



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आजादी का  
अमृत महोत्सव

**By SPEED POST**

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(क)	फ़ाइल संख्या / File No.	1.GAPPL/COM/STP/222/2023 2. GAPPL/COM/STP/223/2023 3. GAPPL/COM/STP/224/2023 4. GAPPL/COM/STP/225/2023	1521 70 1528
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-260 to 263/2023-24 and 09.02.2024	
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)	
(घ)	जारी करने की दिनांक / Date of Issue	13.02.2024	
(ङ)	Arising out of Order-In-Original No. 64/CGST/Ahmd-South/JC/SR/2022-23 dated 30.12.2022 passed by The Joint Commissioner, Central GST & Excise, Ahmedabad South.		
(च)	1.अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Aqua Machinerics Private Limited, Plot No. 3821, Phase-IV, GIDC Vatva, Ahmedabad - 382445	
	2.अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Shri Abhinaya Jayantibhai Patel, Director of M/s. Aqua Machinerics Private Limited, Plot No. 3821, Phase-IV, GIDC Vatva, Ahmedabad - 382445	
	3.अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Shri Basant Maurya, Senior Accountant and Authorized Signatory of M/s. Aqua Machinerics Private Limited, Plot No. 3821, Phase-IV, GIDC Vatva, Ahmedabad - 382445	
	4.अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Shri Ravi Solanki, Chief General Manager (Project) M/s. Gujarat Water Infrastructure Limited, Dr. Jivraj Mehta Bhavan, Block No. 1, Sector-10, Gandhinagar- 382010	

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

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

भारत सरकार का पुनरीक्षण आवेदन:-

**Revision application to Government of India:**

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

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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



(क) 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 में हो माल की प्रक्रिया के दौरान हुई हो।

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

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

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।

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

(घ) 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।

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.

(2) 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 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 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 :-

(2) उक्तलिखित परिच्छेद 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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

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 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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) एके प्रति अपीलो 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)

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

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

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

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6) (i) 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."



1. This order arises out of an appeal (hereinafter referred to as 'Appeal-1) filed by M/s Aqua Machinery Private Limited, Plot No 3821, Phase- IV, GIDC Vatva, Ahmedabad-382445 having Central Excise Registration No. AACCP3014AXM001(hereinafter referred to as 'Appellant-1) against OIO No 64/CGST/Ahmd-South/JC/SR/2022-23 dated 31.12.2022(issued on 13.01.2023) (hereinafter referred to as 'the impugned order') passed by the Joint Commissioner, CGST, Ahmedabad -South(hereinafter referred to as 'the adjudicating authority') as well as other three nos. of separate appeals as details mentioned below:

- (i) An appeal (hereinafter referred to as 'Appeal-2) filed by Shri Abhinaya Jayantibhai Patel, Director of M/s Aqua Machineries Private Limited, Plot No 3821,Phase-IV,GIDC Vatva, Ahmedabad (hereinafter referred to as 'Appellant-2) against the Penalty imposed on him by the adjudicating authority vide impugned order.
- (ii) An appeal (hereinafter referred to as 'Appeal-3) filed by Shri Basant Maurya, Senior Accountant and authorized signatory of M/s Aqua Machineries Private Limited, Plot No 3821,Phase-IV,GIDC Vatva, Ahmedabad (hereinafter referred to as 'Appellant-3) against the Penalty imposed on him by the adjudicating authority vide impugned order and:
- (iii) An appeal (hereinafter referred to as 'Appeal-4) filed by Shri Ravi Solanki, Chief General Manager (Project), M/s. Gujarat Water Infrastructure Limited, Dr. Jivraj Mehta Bhavan, Block no 1, Sector-10, Gandhinagar-382010 (hereinafter referred to as 'Appellant-4) against the Penalty imposed on him by the adjudicating authority vide impugned order.

