



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय उत्पाद शुल्क भवन,  
सातवीं मंजिल, पॉलिटैकनिक के पास,  
आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, Central Excise Building,  
Near Polytechnic,  
Ambavadi, Ahmedabad-380015



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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(84)11 /Ahd-II/Appeals-II/ 2016-17  
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-19-17-18  
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-), अहमदाबाद- II, आयुक्तालय द्वारा जारी  
मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित  
Arising out of Order-In-Original No. 53-54/ADC/2015/MKR Dated: 26/02/2016  
issued by: Additional Commissioner Central Excise (Div-), Ahmedabad-II

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

**M/s J. K. Engineering Co.**

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:

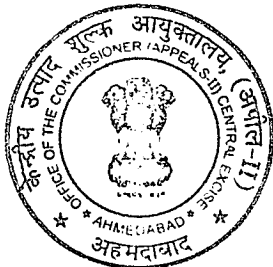
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

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 प्रकिया 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।



Cont...2

- (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 :-

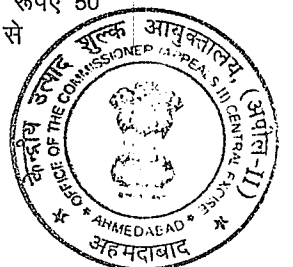
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 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 ओ-20, न्यू मैन्टल 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 इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall 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.

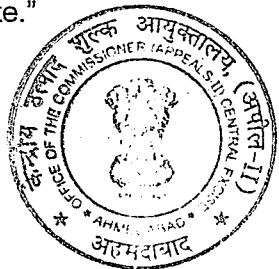
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

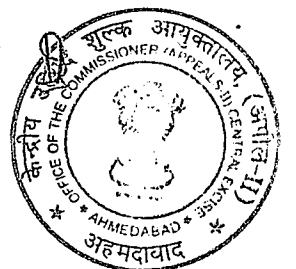
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

The subject appeal is filed by M/s. J. K. Engineering Co. 3-A, Mahashakti Industrial Estate, Nt. Ajay Estate, Opp. Yamuna Estate, B/h Sonya Ceramic, Naroda Road. Ahmedabad 380025. (Hereinafter Referred To As 'The Appellant') Against the Order in Original No. 53-54/ADC/2015/MKR (hereinafter referred to as 'the impugned order') passed by the Addl. Commissioner, Central Excise,, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The appellant is engaged in the manufacture of submersible pumps sets falling under Heading No. 84 of the Central Excise Tariff Act, 1985.

2. Brief facts of the case is that During the scrutiny of ER-3 returns for the period from July'2014 to Jun'2015 it was observed that the appellant was clearing goods viz. 'submersible pumps sets [without BIS] on payment of central excise duty and submersible pumps sets (BIS)' clearing the both under same CETH and simultaneously cleared submersible pumps sets (BIS) 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. the exemption under the said notification is subject to certain conditions specified under paragraph 2. 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 period from July'2014 to Jun'2015, the appellant had paid the central excise duty right from the first clearance on certain goods and availed exemption on other goods. As per condition 2(i) of the said notification it appeared that once the assessee started paying duty, He could not avail exemption under the said notification and had to continue paying duty for the rest of the Financial Year on all the clearances. However, from the returns filed by the appellant it appeared that they had cleared the goods on payment of Central Excise duty as well at nil rate of duty availing exemption under said Noti. From the foregoing paras it appeared that the appellant had not fulfilled the conditions, (i) and (ii) laid down in Noti.08/2003-CE dated 01/03/2003 (as amended). Thus, not eligible for availing exemption. Therefore, excise duty of Rs.8,14,671/- on the goods cleared at Rs.82,94,336/- at NIL rate of duty was required to be recovered along with interest. Further, it appeared that the appellant had cleared excisable goods in contravention of rule 6 and 8 of Central Excise duty in as much as they had cleared the goods without payment of applicable rate of duty. Therefore, all the goods cleared without payment duty were liable for confiscation under rule 25 of the CER 2002. For this act of omission the appellant had rendered them liable to penalty in terms of the provisions of Rule 25(1)(a) of the CER 2002. Therefore, Show Cause Notices for the said period was issued for recovery of Excise Duty Rs.8,14,671/



+Rs.3,30,886/-with Interest and Penalty. Said SCN's are decided vide above order.

3. Being aggrieved with the said OIO the appellant has preferred this appeal on the followings grounds;

a. that they are engaged in manufacturing of Submersible Pumps Sets (Non BIS) and Submersible Pumps Sets (with BIS) both falling wider CETH 84137010 .that they have cleared Non BIS Standard Submersible Pumps Sets on payment of C. Ex. duty without availing Cenvat facility and simultaneously they have cleared BIS Standard Submersible Pumps Sets and Parts by availing General Exemption up to Rs. 150 Lacs as provided Under Noti. No. 8/2003 C.E. dated 01.03.2003.

b. That Non BIS Standard Submersible Pumps Sets was not specified goods and were excluded from the purview of the General Exemption up to Rs. 150 lakhs as provided under said Noti. Hence, Non BIS Standard Submersible Pumps sets were not eligible for SSI Exemption up to Rs. 150 Lacs under said Noti. And they have to pay duty. that BIS Standard Pump Sets and parts are specified goods as provided under said Noti. and eligible for SSI General Exemption.

c. 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 :-*all the goods falling under Chapter 84 (other than power driven pumps primartI.y designed for handling water which do not conform the standards specified by BIS (buereau of Indian Standards) for pumps"*

in view of the above amendment, the power driven pumps not confirming to the standards specified by the Bureau of Indian Standards are not eligible for SSI Exemption under the said Noti. and the Central Excise duty at appropriate rate is chargeable from the first clearance itself w.e.f. 01.01.2007.

