



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)



O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय उत्पाद शुल्क भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2 (84)17&75/Ahd-II/Appeals-II/ 2016-17

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-17-18-17-18

दिनांक (Date): 24.07.2017, जारी करने की तारीख (Date of issue):

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-II), अहमदाबाद- II, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No. MP/03/Dem/AC/2016/PKS Dated: 04/03/16 &
MP/03/Dem/AC/2016/PKS Dated : 12/09/16
issued by: Assistant Commissioner Central Excise (Div-II), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Archana Engineering Works

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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 ।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रक्रिया के दौरान हुई हो ।

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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है ।



- (c) 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।

- (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-बी/35-इ के अंतर्गत:-

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

- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बतए 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 ओ-20, न्यू मेन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) 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



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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. 1 lacs 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 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 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।

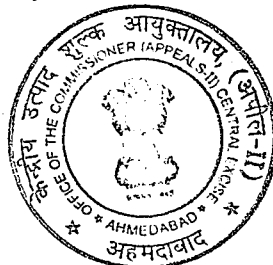
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 सन्दर्भ में 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."

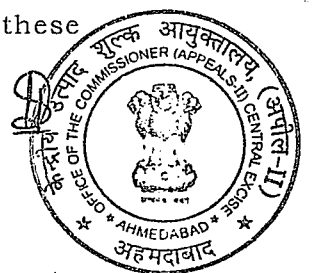


ORDER IN APPEAL

The subject appeals are filed by M/s. Archana Engineering Works, L-54, GIDC Estate, Odhav Road, Odhav, Ahmedabad-382415 (Hereinafter Referred To As 'The Appellant') Against OIO No. MP/03/Dem/AC/2016/PKS & MP/12/Dem/AC/2016/PKS (hereinafter referred to as 'the impugned orders') passed by the Astd. Commissioner, Central Excise, div-II Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The appellant is engaged in the manufacture of domestic water pumps falling under Heading No. 84 of the Central Excise Tariff Act, 1985, and availing CENVAT Credit facility under Cenvat Credit Rules, 2004.

2. Brief facts of the case is that During the scrutiny of ER-3 returns for the period APRIL-2014 TO NOV-2015, it was observed that the appellant was clearing goods domestic water pumps [nonBIS] on payment of excise duty, and domestic water pumps (BIS) both under same CETH, and simultaneously cleared domestic water pumps (BIS) availing benefit of exemption under Noti. No.08/2003-CE dated 01/03/2003 at NIL rate of duty. Thus the appellant had paid duty and availed SSI exemption at the same time. Whereas, the exemption under the said notification is subject to certain conditions specified under paragraph 2 of said notification. As per para 2(i) of said notification the option to avail or not to avail value based exemption should be exercised by the assessee before affecting the first clearance for a given financial year. Further, such option once availed cannot be withdrawn during remaining part of the financial year. During the scrutiny of ER-3 returns for the said period the appellant had paid excise duty right from the first clearance on certain goods and availed exemption on other goods during the said period. From the returns filed it appeared that they had cleared the goods on payment of applicable Central Excise duty as well at nil rate of duty availing exemption under said Noti. and therefore not fulfilled condition in para 2(1) of said notification. Thus, it appeared the applicable central excise duty was required to be paid on all the goods cleared during the said period. From the foregoing paras it appeared that the appellant had not full filled the conditions, (i) and (ii) laid down in said Noti. Thus, not eligible for availing exemption. Therefore Excise duty of Rs.92833+78999/- required to be recovered with interest. The appellant had cleared excisable goods in contravention of rule 6 and 8 of CER, liable for confiscation under rule 25 of the CER 2002. For this act of omission the appellant rendered them liable to penalty under Rule 25(1)(a) of the CER 2002. Therefore, two SCN's were issued for recovery of Excise Duty Rs. Rs.92833+78999/- with Interest and Penalty. Said SCN's were decided vide above order and confirmed the demand.

3. Being aggrieved with the said OIO's the appellant has preferred these appeals on the followings grounds;



a. that they have cleared Non BIS Standard domestic Pumps on payment of C. Ex. duty without availing Cenvat facility as non specified goods. They have cleared BIS Standard domestic pumps by availing General Exemption up to Rs. 150 Lakhs as provided Under Noti. No. 8/2003 C.E. dated 01.03.2003 as specified goods.

