

• आयुक्तालय (अपील-1) केंद्रीय उत्पादन शुल्क *
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटैकनिक के पास, आमबाबाडि,
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)/110&111/Ahd-I/2015-16
Stay Appl.No. NA/2015-16

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP- 037 & 038-2016-17
दिनांक Date : 25.11.2016 जारी करने की तारीख Date of Issue 9/12/16

श्री उमा शंकर आयुक्त (अपील-1) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Asst. COMMR., Div-IV, केंद्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं MP/08/Div-IV/15-16
दिनांक: 19-01-2016, से सृजित

Arising out of Order-in-Original No. MP/08/Div-IV/15-16 दिनांक 19-01-2016 issued by Asst. COMMR., Div-IV, Central Excise, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Micromech Products Pvt Ltd. & Shri Atish Parikh(D/O Microchem Products Pvt.Ltd)

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

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

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केंद्रीय 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 प्रकिया के दौरान हुई हो।

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

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

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



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

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

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

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

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 दिनोंक 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.

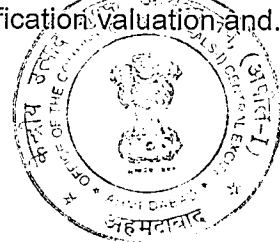
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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.



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 रू.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' वाखिल करने के लिए पूर्व शर्त बना दिया गया है।

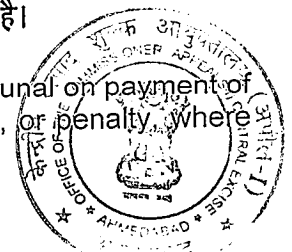
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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

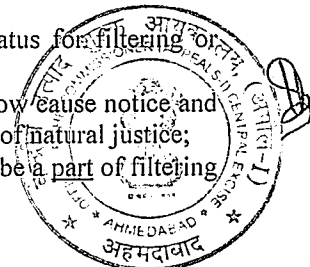
M/s. Micromech Products Private Limited, Opp. Shri Krishna Temple, Near Bhammariya Kuva, Lambha, N.H. No. 8, Ahmedabad (hereinafter referred to as 'appellant-1') and Shri Atish S Parikh, Managing Director of appellant-1, [hereinafter referred to as 'appellant-2'] have both filed appeals against OIO No. MP/08/AC/Div-IV/15-16 dated 19.01.2016, passed by the Assistant Commissioner, Central Excise, Division-IV, Ahmedabad-I Commissionerate (for short -"adjudicating authority").

2. Briefly stated, the facts are that a case was booked by Central Excise Preventive, Ahmedabad-I, against the appellant-1, alleging that they were manufacturing parts of water filtration machinery and clearing the same in the guise of water filtration or purification equipment by classifying it under 8421.21, instead of 8421.99 and thereby wrongly availing the benefit notification No. 6/2006-CE dated 1.3.2006 as amended vide notification No. 12/2012 dated 17.3.2012. A show cause notice dated 01.01.2014, covering the period from 2008-09 to 2012-13 [upto February] was issued to the appellant-1 and 2. This notice was adjudicated vide the impugned OIO dated 19.01.2016, wherein the adjudicating authority, *inter-alia*, ordered 'filter housings' of various types to be classified under chapter sub-heading 84219900. He further confirmed the demand of duty along with interest and also imposed penalty on appellant-1 and appellant-2. However, he refrained from confiscating the goods and did not impose any redemption fine.

3. Feeling aggrieved, both appellants-1 and 2 have filed this appeal on the following grounds:

Appellant-1

- the appellant's request for opportunity of cross examination of the persons whose statements were relied upon by the Revenue stands denied ; that they would like to rely on the case of Nico Extrusions [2009(248) ELT 497], Harika Resim P Ltd [2010(253) ELT 108], Khandelwal Enterprises [1983(13) ELT 1258], Arya Abhushan Bhandar [2002(143) ELT 25], F M Potia [2000(126) ELT 107], Narendra Chandradas [2000(125) ELT 269] and Nagraj V Jain [2000(123) ELT 50]
- the show cause notice dated 01.01.2014, is barred by limitation; that they would like to rely on the case of Padmini Products [1989 (43) ELT 195] and Chemphar Drugs [1989(40) ELT 276];
- that 'water purification system' or 'water purification plant' is different from water filtration equipment; that filter housing is water filtration equipment;
- that water filtration or purification system is different from a water filtration or purification equipment; that the exemption is for water filtration or purification equipment and not for the whole water purification system. that filter housing is an equipment and can by itself purify water; that a water filtration or purification equipment can be used for producing a whole water purification system;
- that a water purification plant or a water purification system consists of various parts including filter housing, which even otherwise is a stand-alone water purification equipment; that such equipment could not have been classified as part of filtering or purifying machinery apparatus;
- that classification under heading 842121 is for machinery and apparatus for filtering or purifying water;
- the definition of 'part' as quoted in the OIO was not provided in the show cause notice and hence they could not counter the argument, thus violating the principles of natural justice;
- Tariff heading 8421 states that filter housing could not be considered to be a part of filtering or purifying machinery and apparatus;



