screens Pvt. Ltd.,
Plot No. B-8 & 9,
Dharti Apollo Industries Park,
Kadi Road, Chatral,
Tal: Kalol, District: 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।

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 :

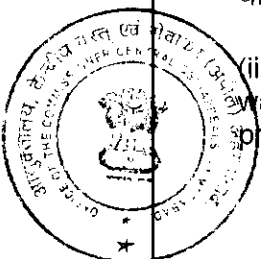
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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, 4th 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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

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

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।

(c) 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 ईए-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 ई. 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-बी/35-इ एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 an appeal lies to :-

(क) उपरलिखित 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद - 380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



- (2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of 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 पढ़ी 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. 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 adjudicating 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 contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

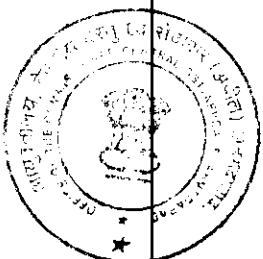
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

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।

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

This appeal has been filed by M/s Apollo Screens Pvt. Ltd., Plot No. B-8 & 9, Dharti Apollo Industries Park, Kadi Road, Chatral, Tal: Kalol, District: Gandhinagar (hereinafter referred to as “the appellant”) against the Order – in – Original No. GNR Comm’ate/AC – KCG/C.Ex./Kalol/08/2020-21 dated 02.06.2020 (hereinafter referred to as the “impugned order”) passed by the Assistant Commissioner, Audit – HQ, Central GST & Central Excise, Gandhinagar Commissionerate (hereinafter referred to as the “adjudicating authority”).

2. Facts of the case, in brief, are that the appellant is engaged in manufacture of metal screens used for the purpose of filtration/separation applications classified under Chapter Heading 84 of the CETA, 1985. They held Central Excise Registration No. AABCU3024AEM001. The appellant unit was working since October, 2014. They were classifying their products as “Strainer filter in pipe form” (as per ER-1 return) under Chapter sub-heading No.84212190 of the CETA, 1985 attracting tariff rate @ 12.5% advalorem as under:

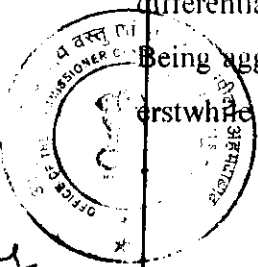
- | | |
|----------|--|
| 8421 | Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus; for liquids or gases. |
| | - Filtering or purifying machinery and apparatus for liquids: |
| 842121 | -- For filtering or purifying water: |
| 84212190 | --- Other |

Further, the “Water filtration and purification equipment” falling under Chapter Sub Heading No. 842121 attracted Central Excise duty @ 6% ad valorem as per Serial No. 240 of Notification No. 12/2012-CE dated 17th March 2012, as amended.

2.1. Thereafter, the appellant started discharging Central Excise duty @ 6% on their product “Strainer filter in pipe form” from 02.08.2016 and submitted a representation to the Commissioner, erstwhile Central Excise, Ahmedabad-III on 11/08.2016 claiming assessment of their products to be chargeable to concessional rate of duty @6% under the above Notification. The Assistant Commissioner (Technical), erstwhile Central Excise, Ahmedabad-III vide letter dated 10/03/2017 informed them that benefit of reduced rate of excise duty on Strainer filter in pipe form, manufactured and cleared from their factory by claiming benefit under Notification No. 12/2012-CE dated 17.3.2012 as amended, cannot be extended to them.

2.2. The appellant was asked by the department vide letter dated 29/03/2017 to pay the differential duty on the clearance affected during the period Aug-2016 to Feb-2017.

Being aggrieved with the said letter issued by the Assistant Commissioner (Technical), erstwhile Central Excise, Ahmedabad-III, the appellant filed Special Civil Application



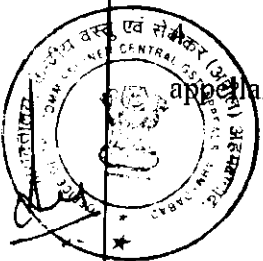
No. 6439 of 2017 in the Hon'ble High court of Gujarat at Ahmedabad on the ground that manufacturer of similar goods located in states like Haryana were allowed to remove such goods on payment of Central Excise duty @ 6% adv., whereas they have been insisted by the department to pay duty at the higher rate i.e. 12.5% adv. The said application was disposed off by the Hon'ble Court holding that no occasion had arisen for the court to opine on the appellant's claim and the department's claim on such claim of the appellant.