d. that simultaneous payment of full rate of duty for the non BIS goods (which are ineligible for SSI exemption) and claiming full exemption for BIS goods (which are eligible for SSI exemption) are in accordance with the provision of Notification No. 8/2003 C.E.

e. they rely upon the case of *Nebulae Healthcare Ltd. V. CCE Chennai 2007-209 ELT-125-[TRI]*. Regarding penalty they contended that they have cleared the subject goods at Nil rate of duty under said Noti and they have filed ER-3 returns and intimation for claiming such exemption. Hence there is no contravention of the Rule/Noti. with intend to evade payment of duty. The ingredients of Rule 25 are not satisfied in the present case. They rely upon the decision of *CCE V Saurashtra Cement Ltd 2010(360)ELT 71 (Guj.)* *Guj. Coolade Beverages Ltd. Vrs. CCE, Mccrut - 2004 (172) ELT451(All)*. That



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duty and interest not payable. That the subject goods are not liable to be confiscation. They rely upon the decision of the Hon'ble Tribunal in the case of Shivkrupalspat Pvt. Ltd. V. CCE Nashik 2009 (235) ELT 623 (Tri LB).

4. Personal hearing was held on 16.5.2017. Shri Harshad Patel Advocate and Shri Jayantibhai K. Patel Proprietor appeared for personal hearing. they reiterated the Contents of the written submission and GOA. and also filed additional submission .I find that the issue to be decided in present 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 this case the appellant was clearing goods viz. 'submersible pumps sets [non BIS] and submersible pumps sets[BIS] clearing the both under CETH 84137010 and parts in which the appellant had cleared the pumps sets'(non-BIS) on payment of applicable excise duty and simultaneously cleared pumps sets(BIS) and availing benefit of exemption under Notification.08/2003-CE dated 01/G3/2003 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 Noti. is subject to certain conditions specified is as under: 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;*

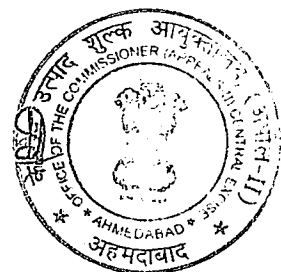
[i] *a manufacturer has the option not to avail the exemption contained in this notification and instead pay the normal rate of duty on the goods cleared by him. Such option shall be exercised before effecting his first clearances at the normal rate of duty. Such option shall not be withdrawn during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

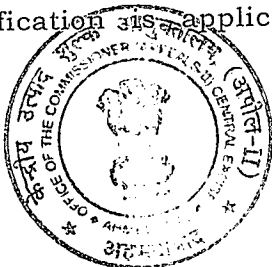
where a manufacturer clears the specified goods from one or more factories, the exemption in his case shall apply' to the aggregate value of clearances mentioned against each of the serial numbers in the said Table and not separately for each factory:

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 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 17<sup>th</sup> 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 assessee. However, payment of duty on one of the products cannot be equalized to option is to invoke said para against the assessee as it is amply clear from the said Notification that SSI exemption is available for goods of the description specified in the Annexure appended to the notification. The appellant had cleared the 'submersible pumps sets[non BIS] on payment of excise duty and simultaneously cleared 'submersible pumps sets (BIS) availing benefit of exemption under said Noti. at NIL rate of duty. The said 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 :-

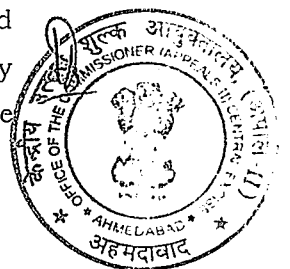
" (xl) all the goods falling under Chapter 84 (other than power driven pumps primarily designed for handling water which do not conform the standards specified by BIS (Bureau of Indian Standards) for pumps"

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 'submersible pumps sets qualify for SSI exemption of clearance value of Rs. One Hundred Fifty Lakhs. As regards goods 'submersible pumps sets' (which do not conform to the standards specified by BIS (Bureau of Indian Standard ) I find that the appellant is manufacturing goods of sub heading 8413701 and paying Central 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:

[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 impugned 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





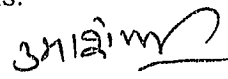
factory of production in the present case. Therefore, for the purpose of determining the aggregate value of clearances for home consumption, in the present case, the impugned clearances cannot be categorized under clause (a) (b) or (c) of paragraph 3 of Notification No. 8/2003-CE, which are the exclusion 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 Notification No. 8/2003-CE. The appellant being liable to pay duty on 'submersible pumps sets'(which do not conform to the standards specified by BIS for pumps), they were liable to pay duty from their first clearance and could not opt back in the same financial year to clearance of goods under Notification No. 8/2003-CE. Thus, the appellant has violated the conditions specified in said Notification. Therefore, the order for recovery of Excise duty with interest 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 Central Excise Rules, 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 the present 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, 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.

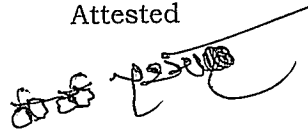
10. In view of above discussion and findings, I uphold the impugned order and disallow the appeal of the appellants.

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

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

  
(उमा शंकर)  
आयुक्त (अपील्स)

Attested

  
[K.K.Parmar )  
Superintendent (Appeals)  
Central tax , Ahmedabad.



By Regd. Post A. D

M/s. J. K. Engineering Co.  
3-A, Mahashakti Industrial Estate,  
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Naroda Road.  
Ahmedabad- 380025.

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.