- that filter housing is equipment for water filtration and are used to get a dust free and clean water;
- filter housing of various types were chargeable to concessional rate of duty under notification even if they did not merit classification under sub heading 84212110; that heading 842121 is the most appropriate heading for classification of housings of various types manufactured by the appellant;
- that imposition of penalty deserves to be set aside since the appellant has not acted dishonestly or contumaciously and therefore even a token penalty would not be justified;
- that ordering, recovery of interest under section 11AA of Central Excise Act, 1944, is without any authority in law.

Appellant-2

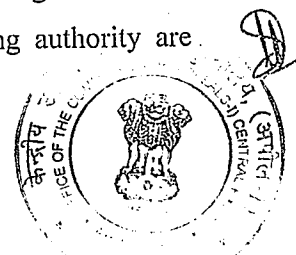
- imposing penalty on appellant-2 is wholly illegal and unjustified for the simple reason that no ground or reason for holding the appellant liable for any penalty is even recorded in the order; that the appellant would like to rely on the case of Vinodkumar [2006(199) ELT 705] and R K Ispat Udyog [2007(211) ELT 460];
- that penalty under Rule 26 could not have been imposed as none of the ingredients of the said rule was satisfied; that they would like to rely on the case of M/s. Standard Pencils [1996(86) ELT 245]; that they would also like to rely on the case of M/s. Z U Alvi [2000(36) RLT 721].

4. Personal hearing was held on 22.11.2016. Shri Amal Dave, Advocate, appeared on behalf of the appellant and reiterated the submission advanced in their grounds of appeal. He also informed that Commissioner(Appeals), had already decided the matter in a case against them.

5. I have gone through the facts of the case, the appellant's grounds of appeal, and submissions during the course of personal hearing. The primary issue to be decided in this appeal is whether products manufactured and cleared by the appellant are water filtration or purifier equipments or whether they are only parts of the water filtration or purifier equipments. This would enable us to come to a conclusion as to whether the appellant is eligible for the benefit of exemption notification.

5.1. Appellant-1 has in the appeal papers, enclosed a copy of judgement dated 31.1.2014 of the Hon'ble High Court of Gujarat in Company Petition No. 254/2013 and 255/2013, wherein the appellant-1 and M/s. Leistung Engineering Private Limited, were permitted to amalgamate. Incidentally, the two companies belonged to the same group of management and were involved in commercial activities of the same nature. As is pointed out during the course of personal hearing, I have already decided a similar issue in the case of M/s. Leistung Engineering Private Limited vide OIA No. AHM-EXCUS-001-APP-022-2016-17 dated 28.10.2016.

6. I find that the contentions/averments raised in the appeal, the allegations made in the notice and consequently the findings recorded by the adjudicating authority are



almost similar as was in the case of M/s. Leistung Engineering Private Limited. Since I have already decided the appeal of M/s. Leistung Engineering Private Limited, my views on the issue are in public domain. In the said matter, the appeal was against an OIO, deciding a periodical show cause notice. However, in the present appeal before me, I find that there are two additional contentions that have been raised, which were not raised in the appeal preferred by M/s. Leistung Engineering Private Limited, which are [i] that opportunity of cross examination was denied; and [ii] the notice dated 01.01.2014 was barred by limitation.

7. I would first like to focus on these two averments before proceeding further on the merits of the matter.

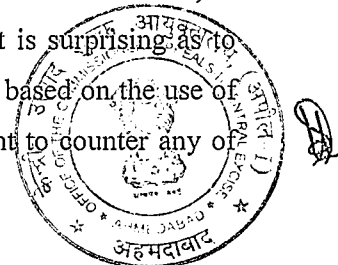
Cross examination

7.1 As far as denial of the opportunity for cross examination is concerned, on going through the written submissions made before the adjudicating authority, [enclosed with the appeal papers], I find that the request was made for grant of cross examination of seven persons along with the chartered engineer, whose statements/opinion find a mention in the show cause notice. The adjudicating authority, except for mentioning that the appellant should have contested the vital aspect which emerged during the course of investigation instead of seeking cross examination of traders or manufacturers, has refrained from recording his finding on the request. It is well known that the right to fair hearing involves the right of the affected party to cross-examine the makers of statements. Therefore, I would now like to give my findings in respect of the appellants contention, that the adjudicating authority erred in denying cross examination.