2.3. It appeared to the department that the appellant was engaged in designing and manufacturing of Wedge Wire Screens for a wide used range of applications including water well, sub surface water extraction, oil & gas sand control, mineral process applications liquids/ solids separation as well as waste water, raw water and numerous other industrial applications. They were not exclusively meant for water filtration. It was the view of the department that as per the Tender Notice issued by the Gujarat Water Supply and Sewerage Boards of the State of Gujarat that tender was invited for supplying the goods Cage Type Trapezoidal Shape "V" Wire Wound Low Carbon Galvanized/ Stainless Steel-304 Screen Pipe and same has been bided by the Haryana based manufacturers. It appeared that the product manufactured and cleared by the appellant by claiming benefit of reduced rate of duty under Notification No. 12/2012-CE dated 17/3/2012 as amended was Strainer filter in pipe form" (as per ER-1 return) which were different from the product bided by the Haryana based manufacturers.

2.4. Accordingly, the appellant was issued SCN F. No. V84/ 03-14 SCN – DEM / 17-18 / dated 16.08.2018 denying them the benefit of Exemption Notification and demanding Central Excise Duty amounting to Rs. 27,87,951/- under Section 11A(i) of the Central Excise Act, 1944 along with interest under Section 11AA of the Act. The SCN also proposed imposition of penalty under Rule 25 of the Central Excise Rules, 2002.

3. The adjudicating authority has vide the impugned order confirmed the demand raised in the SCN along with interest as well as penalty. The adjudicating authority was of the view that the filters ipso facto are not capable of generic use since they have been manufactured to customer specification and hence it is not an equipment or machinery or apparatus in itself but a part of it. Further, the brochure / information / literature pamphlet of the product submitted by the appellant indicate that the screens are fabricated items and are used for well applications and that the V-shaped wire enhances well efficiency and ensures consistent pumping and long well life. Hence, they are part only of filtration equipment and not equipment (which comprises many components) in itself. Accordingly, he has denied exemption claimed by the appellant and confirmed the demand.

Being aggrieved by the impugned order passed by the adjudicating authority, the appellant has preferred appeal on grounds elaborated in subsequent paragraphs.



4.1. Their product Strainer filter in pipe form is water filtration screen and are classified under 84212190. The relevant extract of entry sub-heading 842121 from Chapter 84 of Central Excise Tariff Act – First Schedule is reproduced below:

Tariff Item	Description of Goods	Unit	Rate of Duty
(1)	(2)	(3)	(4)
8421	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids and gases		
	- Filtering or purifying machinery and apparatus for liquids		
8421 21	-- For Filtering or purifying water:		
8421 2110	--- Ion exchanger plant or apparatus.....	u	12.5%
8421 2120	--- Household type filters.....	u	12.5%
8421 2190	--- Other.....	u	12.5%

4.2. It is evident from the above that the product, Strainer filter in pipe form, manufactured and cleared by them is covered under the category of "Filtering or purifying machinery and apparatus for liquids" which have chapter sub-heading from 8421 21 to 8421 29 00. This fact has also been appreciated in the impugned OIO and SCN. Moreover, the same is also nowhere disputed at any stage by the department starting from the date of seeking clarification till issuance of letter dated 10th March 2017. Further, departmental audit team has also conducted the audit of records of the Appellant have not raised any objection regarding classification of "Strainer filter in pipe form."

4.3. The department has never raised any objection with regard to classification at the time of accepting duty payment, CA audit, issuing clarification on clarification sought by them and while issuing SCN and has considered the goods being manufactured by them as classified under HSN 84212190. However, the adjudicating authority has in Para 6.7. of the impugned OIO considered their product as only part of the filtration apparatus and denied benefit of reduced rate @6%. He has travelled beyond the allegations raised in the SCN. They rely on following judicial pronouncements:

- Syndicate Bank vs. Commissioner of Central Excise, Manglore [2018 (10) GSTL 555 (Tri.Bang.)]
- Gawar Construction Ltd. vs. Commr. of C.Ex., Rohtak [2019 (370) ELT 780 (Tri.-Chennai)]
- Mitsui Chemicals India Pvt. Ltd. vs. Commissioner of Customs, Noida [2019 (369) ELT 1291 (Tri. – All.)]
- Padmini Polymers Ltd vs. Commissioner of Customs, New Delhi [2005 (190) ELT 370 (Tri- Delhi)]
- Sargodha enterprises vs. Commissioner of Central Excise, Delhi- I [2004 (167)ELT 519 (Tri. – Del.)]



