आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 – टेलेफैक्स07926305136

DIN : **20221264SW0000424382**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/162,172/2022 / 5990 – 95

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-101 to 102/2022-23**
दिनाँक Date : **16-12-2022** जारी करने की तारीख Date of Issue 16.12.2022

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of OIO No. **MP/5/AC/Div-III/2021-22** दिनाँक: **04.01.2022** passed by Assistant Commissioner, CGST, Division III, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. **M/s Fluidline Valves Company Pvt Ltd**
   Plot No. 516, Phase-IV, GIDC,
   Vatva, Ahmedabad – 382445

2. **Shri Rajesh Kher, Manager**
   M/s Fluidline Valves Company Pvt Ltd
   Plot No. 516, Phase-IV, GIDC,
   Vatva, Ahmedabad – 382445

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

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

भारत सरकार का पुनरीक्षण आवेदन :

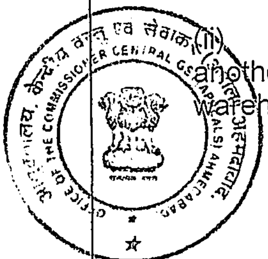
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त 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 हानिकार खाने 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 मे 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.



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

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

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष 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 रूपये या उससे कम होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

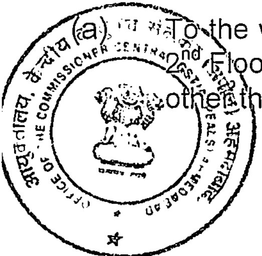
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर 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) 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 2nd माला, बहुमाली भवन , असरवा , गिरधरनागर, अहमदाबाद–380004



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

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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत`हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 not withstanding 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

(70) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

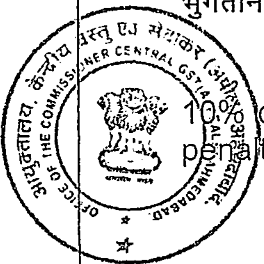
(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

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

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

Under Central Excise and Service Tax, "Duty demanded" shall include:
(ccxi) amount determined under Section 11 D;
(ccxii) amount of erroneous Cenvat Credit taken;
(ccxiii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।



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

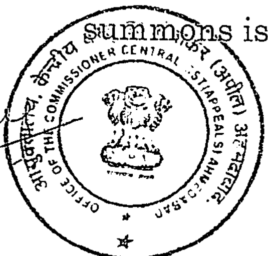
ORDER-IN-APPEAL

Two appeals have been filed by the below mentioned appellants (hereinafter referred to as Appellant No.1 and 2, as per details given in table below) against the Order in Original No. MP/5/AC/Div-III/2021-22 dated 04-01-2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division-III, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

S.No.	Name and address of the appellant	Appeal No.
1	M/s. Fluidline Valves Company Pvt. Ltd., Plot No. 516, Phase-IV, GIDC, Vatva, Ahmedabad- 382 445. **Appellant No. 1**	GAPPL/COM/CEXP/172/2022
2	Shri Rajesh Kher, Manager M/s. Fluidline Valves Company Pvt. Ltd., Plot No. 516, Phase-IV, GIDC, Vatva, Ahmedabad- 382 445. **Appellant No. 2**	GAPPL/COM/CEXP/162/2022

2. Briefly stated, the facts of the case is that the Appellant No.1 were holding Central Excise Registration No. AAACF0950FXM001 and engaged in the manufacture of goods falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. During scrutiny of the ER-1 returns filed by Appellant No.1, it was observed that they had cleared their finished goods amounting to Rs.31,24,260/- without payment of duty to Mega Power Projects (hereinafter referred to as 'MPP') against Project Authority Certificate (hereinafter referred to as 'PAC') under International Competitive Bidding (hereinafter referred to as 'ICB') during F.Y. 2008-2009 (from January, 2009) to F.Y. 2013-14, under Serial No.91 of Notification No.6/2006-CE dated 01.03.2006. Exemption under the said Notification is subject to Condition 19, which stipulates that the goods are exempted from duties of Customs leviable under the First Schedule to the Customs Tariff Act, 1975 and the Additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India.