1.1 it is observed that 'appeal-1' is filed by the 'Appellant-1' against the impugned order in respect of the demand confirmed against them towards central excise duty short/not paid as well as the penalty imposed on them vide the impugned order. All the remaining three appeals as mentioned above have been filed by the respective appellants against the penalty imposed on them by the adjudicating authority vide impugned order in relation to the demand confirmed against the main appellant i.e. 'Appellant-1'. Accordingly all the four appeals have been taken up for consideration under common appeal proceedings.

2. Facts of the case, in brief, are that the main appellant i.e. 'appellant-1' was registered with The Central Excise Department under ECC No. AACCP3014AXM001 for manufacture and clearance of excisable goods i.e. Water Submersible Pumps and Parts thereof falling under CTH No. 8413 of the First schedule to the Central Excise: Tariff Act, 1985 and holding GSTIN. No. 24AACCP3014A1ZB. A show cause notice was issued to the appellants by the Joint Commissioner, Central Excise & GST, Ahmedabad-South vide F.No. V.84/4-48/Aqua/OA-1/18-19 dated 04.01.2019, demanding Central Excise duty amounting to Rs. 1,43,47,178/- from the 'appellant-1' in respect of 'Submersible Pumps & Parts' manufactured and cleared by them valued at total Rs. 23,86,45,977/- [as per 'Annexure-1' to the show cause notice] during the period from December; 2013 to June, 2017, by wrongly availing the benefit of exemption under Notification No. 12/2012-CE dated 17.03.2012 (Sr. No. 233). Further, vide the said show cause notice (i) The



said goods cleared by the appellant-1 were also proposed to be held liable for confiscation under Rule 25 of the Central Excise Rules, 2002 (ii) Penalty was also proposed to be imposed on the 'appellant-1; under the provisions of Section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002 (iii) Penalty was also proposed to be imposed on the 'appellant-2', 'appellant-3' and 'appellant-4' under the provisions of Rule 26 of the Central Excise Rules, 2002.

2.1 The Show Cause Notice dated 04.01.2019 has been adjudicated by the adjudicating authority, vide the OIO No 14/CGST/ Ahmd-South/JC/RKT/2020-21 dated 09.10.2023. as per details mentioned below:

(1) The goods valued at Rs: 22,11,71,116/ cleared by the 'appellant-1' under, ineligible exemption held, liable for. confiscation under Rule 25 of the Central Excise, Rules; 2002;

(2) He confirmed the demand of central Excise duty amounting to Rs.1,32,98,687/- from the 'appellant-1' by invoking the extended period of five years under section 11 A(4) of the Central, Excise Acts 1944 in respect of the goods cleared by them in contravention of the provisions of the Central Excise Act, 1944 and the rules framed there under by availing benefit of the Notification No. 12/2012-CE dated 17.03.2012, wrongly by way of misstatement and suppression of facts, with intention to evade payment of duty and also ordered to be recovered along with interest under Section 11AA of the Central Excise Act, 1944;

(3) He imposed a penalty of Rs. 1,32,98,687/- upon the 'appellant-1', under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944;

(4) He imposed a penalty of Rs. 1,32,98,687/- upon the 'appellant-2', under Rule 26 of the Central Excise. Rules, 2002;

(5) He imposed a penalty of Rs. 44,32,895/- upon the 'appellant-3', under Rule 26 of the Central Excise Rules, 2002;

(6) He imposed a penalty of Rs. 20,00,000/- upon the 'appellant-4', under Rule 26 of the Central Excise Rules, 2002.