7.1.1 I find that during the course of investigation, comments were sought from appellant-2, after allowing him to go through the statements recorded of certain buyers of appellant-1. Appellant-2 gave his answers, to queries raised. The department, thereafter, formed the following opinion based on the replies and the statements recorded:

[a] that filter housing separates solid particles from dirty water and the same is used in ultra filtration units and RO units as a part of the whole water purification system;
[b] filter housing are parts of water purification system and not complete system itself and most of the customers had utilized the filter housing cleared by the appellant as a part of the water purification system.

The appellant himself to one of the question posed, has stated a part of what is mentioned in [a] above. As far as [b] goes, it is the opinion based on end use of the buyer, which was shown to the appellant-2 and his comments recorded in the show cause notice. Further, as far as request to cross examine the chartered engineer is concerned, it is surprising as to why the cross examination is sought because it is a professional opinion based on the use of the product. Surprisingly, the appellant has not put forth one argument to counter any of



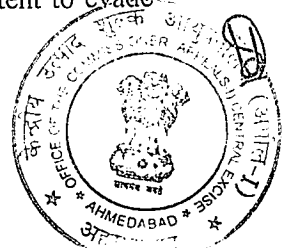
the points in the opinion rendered by the expert. It has been held by the Tribunal in various cases that cross-examination cannot be claimed as a matter of right. Request for cross-examination has to be examined in the context of facts and circumstances of that particular case. The Tribunal in the case of M/s. Fortune Impex [2001(138) ELT 556], held that the denial of cross-examination was not violative of principles of natural justice since the appellants had given a list of 26 persons for cross-examination, without indicating a specific reasons for cross-examining them. Since in the present dispute also, the appellant-1 has not indicated a specific reason, the denial of request for cross examination appears to be proper. In view of the foregoing, I uphold the view of the adjudicating authority, to deny cross examination and further hold that the request of the appellant, at best can only be termed as a diversionary tactic, to delay proceedings.

7.1.2 I would now like to discuss the case laws relied upon by the appellant-1, in this regard:

- Nico Extrusions [2009(248) ELT 497]. This case law stands distinguished since the case of department was based on statements of transporters, owners of vehicles and drivers and the statements of some persons were contradictory to statements of others, on sale of goods and receipt of payment by cheque. However, it is not so, in the present dispute. The present dispute is not based on any statements.
- Harika Resim P Ltd [2010(253) ELT 108]. This case law stands distinguished as this case is related to clandestine removal. The present dispute before us is a dispute regarding classification and availment of benefit of notification.
- Khandelwal Enterprises [1983(13) ELT 1258]. The rationale is not applicable to the present dispute, since the above case was relating to seizure of smuggled goods.
- Arya Abhushan Bhandar [2002(143) ELT 25]. The facts of this case differ from the facts in the present case. In this case search was conducted at both shop and house whereas search-warrant was limited to the shop. The Hon'ble Apex Court held that panchas to the search, were material witnesses and therefore non-production of such witnesses for cross-examination, resulted in breach of natural justice. Hence, this case law stands distinguished.
- F M Potia [2000(126) ELT 107]. Again in this case it was held that there was a violation of natural justice since the petitioners were refused opportunity to cross-examine the evidence as contained in the statements furnished to the enquiry officers. The statements relied upon in the present dispute contain basic facts, not disputed even by the appellants and hence it is felt that the denial of opportunity to cross examine would not result in violation of natural justice.
- Narendra Chandradas [2000(125) ELT 269] The facts differ since this is a customs smuggling case. Hence, the rationale is not applicable to the present dispute.
- Nagraj V Jain [2000(123) ELT 50]. It is a customs case and since the facts are not similar the rationale would not be applicable to the present dispute.

Limitation

7.2 Regarding the second averment, of the notice being hit by limitation, I find that there is only a passing reference in the impugned order in paragraph 26, of their being elements of fraud, wilful misstatement, suppression of facts and contravention of the provision of Central Excise Act and the rules framed there under, with an intent to evade



payment of duty, in the case. I would now like to give my findings, in respect of whether the case is hit by limitation.