2.1 Inquiry was initiated against Appellant No.1 and in response to the summons issued, Appellant No.2 appeared and his statement was recorded. It



was observed that supply of good, falling under Chapter Heading 9801, to MPP is exempted from payment of Customs duty and Additional duty of Customs by virtue of Serial No.400 of Notification No.21/2002-Cus dated 01.03.2002, subject to following Condition No. 86 of the said Notification. It was observed that exemption under Customs, by virtue of the said Notification, is in respect of goods of Chapter Heading 9801, while the cleared by Appellant No. 1 falls under Chapter 84.

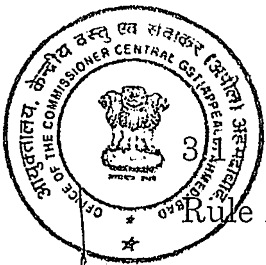
2.2 It further appeared from the description of goods covered by Chapter Heading 9801 and Notification No.21/2002-Cus dated 01.03.2002, that the exemption is available to goods if imported in cluster or bundle for setting up of a specified unit or substantial expansion of such specified unit. In the instant case, Appellant No. 1 had supplied only machinery of Chapter 84, which by no means can be considered to constitute the whole bundle of goods to merit classification under Chapter Heading 9801 of the Customs Tariff Act. Therefore, it appeared that Appellant No.1 were not entitled to exemption in terms of Notification No.21/2002-Cus dated 01.03.2002. It, therefore, appeared that Appellant No.1 had violated Condition No.19 of Notification No.6/2006-CE dated 01.03.2006 and they were not eligible for exemption under the said Notification. Accordingly, it appeared that Appellant No. 1 were required to pay Central Excise duty amounting to Rs.3,21,799/- in respect of the goods cleared by them to MPP by availing exemption under the said Notification.

3. The appellant was, therefore, issued Show Cause Notice bearing No.Ch.32/3-9/Fluidline/AC-II/14-15 dated 25.07.2014 wherein it was proposed to :

I. Recover central excise duty amounting to Rs.3,21,799/- under Section 11A(5) and erstwhile Section 11A (1) of the Central Excise Act, 1944 along with interest under Section 11AB/11AA of the Central Excise Act, 1944.

II. Impose penalty under Section 11AC(1)(b) of the Central Excise Act, 1944.

III. Confiscate the goods, cleared without payment of duty, under Rule 25 of the Central Excise Rules, 2002.



3.1 The SCN also proposed imposition of penalty, on Appellant No.2, under Rule 26 of the Central Excise Rules, 2002.

4. The SCN was adjudicated vide the impugned order wherein demand of central excise duty was confirmed along with interest. Penalty equal to the central excise duty confirmed was imposed on Appellant No.1. Penalty amounting to Rs.3,21,799/- was also imposed under Rule 25 of the Central Excise Rules, 2002. Penalty amounting to Rs.3,21,799/- was imposed on Appellant No.2 under Rule 26 of the Central Excise Rules, 2002.

5. Being aggrieved with the impugned order, Appellant No. 1 have filed the present appeal on the following grounds :

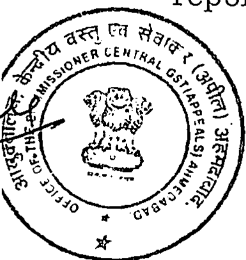
i. The impugned order has been passed without comprehending the exemption Notification No.6/2006-CE and conditions thereof.

ii. The impugned order has been passed without taking into consideration the submissions made by them in their reply to the SCN which was filed on 18.09.2014 and acknowledged by the department. The adjudicating authority has however, observed that they did not filed reply to the SCN. Therefore, the impugned order has been passed in violation of natural justice.

iii. Reliance is placed upon the judgment in the case of Mohan Electro Castings Ltd. – 2008 (222) ELT 587 (Commr.Appl) and Govan Soma Tandel Vs. Commissioner of Customs (P), Ahmedabad – 2000 (115) ELT 772 (T).

iv. They had in their reply to the SCN submitted that they had furnished PAC issued by the Joint Secretary of Government of India wherefrom it is established that goods were supplied against ICM and conditions of Notification No.21/2002-Cus complied with.

v. It was submitted by them that exemption was available to all goods of the description specified under Chapter Heading 9801 of the Customs Tariff. It was also submitted that Condition No. 86 (a) (iii) of Notification No.21/2002-Cus was substituted by Notification No.49/2006-Cus and therefore, issue raised with regard to condition did not come in the way of exemption. It was also submitted that there was no condition of supplying goods in cluster or bundle as contended by the department. They had also raised the limitation issue on the ground of final audit report issued. However, these submissions were not taken on record.



vi. Serial No.91 of Notification No.6/2006-CE dated 01.03.2006 exempts all goods supplied against ICB subject to Condition No.19.