3. Being aggrieved with the impugned order, all the appellants preferred before the Hon'ble Commissioner (appeals), Ahmedabad. The Hon'ble Commissioner (appeals), Ahmedabad, vide OIA No AHM-EXCUS-001-APP-14 to 17-2021-2022 dated 11.10.2021, partly rejected the appeal and partly remanded back the above OIO to the original adjudicating authority. Details are under mentioned:

Table-1

Sr. No	Category	Assessable value	Rate of duty applied	Duty demanded	Assessable value after cum duty benefit	Duty Re-computed	Cenvat Reversed	Differential payable	Exemption considered or not
1	GWIL Bhuj Bhachhau -Gujarat	67695648	6%	4061739	63863819	3831829	1817800	2014029	Not considered, appeal rejected,



2	Other than GWIL Bhuj	116972457	6%	7018347	110351375	6621082	4394194	2229889	However adjustment of cum duty benefit and cenvat reversal allowed sub to verification
4	Other than GWIL Bhuj	10702531	6%	642152	10096727	605804	653603	-47799	
		195370636		11722238	184311921	11058715	7105328	4196119	
5	Other than GWIL Bhuj	16962646	6%	1017759	16002496	960150	385691	574459	Remanded back for examination and cum duty benefit and cenvat reversal sub to verification
3	Other than GWIL Bhuj	5816399	6%	348984	5487169	329230	379559	-50329	
7	Other than GWIL Bhuj	1647785	6%	98867	1554514	93271	0	93271	
8	Other than GWIL Bhuj	851430	6%	50582	803236	48194	14424	33770	
10	Other than GWIL Bhuj	541110	6%	32467	510481	30629	32467	-1838	
		25819370		1548659	24357896	1461474	812141	649333	
	G.Total	221190006		13270897	208669817	12520189.02	7531778	4845452	

For the following clearances, the Exemption was denied in the above OIA:

Table-II

Sr No	Categories	Plant scheme Name	Value of clearance	Rate applied	Duty Demanded	Cenvat Credit Reversed @ 5%/6%
1	GWIL Bhuj-Bhachhau-Gujarat	Drinking water Supply Project	67695648	6%	4061739	1817800
2	Other than GWIL Bhuj	Drinking water Supply Project	116972457	6%	7018347	4248234
4	Other than GWIL Bhuj	Sewage water Treatment Plan	10702531	6%	642152	653603
			195370636		11722238	6719637

3. Being aggrieved upon above, all the appellants filed appeal before the Hon'ble CESTAT against the OIA No. AHM-EXCUS-001-APP-14 to 17/2021-22 dated 27.08.2021(issued on 11.10.2023) which are pending for disposal. Details of the same are as under:

Sr. No.	Name of the appellant	Case Diary No.
1	Aqua Machineris Private Limited	101472022/29.03.2022
2	Abhinaya Jayantibhai Patel, Director	101492022/29.03.2022
3	Basant Maurya, Senior Accountant	101482022/29.03.2022
4	Ravi Solanki, Chief General Manager,(Retired) GWIL,Gandhinagar.	101502022/29.03.2022

(i) The original adjudicating authority decide show cause notice afresh and issued the impugned order No.64 /CGST/Ahmd-South/JC/SR/2022-23 dated 30.01.2023. In this order the



Original adjudicating authority has considered Annexure-A of the show cause notice which is month wise computation of demand. The adjudicating authority has allowed cum duty benefit and adjustment of Cenvat reversal as allowed by the Hon 'ble Commissioner (Appeals) to the appellant. Details are as under:

Table-III

Table A & B of the Impugned order dated 13.01.2023							
Sr. No.	Month and Year	Value as per SCN	Demand	Value on giving cum duty benefit	Amt. of duty payable after cum duty benefit	Amt. of reversal made(as per ER-1 return)	Differential amount payable
1	Dec-13	225000	13500	212264	12736	14424	0
2	Mar-14	116370	14546	101824	12728		12728
3	Jul-14	2209998	132600	2084904	125094		125094
4	Sept-14	5265090	315905	4967066	298024	273837	24187
5	Oct-14	40378230	2422694	38092670	2285560	4002608	2361252
6	Nov-14	17500000	1050000	16509434	990566		
7	Dec-14	54549957	3272997	51462224	3087733		
8	Jan-15	447209	26833	421895	25314		25314
9	Feb-15	43278732	2596724	40828992	2449740		2449740
10	Mar-15	24416916	1465015	23034826	1382090		1382090
11	Apr-15	7139957	428398	6735808	404148		404148
12	June-15	3800000	228000	3584906	215094		215094
13	Jul-15	7398686	443921	6979892	418794	474497	0
14	Aug-15	1856656	111399	1751562	105094	86704	18390
15	Dec-15	2758823	165529	2602663	156160	165529	0
16	Feb-16	1306328	78379	1232385	73943		73943
17	Mar-16	509257	30555	480431	28826	34989	0
18	Mar-16	73900	9238	69717	8715		8715
19	May-16	670000	40200	632075	37925	43632	0
20	May-16	46700	5838	44057	5507		5507
21	Sep-16	608960	36538	574491	34469		34469
22	Nov-16	1038825	62330	980024	58801		58801
23	Dec-16	5419827	325190	5113044	306783	325189	0
24	Mar-17	37128	4641	35026	4378		4378
25	Apr-17	250635	15038	236448	14187	325189	0
26	Apr-17	21420	2678	20208	2526		2526
		221324604	13298685	208788836	12544934	5746598	7206376

(ii) As per OIO, after cum duty benefit, the demand is confirmed as Rs. 1,25,27,330/-, however there was totaling mistake of Rs. 17,604 /-. and the actual demand which would have been confirmed after cum duty benefit would be Rs. 1,25,44,934/- [Rs. 1,25,27,330/- + Rs.17,604/-]. As regard to adjustment of Cenvat reversal claimed by the appellant the original



adjudicating authority has considered Rs.57,46,598/- and accordingly balance amount of Rs.72,06,376/- is proposed to be recovered in the impugned order.

(iii) The adjudicating, considering cum duty benefit and allowed part of the Cenvat credit reversed, finally confirmed Central Excise duty of Rs.1,25,27,330/- and ordered for recovery of differential duty of Rs.72,06,376/- along with interest under section 11AA(2) of the EA,1962 and imposed penalty equivalent to duty of Rs. 1,25,27,330 / - . penalty of Rs. 1,25,27,330 / - on shri abhinaya jayantibhai Patel, director of M/s Aqua achineries Pvt. Ltd., penalty of Rs 41,75,776/- on Shri Basant Maurya, Senior Accountant & Authorized Signatory of M/s Aqua Machineries Pvt. Ltd & penalty of Rs 20,00,000/- on Shri Ravi solanki Chief General Manager(Project),M/s Gujarat Water Infrastructure Limited, Gandhinagar were also imposed under Rule 26 of the Central Excise Rules,2002.

4 . Being aggrieved by the above impugned order, The appellant has filed the present appeal on the following grounds:

- **Adjudication of following exemption is not legal and correct as the appeal is Pending before CESTAT against OIA .**

The appellant submitted that the Hon ble Commissioner (Appeal) while remanding back the OIO No. 14/CGST/Ahmd-South / JC/RKT/2020-21 dated 09.10.2020 dis-allowed exemption in the case of following exemptions.

**Table-IV**

Sr. No	Category	Assessable value	Rate of duty applied	Duty demanded	Assessable value after cum duty benefit	Duty Re-computed	Cenvat Reversed	Differential payable	Exemption considered or not
1	GWIL Bhuj Bhachhau-Gujarat	67695648	6%	4061739	63863819	3831829	1817800	2014029	Not considered, appeal rejected, However adjustment of cum duty benefit and cenvat reversal allowed sub to verification
2	Other than GWIL Bhuj	116972457	6%	7018347	110351375	6621082	4394194	2229889	
4	Other than GWIL Bhuj	10702531	6%	642152	10096727	605804	653603	-47799	
		195370636		11722238	184311921	11058715	7105328	4196119	

In this regard it is submitted that as per the direction of the Hon'ble Commissioner, (Appeals), the learned adjudicating authority has to verify the Cenvat reversal which the appellant have claimed and eligibility of cum duty benefit only, and ought not to have commented with regard to exemption which were already denied by in the appeals against which the appellant has filed an appeal before the Hon'ble tribunal.