- (f) Commissioner of C. Ex., Nagpur vs. Ballarpur Industries [2007 (215) ELT 489(S.C.)]
- (g) Commissioner of C. Ex., Bangalore vs. Brindavan Beverages (p) Ltd. [2007 (213)ELT 487 (S.C.)]
- (h) TNS India Pvt. Ltd. vs. Commissioner of Central Excise, Bangalore [2009 (14)STR 239 (Tri.- Bang.)]

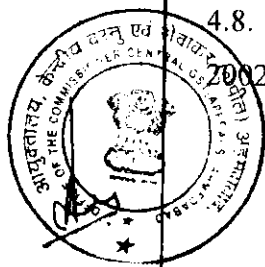
4.4. The term apparatus and equipment are synonyms and are therefore used interchangeably. The term apparatus or equipment has not been defined under the Act. Therefore, we may refer to the definitions as explained in various dictionaries. As per the definitions given in various dictionaries, such screens are very well covered under the definition of the equipment and therefore are eligible for benefit of reduced rate of duty as per S.No. 240 of Notification No. 12/2012-CE dated 17th March 2012.

4.5. The "Strainer filter in pipe form" is a commercial term and the same is known as **"water well screen"**. The brochure submitted along with the submissions seeking clarification and also at the time of personal hearing before the adjudicating authority clearly mention that the water well screens are used for ground water applications and is highly efficient in filtering water. They also submitted certificate from Chartered Engineer certifying that the subject screen can only be used for filtration of water.

4.6. Strainer filter in pipe form is eligible for reduced rate of duty under Notification No. 12/2012-CE dated 17th March 2012 as amended as it can be used only for filtration of water. Strainer filter in pipe form and product of Haryana based manufacture have identical use i.e. filtration of water. Further, the commercial nomenclature of the Haryana based manufacture's product on which benefit of reduced rate of duty of claimed at S.No. 240 of the Notification No. 12/2012-CE dated 17th March 2012 cannot be equated with the commercial nomenclature of the product of the Appellant for disallowing the benefit of reduced rate of duty as long as both products performs same function and have same use i.e. filtration of water.

4.7. In view of above factual and legal submissions, they have rightly claimed the benefit of reduced rate of duty on Strainer filter in pipe form and there is no legal ground for denying the benefit of reduced rate of duty under Notification No. 12/2012-CE dated 17th March 2012. Further the benefit of reduced rate of duty extended to "Water filtration or purification equipment" at S. No.240 does not envisage any condition and the benefit of reduced rate is unconditional. Thus, question of contravention of any condition of the Notification No. 12/2012-CE dated 17th March 2012 as amended does not arise at all. Accordingly, the penalty confirmed in the impugned OIO is not legal and tenable in the eyes of law.

4.8. SCN has proposed to impose penalty under Rule 25 of the Central Excise Rules, 2002 without invoking a specific clause of the said Rules and the impugned OIO has



confirmed the same. There are plethora of judgment wherein it has been held that penalty cannot be imposed when specific clause showing contravention is not invoked.

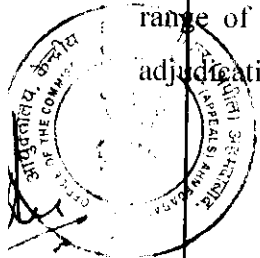
5. Personal hearing in the case was held on 23.06.2021 in virtual mode. Mr. Gopal Krishna Laddha, Chartered Accountant, appeared for the hearing for appellant. He reiterated submissions in the appeal memorandum.

6. I have carefully gone through the case records and submissions made by the appellant in the appeal memorandum and during personal hearing. It is observed that the issue to be decided in the case is whether the impugned order confirming the demand against the appellant by denying the benefits under Notification No. 12/2012 – CE dated 17.03.2012 on their product “strainer filter in pipe form” is legally sustainable or otherwise.