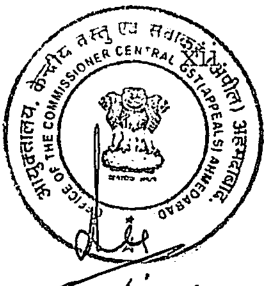
vii. Exemption from Customs duty is provided at Serial No.400 of Notification No.21/2002-Cus dated 01.03.2002 subject to Condition No.86.

viii. They had submitted that the exemption disputed on the basis of Condition No. 86 (a) (iii) was not proper as the same was substituted and only Clause (i) and (ii) were made effective vide Notification No.49/2006-Cus dated 26.05.2006.

ix. The exemption was also disputed on the grounds that they had supplied only machinery of Chapter 84 and not all goods of Chapter Heading 9801. The said Chapter Heading 9801 includes all items of machinery, spare parts, raw materials including semi-finished material, consumable stores etc. which are in consonance with Note No.1 of Chapter 98 of the Customs Tariff. It also provides that 'This chapter is to be taken to apply to all goods which satisfy the conditions specified therein, even though they may be covered by a more specific heading elsewhere in this Schedule'. Thus, it is very specific that the goods of Chapter 84 are also covered for the purpose of exemption.

x. Reliance was also placed upon the judgment in the case of Kent Introl Pvt. Ltd. V. CCE, Nashik – 2014 (301) ELT 84 (Tri.-Mumbai) and Om Metal SPML JV Unit 2 Vs. CCE & ST, Jaipur – 2013 (298) ELT 79 (Tri.-Del.).

xi. They had also contested the demand on the ground of limitation inasmuch as they had regularly furnished all details pertaining to clearance of goods under Notification No.6/2006-CE in their monthly returns. Further, the department had also audited their record and two Final Audit Reports were issued for the period from April, 2009 to July, 2013 wherein the issue of exemption was not raised. In Final Audit Report No. 57/2011-12 exemption Notification No.6/2006-CE was shown. However, there was no audit para in this regard. Similarly in Final Audit Report No. 175/2013-14 dated 15.10.2013, there was no objection regarding exemption under the said Notification.



Reliance is placed upon the judgment in the case of Sunil Forging & Steel Ind. Vs. CCE, Belapur – 2016 (332) ELT 341 (Tri.-Mumbai).

xiii. The impugned order is nothing but verbatim reproduction of the SCN and no findings have been recorded on their submissions.

xiv. They had received orders for supply of goods to MPPs certified by the Joint Secretary to the Government of India. Accordingly, they had furnished PACs and supplied goods against ICB. They had fulfilled condition No.19 of Notification No.6/2006-CE inasmuch as Condition No. 86 of Customs Notification No.21/2002-Cus applying to Notification No.6/2006-CE stands satisfied.

xv. It is mentioned in the SCN and the impugned order that Condition No. 86 (a) (i) & (ii) were fulfilled by them. Since Clause (iii) was substituted vide Clause (ii) vide Notification No.49/2006-Cus, exemption under Notification No.6/2006-CE cannot be denied.