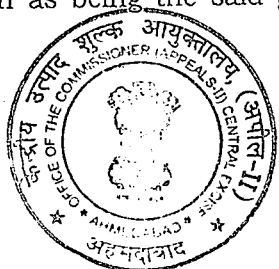
b. they invite kind attention to the product manufactured by them which is admittedly in the show cause notice as "Domestic Water Pumps" and "Domestic Water Pumps under BIS Certificate" both falling under Ch. 84137010 and also invite attention to the SSI exemption Not. No. 8/2003 dated 01.03.2003, whercin, in preamble it is mentioned that the Central Government being satisfied that it is necessary in the Public Interest so to do hereby exempts clearances, specified in Col.(2) of the Table below for home consumption of excisable goods of the Description specified in the Annexure appended to this Notification (hereinafter referred to as the 'specified goods') from so much for the duty

c. That they invite kind attention to the Annexure appended to the said Noti. giving description of specified goods whercin their product is specified at Sr. No. XL having description "of goods falling under Chapter 84 (other than powered driven pumps preliminary designed for handling water which do not confirm to standard specified by BIS for such pumps)" and this means the water pumps which are having BIS certificate are eligible for SSI exemption as specified goods, but, the water pumps which do not have BIS certificate/standard are not specified goods and are not eligible for exemption,

d. That when they have cleared the water pumps without BIS certificate on payment of duty because this goods are not specified goods and not eligible for SSI exemption. Simultaneously, when they have cleared the water pumps having BIS certificate they have availed exemption under the said Noti. as specified goods covered under the said Noti. that the Para 2 of the said Noti. Relied in the SCN is not at all applicable in the above situation because, they have not availed any option to pay duty on specified goods, but, we have availed the exemption under the said Noti. as they are eligible for the same for specified goods and wherever they have cleared non specified goods which are not eligible for the said exemption, they have paid appropriate duty on such goods. Thus, the ground of the SCN relying condition No. (i) & (ii) of para 2 of the said Noti. is not at all correct and accordingly they are not required to pay any duty as demanded under the notice.

e. that as regard the condition (iii) of para 2 of the said Noti., they have not availed any credit on the inputs used for the manufacture of specified goods, but, they have availed credit on inputs used in the manufacture of non specified goods only, for which they are also entitled as per the various decisions of Hon'ble Tribunal.

f. that as regard proposed action for confiscation of the goods cleared by them at the Nil rate of duty availing exemption, they have rightly availed SSI exemption as being the said goods specified in the said Noti., therefore, the



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allegation for contravention of Rule 6 & Rule 8 of the said Rules for invoking Rule 25 of the said Rules is not at all correct. In this regard they rely upon a decision of Hon'ble Larger Bench of CESTAT in the case of Shivkripa Ispat Pvt. Ltd. Vrs. CCE reported in 2009 (235) ELT 623. therefore, the provisions of Rule 25 is not applicable in the present case. They also rely upon a decision of Hon'ble Tribunal in the case of CCE Vrs Rajdhani reported in 2009 (239) ELT 188, wherein, it is decided that the goods not required to be held liable to confiscated.

g. they relied upon the case laws of CCE, Kolkata-I V Dynamic Engineers Pvt. Ltd. reported at 2012 (279) ELT 556 (Tri.- Kolkata) and Cure Quick Remedies P. Ltd. Vrs. CCE, Panchkula reported at 2010 (255) ELT 249 (Tr. Del.)

h. Regarding penalty, they contended that they have cleared the subject goods under Noti. No. 8/2003 CE and they have filed ER-3 returns and claiming such exemption. The ingredients of Rule 25 are not satisfied in the facts of present case. They relied upon the decision of BATA INDIA LTD.V CCE 2015 (321) ELT194(SC).

4. Personal hearing was held on 16.5.2017. Shri Vijay.B.Joshi Advocate appeared in personal hearing. he reiterated the written submission of GOA.I find that the issue to be decided in this case is that once a manufacturer exercises his option for not availing the benefit of the exemption contained in the notification, he has to pay duty at the rate applicable on all subsequent clearances Of specified goods made after availing such option in a financial year in which such date of option falls. If any condition is violated even once, he will forfeit the entire exemption and the loss of exemption will not be confined to the particular clearance in respect of which the condition has been violated.