7. It is observed from the case records that the appellant has manufactured and cleared their products “Strainer filter in pipe form” classifying it under Chapter sub-heading No.84212190 of the CETA, 1985 attracting tariff rate @ 12.5% advalorem. They subsequently started clearing their products by discharging Central Excise duty @ 6% from 02.08.2016 by claiming it to be the “Water filtration and purification equipment” falling under Chapter Sub Heading No. 842121 as per Serial No. 240 of Notification No. 12/2012-CE dated 17th March 2012, as amended. They also submitted a representation to the Commissioner, erstwhile Central Excise, Ahmedabad - III on 11/08.2016 to this effect. The department denied them the exemption claimed and issued the SCN in question demanding the differential duty along with interest and penalty.

7.1. It is further observed from the SCN as well as the impugned order that there is no dispute regarding the classification of product in question under Chapter Heading No. 84212190 of the CETA, 1985. The said entry pertains to Filtering or purifying machinery and apparatus for liquids under first level of classification, and Filtering or purifying machinery and apparatus for filtering or purifying water under second level of classification, and under the category others in third level of classification. Hence, the Chapter Heading 842121 pertains to Filtering or purifying machinery and apparatus for filtering or purifying water as per the tariff entry.

7.2. It is the contention of the appellant that the nomenclature of their product in question as “Strainer filter in pipe form” is a commercial term and the same is known as “water well screen”, which are used for ground water applications and is highly efficient in filtering water. Hence, they are eligible for exemption under Serial No. 240 of the Notification No. 12/2012 – CE dated 17.03.2012 as “Water filtration or purification equipment”. It has been alleged in the SCN that the product of the appellant had wide range of application and were not exclusively meant for water filtration. Further, the adjudicating authority in the impugned order has come to conclusion that the filters ipso



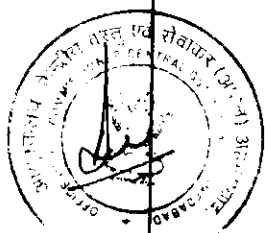
facto are not capable of generic use since they have been manufactured to customer specification and hence it is not an equipment or machinery or apparatus in itself but a part of it.

7.3. In order to examine the matter in proper perspective, the relevant Entries in the Notification No. 12/2012 – CE dated 17.03.2012 is reproduced below:

G.S.R. (E).-In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 3/2005-Central Excise, dated the 24th February, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 95(E), dated the 24th February,2005,(ii) notification No. 3/2006- Central Excise, dated the 1st March,2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 93 (E), dated the 1st March,2006,(iii) notification No. 4/2006-Central Excise, dated the 1 st March,2006 , published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 94 (E) dated the 1st March,2006,(iv) notification No. 5/2006-Central Excise, dated the 1st March,2006 , published in the Gazette of India, Extraordinary Part II, Section 3, Sub-section (i), vide number G.S.R 95 (E) dated the 1st March,2006,(v) notification No. 6/2006-Central Excise, dated the 1st March, 2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 96 (E) dated the 1st March,2006, and (vi) notification No. 10/2006-Central Excise, dated the 1st March,2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 100 (E) dated the 1 st March,2006, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below read with relevant List appended hereto and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions annexed to this notification, if any, specified in the corresponding entry in column (5) of the Table aforesaid: Provided that nothing contained in this notification shall apply to the goods specified against serial number 296 and 297 of the said Table after the 31st day of March, 2013.

Explanation 1.- For the purposes of this notification, the rates specified in column (4) of the said Table are ad valorem rates, unless otherwise specified.

Explanation 2.- For the purposes of this notification, —brand name means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between



the product and a person using such name or mark with or without any indication of the identity of that person.

No.	Sr.	CETH	Description	Rate	Condition
239		8421 21 (except 84212120)	Water purification equipment, based on following technologies:- (a) Ultra-filtration technology using polyacrylonite membranes or polysulphone membranes or (b) Arsenic removal technology using ceramic micro-filtration membrane; or (c) Reverse osmosis technology using thin film composite membrane (TFC); or (d) Candle-less terracotta water filtration	NIL	-
240		842121	Water filtration or purification equipment	6%	-
241		842121 20	Replaceable kits of all water filters except those operating on reverse osmosis technology	6%	-

It is observed that the Entry No. 240 of the Notification No. 12/2012 – CE provide exemption to Water filtration or purification equipment under CETH 842121 by way of effective rate of duty @6%.