The appellant have filed an appeal before the Hon'ble Tribunal against the dis-allowed exemption by the OIA No AHM-EXCUS-001-APP- 14 to 17-21-22 dated 11.10.2021. The learned adjudicating authority ought to have decide eligibility of exemption only for Sr.No.5,3,7,





8 & 10, however, they have also proceeded to decide exemption for Sr.No. 1,2 & 4 which is already pending before the Hon'ble Tribunal as stated above. When the deemed stay by the Hon'ble CESTAT is in operation, the learned adjudicating authorities have again decided the aforesaid exemption mentioned at Sr. No. 1, 2 & 4 which ought not to have decided, the adjudication in this regard is not legal and proper.

• **In remand preceding the learned adjudicating authority failed to examine the eligibility of various exemption categorically and erroneously confirmed demand only on assumption.**

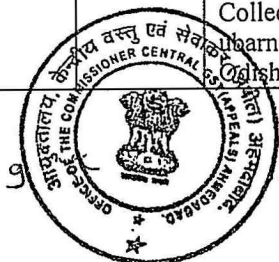
While remanding back with regard to eligibility of exemption claimed at Sr. No.5,3,7,8 and 10 of the order in original, the Hon'ble Commissioner, (Appeals) in para 15.2 of the OIA directed as under:

Further, as discussed in para-9.5.1 above, I remand back the impugned order to the adjudicating authority to re-examine the eligibility of respective notification in respect of the said clearances (shown at Sr. No. 3, 5, 7, 8 and 10 of the table 2 at para-30.8.2 of the impugned order/ of the Table-1 shown at Para-9 above and decide it afresh, following the principle of natural justice.

As per the above direction of the Hon'ble Commissioner, (Appeal), the appellant have Submitted all the documents related to fulfillment of the conditions of the exemption before the learned adjudicating authority physically as well as vide E-mail 20.12.2022, 22.12.2022 & 30.12.2022. The appellant would like to submit Invoice wise details of exemption claimed as per Sr.No.5,3,7,8 and 10 for which eligibility has to be decided after verification of documents submitted as per the direction of Hon'ble Commissioner (Appeals).

**Table-V**

Pending for DENOVO										
Sr. No.(Table 2)	Invoice No.	Dt. Of Invoice	Duty payable	Docs. Submitted on	Name of the customers	Certificate issued by	Nature of work carried out	Noti .	Sr. No	Condition
5	18	21.04.2017	16323	19.04.2017	Other than GWIL Bhuj-Bhachhau	Dist. Collector,Banswara,Raj.	Water supply project/ Water Supply Scheme/water supply Plants	12/2012-CE	233	23
	275	10.12.2014	385691	19.11.2014		Dist. Collector,Bhavnagar,Guj.				
	379	30.12.2016	263848	21.12.2016		Deputy Comm,Tumakuru,karnataka				
	201	30.09.2014	125105	23.09.2014		Dist. Collector,Banswara,Raj.				
	530	30.03.2016	23442	23.12.2015		Dist. Collector,Banswara,Raj.				
	57	21.05.2016	43632	30.12.2015		Dist. Collector,Saarnapur,Odisha				



			858042							
3	132	08.07.2015	183455	15.05.2015	Other than GWIL Bhuj-Bhachhau [Rajkot Municipal Corporation]	Dist. Collector, Rajkot, Gujarat for Rajkot Municipal Corp.	Drinking water supply and water treatment Plant	12/2012-CE	233	23
	377	23.12.2015	165529	23.09.2015						
			348984							
7	204	18.08.2015	37082	20.07.2015	Other than GWIL Bhuj-Bhachhau	Chief Executive Officer, BR BCL, NTPC Ltd.	Hydro Poer project	12/2012-CE	336	41
	251	31.12.2013	13500	26.12.2013						
			50582							
8	134	09.07.2015	32467	09.07.2015	Other than GWIL Bhuj-Bhachhau	Director, Lupin Ltd. for Research & Development	Research & Development works	10/97-CE		
10	298	18.11.2016	62330	01.01.2015	Other than GWIL Bhuj-Bhachhau	Chief Executive Officer, MEJA Thermal Power, thermal power project	thermal power station	12/2012-CE	336	41
	221	22.09.2016	36538	24.05.2016						
			98868							
G. Total			1388943							