5. I Find That, In the present case the appellant was clearing goods . viz. 'Domestic Water Pumps without BIS , and Domestic water Pumps[BIS] clearing the both under same tariff heading and availing benefit of exemption under Notification No.08/2003-CE dated 01/03/2003 at NIL rate of duty. Thus the appellant had paid duty and availed SSI exemption at the same time.

I find that, the exemption under the said notification is subject to certain conditions specified under paragraph 2 which read as under:-

2. The exemption contained in this notification shall apply subject to the following conditions,namely;

(i) a manufacturer has the option not to avail the exemption contained in this notification and instead pay the normal rate of duty on the goods cleared by him. Such option shall be exercised before effecting his first clearances at the normal rate of duty. Such option shall not be withdrawn during the remaining part of the financial year;

[ii] while exercising the option under condition (i). the manufacturer shall inform in writing to the Assistant Commissioner of Central Excise or the Deputy



Commissioner of Central Excise with a copy to the Superintendent of Central Excise giving the following particulars, namely;-

a.name and address of the manufacturer;

b.location/ locations of factory/ factories:

c.description of inputs used in manufacture e of Specified goods ;

d.description of specified goods produced;

e. date from which option under this notification has been exercised

f.aggregate value of clearances of specified goods (excluding the value of clearances referred to in paragraph 3 of this notification) till the date of exercising the option;

(iii) the manufacturer shall not avail the credit of duty on inputs under rule 3 or rule 11 of the CEN VAT Credit Rules, 2002 (herein after referred to as the said rules), paid on inputs used in the manufacture of the specified goods cleared for home consumption, the aggregate value of first clearances of which, as calculated in the manner specified in the said Table does not exceed [one hundred and fifty lakh rupees]:

[Provided that nothing contained in this clause shall apply to the inputs used in the manufacture of specified goods bearing the brand name or trade name of another person, which are .

Ineligible for the grant of this exemption in terms of paragraph 4];

the manufacturer also does not utilize the credit of duty on capital goods under rule 3 or rule 11 of the said rules, paid on capital goods, for payment of duty, if any, on the aforesaid clearances, the aggregate value of first clearances of which does not exceed rupees one hundred and fifty lakhs, as calculated in the, manner specified in the said Table;

where a manufacturer clears the specified goods from one or more factories, the exemption in his case shall apply' to the aggregate value of clearances mentioned against each of the serial numbers in the said Table and not separately for each factory:

where the specified goods are cleared by one or more manufacturers from a factory, the exemption shall apply to the aggregate value of clearances mentioned against each of the serial numbers in the said Table and not separately for each manufacturer;

the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories or from a factory by one or more manufacturers, does not exceed rupees four hundred lakhs in the preceding financial year.

[provided that for the purpose of availing of exemption under this notification for the financial year 2012-13, the aggregate value of clearance of articles of jewelry (other than silver jewellery) falling under Chapter heading 7113 of the First Schedule, for



①

home consumption by a manufacturer for one or more factories, or from a factory by one or more manufacturers, for the financial year 2011-12 shall be calculated on the basis of tariff value fixed in accordance with notification no. 09/2012 -central excise (N. T), dated the 17th March, 2012]

6. I find that, on perusal of said Notification it is clear that Para 2 of the said Notification is applicable in a situation where the manufacturer exercises his option not to avail the benefit of exemption notification. The expression 'option' by its very nature gives a choice to the assessee either to avail the exemption or not to avail the same. As such, it is very necessary that the assessee must 'Opt for not availing the exemption which reflects open conscious decision on the part of the appellant. it is clear from the said Notification that SSI exemption is available for goods of the description specified in the Annexure appended to the notification, In the instant case, the appellant is manufacturing and clearing goods i.e. domestic pumps[non BIS] on payment of excise duty and also cleared domestic pumps(BIS) availing benefit of exemption under said Notification at NIL rate of duty. On perusal of annexure appended to the notification, it is found that the said exemption Noti. was amended vide Noti. No. 8/2006 -C.E. dated 01.03.2006 and in the Annexure of the said Noti. for the entry (xl) with effect from 1st day of April. 2006, the following entries were substituted :-