7.4. It is observed from the relevant Entry No. 240 of the Notification No. 12/2012-CE that it provides for concessional rate of duty to water filtration or purification equipment. It is the contention of the appellant that the term apparatus and equipment are synonymous and hence they are eligible for exemption. I find that the **Cambridge Dictionary defines equipment as under:**

the set of necessary tools, clothing, etc. for a particular purpose. e.g. office/camping/kitchen equipment, electrical equipment.

Further, **Merriam Webster's Dictionary defines equipment as under:**

the set of articles or physical resources serving to equip a person or thing:
such as

(1): the implements used in an operation or activity: APPARATUS
sports equipment

(2): all the fixed assets other than land and buildings of a business enterprise

(3): the rolling stock of a railway

b: a piece of such equipment

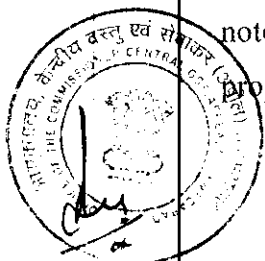
In view of the above, I find that there is merit in the contention of the appellant that the terms equipment and apparatus are synonymous.

7.5 It is the contention of the appellant that the department has never disputed the fact the "Strainer filter in pipe form" is an apparatus/equipment while accepting the duty payment, during the departmental audit, during the process of issuing clarification and

even while issuance of SCN. Hence, it is observed that the impugned OIO has travelled beyond the allegation made in SCN in disallowing the benefit of reduced rate of duty altogether on different ground which has never been raised by the department.

7.6. It is observed from the brochure submitted by the appellant along with the appeal memorandum that the products in question i.e. water well screens are made from two elements the V shaped wedge wire helically wound around an array of internal longitudinal support rods. They are made of LCG (Low Carbon Galvanized)/SS304/SS316/SS316L – or as required to meet Customer requirements. The continuous slot wedge wire offers higher open area than any other type of screens used for water well applications. It is further observed that the appellant has submitted a Chartered Engineer's Certificate dated 20.06.2017 of M/s Raj Techno Essential to certify that the product "Strainer Filter in pipe form" is used only for water filtration and there is no other use of said product. There is no adverse finding recorded in the impugned order by the adjudicating authority on the Chartered engineer's Certificate. I have also gone through the Tender Document of Gujarat Water Supply & Sewerage Board (in short 'GWSSB') submitted along with appeal memorandum and find that the same pertains to supply of "cage type Trapezoidal Shape ('V') wire wound Low Carbon Galvanized Screen Pipes as per specifications prescribed. I find that the products in the tender and those manufactured by the appellant are similar. There is no dispute that the product in tender documents are eligible for concessional rate as per the Notification No. 20/2012 – CE. Further, in the case on hand also, the product has been cleared to GWSSB only. Therefore, it is not justifiable to have different kinds of assessment of duty for similar products by different manufactures for the same buyer.

7.7 I find that the adjudicating authority has denied the benefit of concessional rate of duty available as per Notification No.20/2012-CE on the ground that the impugned product is not water filtration or purification equipment in itself and it is just a part or a component for/of filtration and it can be used for many industrial purposes. However, in the Show Cause Notice issued in the matter, there was no allegation that the product in question is not an equipment or it is a part. It is a fact undisputed that the department has accepted the classification of the product under CETSH No.84212190 which pertains to machinery and apparatus for filtering or purifying water. It is unambiguously clear that the said CETSH does not cover parts of machinery/apparatus covered therein. Parts of machinery or apparatus covered under Chapter sub-heading No.8421 is very specifically and separately covered under CETSH No.8421 9100 and No.84219900. That being the case, it cannot be contended after accepting the classification of the impugned product under CETSH 84212190 that the said product is a part of an equipment/apparatus. Further, it is also pertinent to note that the Show Cause Notice issued in the case did not contain any proposal/charge to classify the product as part under "Parts of Chapter subheading



No.8421". Therefore, the decision of the adjudicating authority of classifying the product as 'part' does not sustain legally on the facts of the case and I find merit in the contention of the appellant that the adjudicating authority has travelled beyond the scope of the show cause notice by raising such a ground in deciding the issue under dispute.