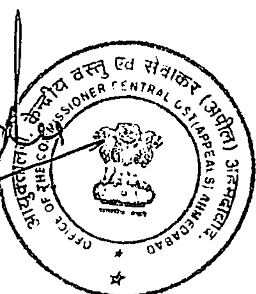
xvi. The Hon'ble Courts and Tribunals have consistently held that larger period cannot be invoked when exemption is claimed under bonafide belief. Reliance is placed upon the decision in the case of Vijeta Textiles Vs. CCE, Ahmedabad – 2011 (268) ELT 267 (Tri.-Ahmd.).

xvii. They had supplied goods only after ensuring that exemption under Notification No. 6/2006-CE was available. They had furnished requisite certificate, document and letter to establish admissibility of exemption. Moreover, allegation of supply of goods without establishing entitlement of exemption cannot be construed as intention to evade payment of duty. Therefore, the allegation of suppression does not survive.

xviii. Penalty equal to the duty confirmed has been imposed. However, under the provisions of Section 11AC (1)(b) of the CEA, 1944, penalty equal to 50% of the duty determined can be imposed.

xix. The imposition of penalty under Rule 25 of the CER, 2002 is beyond the scope of the SCN inasmuch as there is no proposal to impose penalty under Rule 25 of the CER, 2002. Reliance is placed upon the judgment in the case of CCE, C&ST, Belgaum Vs. Swarnagiri Wire Insulations Pvt. Ltd. – 2014 (301) ELT 46 (Kar.)

xx. The adjudicating authority has also lost sight of the fact that penalty under Rule 25 of the CER is imposable subject to the provisions of Section 11AC. As such penalty in addition to the provisions of Section 11AC ought not to have been imposed.



6. Being aggrieved, Appellant No.2 has filed the present appeal on the following grounds :

a. The impugned order has been passed without considering the submissions made in their reply to the SCN filed on 18.09.2014 which was also acknowledged by the department. Despite this, the impugned order has been passed ex-parte and it has been stated that no defence reply was filed by them.

b. In the present case, no goods have been confiscated nor the adjudicating authority has ordered to confiscate any goods. Before imposition of penalty under Rule 26 (1) the person should have been found guilty of having dealt with goods in the manner specified in the Rule and conscious knowledge to the fact that the goods were liable to confiscation has to be established.

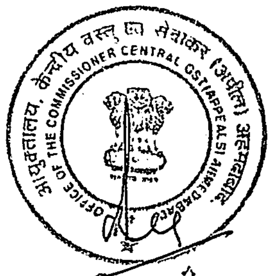
c. The company followed condition of Notification No.6/2006-CE and when the goods were cleared under exemption, they did not deal with the goods as envisaged under Rule 26(1) of the CER, 2002. Therefore, when it is not the case of the department that they had dealt with any goods or concerned with the goods or had knowledge that the goods were liable for confiscation, provisions of Rule 26 (1) cannot be invoked.

d. Provisions of sub-rule (2) of Rule 26 are attracted against the supplier of goods. However, the SCN was issued proposing penalty under Rule 26 without specifying the sub-rule.

e. Since the issue pertains to eligibility of exemption Notification, there was no case of issuing invoice without delivery of goods or facilitating the buyer to avail ineligible cenvat credit. Therefore, penalty cannot be imposed under Rule 26 (2) of the CER, 2002.

f. Without establishing their knowledge about confiscation, penalty ought not to have been imposed. Reliance is placed upon the decision in the case of Bellary Steel & Alloys Ltd. Vs. CCE, Belgaum – 2003 (157) ELT 324 (Tri.-Bang.

g. The company had received orders from MPP certified by the Joint Secretary to the Government of India. Therefore, the question of clearing goods with intent to evade payment of duty does not arise. Consequently, it cannot be held that they had knowledge or reason to believe that the goods were liable to confiscation. The adjudicating authority has not held



any goods liable for confiscation. Since there is no order of confiscation, imposition of penalty under Rule 26 of the CER, 2002 is against the law.

h. The impugned order is nothing but verbatim reproduction of the SCN and no finding was recorded on their submissions.

7. Personal Hearing in the case was held on 09.12.2022. Shri P.G. Mehta, Advocate, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He submitted a written submission during hearing and reiterated the submissions made therein.

8. In the written submissions filed on 09.12.2022, the appellant basically reiterated the submissions made in the appeal memorandum.

9. I have gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing and the material available on records. The issues before me for decision are :

A. Whether Appellant No.1 are eligible to the benefit of exemption in terms of Notification No. 6/2006-CE dated 01.03.2006 in respect of the goods cleared by them to MPP under ICB.