7.2.1 The show cause notice in respect of this case, covers the period from 2008-2009 to 2012-2013 [upto February 2013] and was issued on 1.1.2014. Since facts were not coming out from the papers, submitted by the appellant, I had called for the adjudication file from the Central Excise, Division-IV, Ahmedabad. The file has a letter from the Preventive wing to the Division Office, that the last date for issue of show cause notice is 30.1.2014. However, nothing is forthcoming, as to which is the date of the first consignment, which pertains to the year 2008-2009. Therefore, without this data it is not possible to comment on whether any portion of the demand is time barred.

7.2.2 However, on the larger question of invocation of extended period, I would like to state that the appellant had cleared the said goods on payment of duty, in the past, which clearly depicts that the appellant suppressed facts, wilfully misstated the facts and moreover by his act of wrongly availing the benefit of the notification, contravened the provisions of the Central Excise Act and the rules framed there under, with an intent to evade payment of duty. Hence, I find this to be a fit case for invocation of extended period.

8. Now, I would like to go into the merits of the case. As is already mentioned above, I have decided a similar issue in the case of M/s. Leistung Engineering Private Limited vide OIA No. AHM-EXCUS-001-APP-022-2016-17 dated 28.10.2016. I therefore, reproduce the relevant paragraphs of my findings, recorded in the OIA dated 28.10.2016:

"10. Equipment is not defined /discussed by the adjudicating authority. The simple definition of equipment is:

- *supplies or tools needed for a special purpose*
- *the act of equipping someone or something*

As per the Merriam Webster Dictionary, equipment means

1a : the set of articles or physical resources serving to equip a person or thing: 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

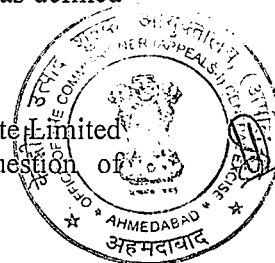
2a : the equipping of a person or thin

b : the state of being equipped

3: mental or emotional traits or resources : endowment

The functioning of filter housings, as described by the Chartered Engineer, relied upon by Revenue, does not fit into the definition of equipment as reproduced above. In-fact, it clearly fits into the definition of part, as defined in the impugned OIO.

10. The Hon'ble Tribunal in the case of M/s. Poonam Spark Private Limited [2004(164) ELT 282], while discussing a case involving the question of



manufacture of a similar good dwelled upon how a water purification and filtration system comes into existence. The relevant paras are quoted below for ease of reference:

7. We have considered the submissions of both the sides. It is settled law that duty of excise is leviable on the goods manufactured. It has been held by the Constitution Bench of the Supreme Court in Union of India v. Delhi Cloth & General Mills, 1977 (1) E.L.T. (J199) (S.C.), that "Manufacture implies a change, but every change is not manufacture something more is necessary and there must be transformation; a new and different article must emerge having distinctive name, character or use." We observe from the Memorandum of Appeal that M/s. Perfect Drug Ltd. supply to the Appellants the following :

- (i) Filter Housing Cartridge
- (ii) U.V. Units
- (iii) Timer
- (iv) Mounting Plate and Screws
- (v) Tubings and Fittings

The Appellants then make the following types of water Purification and Filtration System (WPFS) :

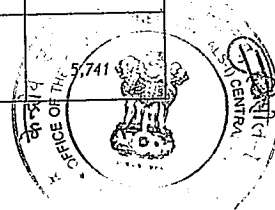
- (a) WPFS with Dual Cartridges,
- (b) WPFS with Single Cartridge,
- (c) WPFS with Single Cartridge and Electronic Control Unit

It is also mentioned in the Memorandum of Appeal that filter housing and cartridge are imported by M/s. Perfect Drug Ltd. through M/s. Cuno Asia Pvt. Ltd., Singapore and U.V. based Filtration and Purification unit from Rathi Brothers/IWT Poona. The choice of cartridge depends upon the basis of filtration, the operating conditions and the customer's ability to afford the particular type of cartridge, etc. The Appellants undertake the job of assembling all the items received from M/s. Perfect Drug Ltd. on a base plate and thus brings into existence a new and commercially different commodity known as Water Purification and Filtration System. Thus the activity undertaken amounts to manufacture within the meaning of Section 2(f) of the Central Excise Act. It has been held by the Supreme Court in Empire Industries v. Union of India, 1985 (20) E.L.T. 179 (S.C.) that it is not the nature of the process or activity which determines the issue but the end result of that process or activity i.e. whether or not a new and different commercial product comes into existence thereby. The decision in the case of Rubicon Steels is not applicable as in that matter the Appellants, therein, were attaching angles, rods and locks on outer door and were not bringing into existence any new product having a new name, character or use.