" (xl) all the goods falling under Chapter 84 (other than power driven pumps primarily designed for handling water which do not conform the standards specified by BIS (Bureau of Indian Standards) for pumps"

7. From the above entry, I find that the entire Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985 was eligible for SSI exemption but exemption was available with some restriction given in the proviso appearing in the preamble of the notification as other than power driven pumps primarily designed for handling water **which do not conform the standards specified by BIS (Bureau of Indian Standards)**. This means that excisable goods water pumps qualify for SSI exemption of clearance value of Rs. One Hundred Fifty Lakhs. As regards goods domestic water pumps (which do not conform to the standards by BIS, I find that the appellant is manufacturing goods of sub heading 8413 and paying Excise duty @ 6% *ad valorem* of Noti. No. 12/2012-C.E., dated 17-3-2012 .Further, on examining the Notification No. 08/2003-CE I find that the method for determination of aggregate value of clearances for home consumption is provided in paragraph 3 thereof, which is reproduced below:

"3. For the purposes of determining the aggregate value of clearances for home consumption, the following clearances shall not be taken into account, namely : -

[a] clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods;



[b] clearances of strips of plastics used within the factory of production for weaving of fabrics or for manufacture of sacks or bags made of polymers of ethylene or propylene."

8. I find that, In this case, the clearances do not pertain to goods bearing brand name or trade name of another person. The impugned clearances are pertaining to 'pumps' that cannot be treated as inputs by any stretch of imagination. There is no clearance of strips of plastics used within the factory of production in the present case. Therefore, for the purpose of determining the aggregate value of clearances for home consumption, in the present case, the said clearances cannot be categorized under clause (a) (b) or (c) of paragraph 3 of Notification No. 8/2003-CE, which are the exclusion clauses. Thus, there is no merit in the claim of the appellant that the impugned clearances are liable to be excluded while determining the aggregate value of clearances for exemption benefit under said Notification. The appellant are liable to pay duty on water pumps (which do not conform to the standards specified by BIS for pumps), from their first clearance and could not opt back in the same financial year under said Notification. Thus, the appellant has violated the conditions specified in said Notification. Therefore, I find that the impugned order is legal and sustainable.

9. On the issue of confiscation of goods, I find that goods were cleared in contravention of rule 6 and 8 of CER 2002 in-as-much as the appellant had failed to make the correct assessment of duty and failed to pay duty on such goods by the stipulated date of payment. Therefore, the said goods are liable for confiscation. However, this is not a case where the goods were placed under seizure and provisionally released. Therefore, as per settled law, there is no scope for ordering the release of the said goods on payment of redemption fine. Accordingly, imposing fine in lieu of confiscation is not sustainable in this case. However, I find that, they have cleared the subject goods at Nil rate of duty under Noti. No. 8/2003 CE and they have not filed correct ER-3 returns, Hence there is contravention of the Rules/Notification by reasons of fraud, collusion or willful misstatement and contravention of the provisions of the Act or Rules with intent to evade payment of duty. Therefore, I hold that, penalty imposed on the appellant is just and legal.

10. In view of above discussion and findings, I uphold the impugned orders and disallow both the appeals of the appellants.

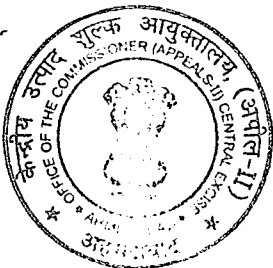
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

11.. The appeals filed by the appellant stand disposed off in above terms.

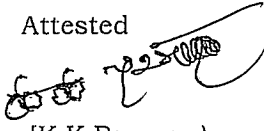
उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)



Attested



[K.K.Parmar)

Superintendent (Appeals)
Central tax Ahmedabad.

By Regd. Post A. D

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Copy to :

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II.
3. The Asstt. Commissioner, Central Excise, Div-II, AhmedabadII
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. ~~Guard file.~~
6. PA file.

*Peer xerox copy
Asstt. Comr (Alpesh Patel)
13/3/18*