B. Whether Appellant No.2 is liable to penalty under Rule 25 of the CER, 2002.

10. It is observed that it is undisputed that Appellant No.1 had cleared goods to MPP under ICB. The impugned order has denied exemption to Appellant No.1 primarily on the grounds that they are clearing only machinery of Chapter 84 which do not constitute the whole bundle of goods and, hence, not classifiable under Chapter Heading No.9801 of the Customs Tariff Act. Therefore, as the goods cleared by Appellant No.1 are not exempted from Customs duties under Notification No.21/2002-Cus dated 01.03.2002, the benefit of exemption under Notification No.6/2006-CE dated 01.03.2006 is not admissible to them.

10.1 I find it relevant to refer to the Chapter Notes of Chapter 98 of the Customs Tariff Act, 1975. Note 3 and 4, which are relevant to the issue on hand, are reproduced below :

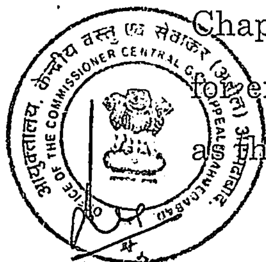
> "3. This Chapter is to be taken to apply to all goods which satisfy the conditions prescribed therein, even though they may be covered by a more specific heading elsewhere in this Schedule.
>
> 4. Heading 9801 is to be taken to apply to all goods which are imported in accordance with the regulations made under section 157 of the Customs Act, 1962 (52 of 1962) and expressions used in this heading shall have the meaning assigned to them in the said regulations."

10.2 Chapter 9801 covers the goods of the description :

> "All items of machinery including prime movers, instruments, apparatus and appliances, control gear and transmission equipment, auxiliary equipment (including those required for research and development purposes, testing and quality control), as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components required for the initial setting up of a unit, or the substantial expansion of an existing unit, of a specified :"

10.3 From a plain reading, it is clearly evident that Chapter Heading 9801 covers a wide gamut of goods and a conjoint reading of Chapter Note 3 makes it clear that the goods covered by Chapter Heading 9801 may be classifiable elsewhere under a more specific heading. However, not everyone can claim classification of their goods under Chapter Heading 9801 as the said heading is only for the purposes specified in the heading, one of them being Power Project. Initial setting up of a unit or its substantial expansion involves various goods which are classifiable under different Chapter Headings. To alleviate the issues of multiple classification, the goods for the specified projects are allowed classification under Chapter Heading 9801 of the Customs Tariff Act, 1975. Therefore, irrespective of their actual classification, the goods imported for the specified projects are classifiable under Chapter Heading 9801. No where in the Chapter Notes or in the description of goods under the heading, it is mandated that the goods must be a bundle or cluster, as held by the adjudicating authority, to qualify for classification under Chapter Heading 9801. Therefore, I am of the considered view that the finding of the adjudicating authority in this regard is erroneous and not supported by law.

10.4 As goods, irrespective of their actual classification, are allowed to be imported by classifying them under Chapter 9801 of the Customs Tariff Act, 1975, the natural corollary is that even if the goods are classifiable under Chapter 84 of the Central Excise Tariff Act, 1985, the same would be eligible for exemption under Sr.No.91 of Notification No.6/2006-CE dated 01.03.2006 as the same, when imported under Chapter Heading 9801, are exempted from



payment of Customs Duty in terms of Serial No. 400 of Notification No.21/2002-Cus dated 01.03.2002.

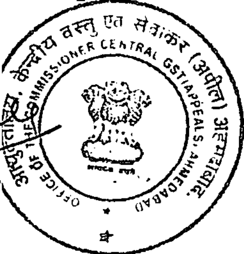
10.5 Appellant No.1 have in their support relied upon the judgment in the case of Om Metal SPML JV Unit 2 Vs. CCE & ST, Jaipur – 2013 (298) ELT 79 (Tri.-Del.). I have gone through the said judgment and find that it is applicable to the facts and circumstances of the present appeal. The Hon'ble Tribunal had in the said case held that :