7.8 Even otherwise, I do not find any merit on the contention of the adjudicating authority that the product under dispute is not an equipment but is part of equipment. The adjudicating authority while holding such a view has not discussed specifically as to which equipment's part is the said product. As explained by the appellant and accepted in Para 9 of the show cause notice, 'equipment' means the articles or implements used for a specific purpose for activity and the purpose or activity in the case is 'Filtration'. After going through the product brochure submitted by the appellant along with the appeal memorandum, I am of considered view that the product in question viz. "strainer filter in pipe form" has its own specific function and its said function is not dependent or controlled by the apparatus/machinery to which it is fitted with. The function of filtration is done by the product in its own. Thus, it has its own stand alone function and is, therefore, stand qualified as an 'equipment' in itself in carrying out the function of filtration of water.

7.9 It is also the contention of the Revenue that the product in question has wide range other industrial applications also and hence was not exclusively meant for water filtration and purification. The show cause notice issued in the matter precisely proposed to deny the benefit of concessional rate of duty to the appellant on this ground. I find that the mere fact that a product has got other uses also does *not ipso facto* take it out of the purview of exemption or the benefit of concessional rate of duty so long as there is no dispute that it is used for the intended purpose viz. for filtration/purification of water. In the instant case, it is not the case of the Revenue that the product is not used for water filtration or purification but is only that it can also be used for other purposes. A perusal of the relevant entry at Sr.No.240 of the Notification No.12/2012-CE dated 17.03.2012 as amended reveals that the benefit of concessional rate of duty mentioned therein is applicable to 'Water filtration or purification equipment' and thus any equipment which filter or purifies water would be eligible for the benefit of concessional rate of duty envisaged therein. It does not imply in any manner that an equipment used for water filtration/purification, if has other use than water filtration/purification are not eligible for the said benefit of concessional rate of duty. So long as an equipment is used for water filtration/purification, the benefit available under entry at Sr.No.240 of the said Notification is not deniable. Therefore, when the fact of use of the product for water filtration/purification is not disputed by the Revenue, the benefit of concessional rate of duty cannot be denied in the facts of the case.

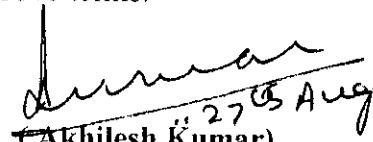


7.10 In view of the facts discussed above, it is held that the product, 'strainer filter in pipe form' classifiable under CETSH No.842121 manufactured and cleared by the appellant to GWSSB is eligible for benefit of concessional rate of duty @ 6% vide entry at Sr.No.240 of Notification No.12/2012-CE dated 17.03.2012 as amended. Accordingly, the demand confirmed vide the impugned order is not legally sustainable and is liable to be set aside for being not legal and proper for reasons discussed hereinabove. When the demand fails, there does not arise any question of interest and penalty in the matter.


8. Accordingly, the impugned order passed by the adjudicating authority is set aside and the appeal of the appellant is allowed.

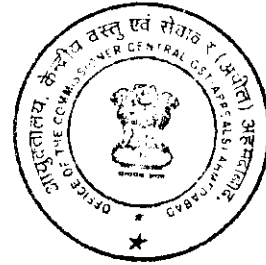
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)
Date: 27.08.2021

Attested


(Anilkumar P.)
Superintendent (Appeals)
CGST, Ahmedabad.



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

M/s Apollo Screens Pvt. Ltd.,
Plot No. B-8 & 9,
Dharti Apollo Industries Park,
Kadi Road, Chatral,
Tal: Kalol, District: Gandhinagar.

Copy to:-

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Gandhinagar Comm'rate.
3. The Asstt/Dy. Commissioner, CGST & Central Excise, Kalol Division, Gandhinagar Comm'rate.
4. The Assistant Commissioner, CGST & Central Excise HQ, Gandhinagar Comm'rate.
5. The Asstt. Commissioner, System, CGST & Central Excise, Gandhinagar Comm'rate.
26. Guard File.
7. P.A. File.