The aforementioned items go into making of a water purification and filtration system. It is not understood how the appellant claims that filter housing, by itself is water filtration or purification equipment. The claim does not appear to be correct. If the filter housing were by itself a water filtration or purification equipment, than surely the other parts as mentioned above would not be required to form a water filtration or purification system – when the end function of both the system and housing filter is supposed to be the same i.e. purification of water.

11. Filter housings are routinely imported into India. On going through Zaumba website, which provides the details of imports, it is learnt that the said goods were imported under HS code 84219900. The filter housings have in-fact been classified under this chapter sub-heading as part instead of water filtration equipment. The data in respect of recent imports is reproduced below for ease of reference.

Date	HS Code	Description	Origin Country	Part of Discharge	Unit	Quantity
24-Oct-2016	84219900	FILTER HOUSING, PART NO 6010667 (PARTS FOR PUMP) (ONLY FOR CAPTIVE USE)	China	Nhava Sheva Sea	PCS	18,963
24-Oct-2016	84219900	FILTER HOUSING, PART NO 6010667 (PARTS FOR PUMP) (ONLY FOR CAPTIVE USE)	China	Nhava Sheva Sea	PCS	741



[source <https://www.zauba.com/import-filter-housing-hs-code.html>]

12. In view of the foregoing, the classification of filter housing under chapter sub-heading 84219900 as part is therefore, upheld. Consequently, it goes without saying that the appellant is not eligible for the benefit of the exemption notification, supra.”

9. In view of the foregoing, the impugned order classifying the disputed goods under chapter sub-heading 84219900 as a part of water filtration equipment, along with confirmation of demand/duty, is upheld.

10. The appellant, has also questioned the imposition of penalty on appellant-1 and 2. As far as penalty on the appellant-1 is concerned, their plea is that they have not acted dishonestly or contumaciously and therefore, no penalty is leviable. Penalty under Rule 25 of the Central Excise Rules, 2002, is imposable in case, any manufacturer removes excisable goods, in contravention of any of the provision of the rules or notification issued under the rules. That precisely is the case. The contention of the appellant-1 is therefore, without merit. In so far as penalty on the appellant-2 is concerned, it is contended that no penalty is leviable since the ingredients of Rule 26 is not satisfied. Rule 26, *ibid*, states as follows :

RULE 26. Penalty for certain offences. —

[(1)] Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or *[two thousand rupees], whichever is greater.

The argument of the appellant is not tenable since the goods have been held to be liable for confiscation under para 24, of the impugned OIO. Further, the appellant-2 was the main person of the appellant-1 who was aware that earlier the same goods were cleared on payment of duty. Hence, to now contend that the ingredients of Rule 26, *ibid*, is not satisfied, is not a tenable argument.

11. In view of the foregoing, the OIO is upheld. However, as is mentioned above in para 7.2.1, certain facts still needs to be verified to conclude that the demand in respect of the entire period, has been issued within the stipulated time. Only for this limited purpose, the case is remanded to the original adjudicating authority who will verify this aspect and issue a speaking order after proper verification. I have already upheld that the impugned order in so far as it classifies the disputed goods under chapter sub-heading



84219900 as a part of water filtration equipment. While remanding the matter, I rely on the case of M/s. Honda Seil Power Products Limited [2013(287) ELT 353].

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
12. The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 5/11/2016

Attested



(Vinod Lukose)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY RPAD.

To,

M/s. Micromech Products Private Limited, Opp. Shri Krishna Temple, Near Bhammariya Kuva, Lambha, N.H. No. 8, Ahmedabad	Shri Atish S Parikh, Managing Director M/s. Micromech Products Private Limited, Opp. Shri Krishna Temple, Near Bhammariya Kuva, Lambha, N.H. No. 8, Ahmedabad
--	--

Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Principal Commissioner of Central Excise, Ahmedabad-I
3. The Additional Commissioner (System), Central Excise, Ahmedabad-I
4. The Deputy/Assistant Commissioner, Central Excise, Division-IV , Ahmedabad-I
5. Guard file.
6. P.A