> "**9.** We find that goods in question are classifiable under Chapter 73 of the Tariff. Under Central Excise Tariff there is no Heading 98.01 and which exists in Customs Tariff only. Since the goods manufactured in India can not be classified under 98.01 of the Central Excise Tariff, denial of the exemption on the ground of non-fulfilment of condition of Project Import Regulation is not sustainable particularly when condition No. 86 of the Notification No. 21/2002, dated 1-3-2002 is fulfilled by them. Similar submissions were made by Revenue for denying the benefit of Notification 6/2006, dated 1-3-2006 on the ground of non-fulfilment of conditions of the Project Import Regulation in case of *Sarita Steels and Industries Ltd.* reported in 2011 (264) E.L.T. 313 and Tribunal in that case allowed the exemption under Notification 6/2006, dated 1-3-2006 to the assessee. We therefore hold that appellants are eligible for exemption under Notification 6/2006, dated 1-3-2006 and accordingly set aside the impugned order and allow the appeal."

10.6 In the instant case, it is observed that the adjudicating has accepted, at Para 39 of the impugned order, that Appellant No.1 have fulfilled condition No. 86 (a) (i) and (ii) of Notification No.21/2002-Cus dated 01.03.2002 but not produced documents to establish that condition No. 86 (a) (iii) was fulfilled. In this regard, I find that the adjudicating authority has failed to appreciate that by virtue of Notification No.49/2006-Cus dated 26.05.2006 Condition No. 86 (a) (iii) has been omitted. Hence, the findings of the adjudicating authority are based on legal provisions which were not in existence and hence are not legally tenable.

10.7 Considering the facts discussed hereinabove, I am of the considered view that the impugned order denying the benefit of exemption under Notification No.6/2006-CE dated 01.03.2006 and confirming the demand of central excise duty is not legally sustainable and, is accordingly set aside.

11. Appellant No.1 have also raised the issue of limitation and imposition of penalties. However, since on merits the issue has been found in favour of



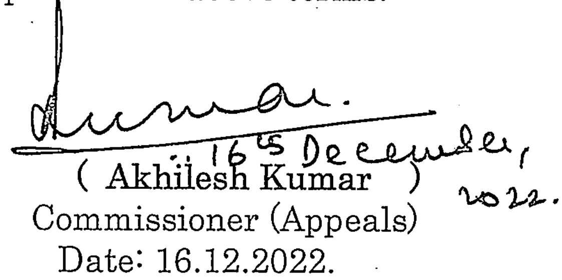
Appellant No.1, I am not dealing with the merits of the these issues raised by Appellant No.1 in their appeal memorandum.

12. Regarding the issue of penalty imposed on Appellant No.2 under Rule 26 of the CER, 2003, I am of the view that since Appellant No.1 has correctly claimed and availed exemption under Notification No.6/2006-CE dated 01.03.2006, the allegation of non payment or evasion of central excise duty against Appellant No.1 does not survive. Consequently, the imposition of penalty on Appellant No. 2 also does not survive.

13. In view of the above, the impugned order is set aside and the appeal filed by Appellant No.1 and 2 are allowed with consequential relief.

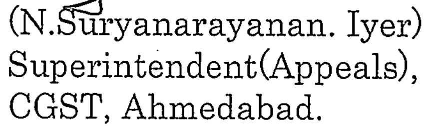
14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

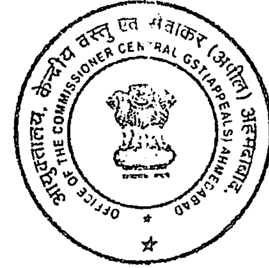
The appeals filed by the appellants stands disposed of in above terms.



(Akhilesh Kumar)
Commissioner (Appeals)
Date: 16.12.2022.

Attested:





(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Fluidline Valves Company Pvt. Ltd., Appellant No.1
Plot No. 516, Phase-IV,
GIDC, Vatva, Ahmedabad- 382 445

Shri Rajesh Kher, Manager — Appellant No.2
M/s. Fluidline Valves Company Pvt. Ltd.,
Plot No. 516, Phase-IV,
GIDC, Vatva, Ahmedabad- 382 445

The Superintendent, — Respondent
CGST, Range-II, Division- VI,
Commissionerate : Ahmedabad South.

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1. The Chief Commissioner, Central GST, Ahmedabad Zone.

2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
4. Guard File.
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