The learned adjudicating authority has considered the cum duty benefit and reversal of Cenvat credit, however rejected the claim of aforesaid exemptions without appreciating the documents presented by the appellant. From the above table it could be seen that four types of exemption are there. Sr. No.5 and 3 involves exemption availed as per Sr. No.233 of Notification No. 12/2012-CE having condition 23 where under the designation of the authority who have issued certificate for end use of the goods cleared under the Invoices is also mentioned;

(ii) Sr. No.7 involves exemption availed as per Sr. No.336 of Notification No. 12/2012-CE having condition No. 41 where under the designation of the authority who have issued certificate for end use of the goods cleared under the Invoices is also mentioned;

(iii) Sr. No. 8 involves exemption availed as per Notification No. 10/97-CE, where under the designation of the authority who have issued certificate for end use of the goods cleared under the Invoices is also mentioned.

(iv) Sr. No.10 involves exemption availed as per Sr.No.336 of Notification No. 12/2012- CE having condition No.41 where under the designation of the authority who have issued certificate for end use of the goods cleared under the Invoices is also mentioned;



In this regard the appellant drawn attention to para 35 and 36 of the impugned order wherein the Learned adjudicating authority while dis-allowing the exemptions it is recorded that:

35. I find the exemption was conditional but the documents submitted show that the exemption was wrongly claimed. Copies of the following documents have been submitted:

(i) A copy of Certificate from Collector and District Magistrate, Subarnapur, Orissa, regarding clearances made on 21.05.2016, showing that pumps are required for setting up water supply plants.

(ii) There is another certificate from the District Collector of Banswara, for supply of pumps for a water supply project for villages in Tehsil Bagidora and Banswara.

iii) There is a Certificate from the Collector and District Magistrate of Rajkot, for the supply of pumps which is again for water supply project.

iv) There is a Certificate from the Collector and District Magistrate of Bhavnagar for supply of submerged Centrifugal Pumpsets for Palitana water supply scheme.

36. I find none of the above documents show clearance for setting up of Water treatment plants.

Therefore, prima facie, the exemption claimed is not admissible for the five clearances that have been ordered for re-examination. Further, audit of records by CAG Officers or reversal of credit cannot take the place of evidence to justify the exemption claimed. In view of the above, I find the demand relating to the five clearances is required to be upheld.

In-spite of the documents related to compliance of the conditions as stipulated in the notification made available, from the above findings of the learned adjudicating authority it can be seen that the findings are related to supply of submersible pumps to Water Supply Project/Water Supply Scheme/Water Supply Plants/ Drinking Water Supply and Water Treatment Plant pertaining to Sr. No.5 and 3 of Table 7, however the said findings are not at all relevant to the exemptions pertains to Sr. No.7,8 and10. Therefore confirmation of demand for these exemption at Sr. No.7, 8 and 10 are based on the assumption only.

In this regard the appellant mention that exemption availed for Sr. No.7, 8 and 10 meant for Hydro Power Project, Super Thermal Power Station and Research & Development works respectively were not the part of Investigation for supply of goods to GWIL, Bhachau. There is no any relevance of certificate of District Magistrate as the same was not the condition prescribed in the relevant Sr. No. of the said Notification.



With regard to the Exemption at Sr. No 5 and 3 of table 7, it is submitted that the said exemption availed on the basis of Certificate issued by the competent authorities of respective state which were properly issued for which no Investigation was carried out, however the learned adjudicating authority has wrongly confirmed the demand of Central Excise duty purely without appreciating the certificates.

Thus all the demand of Central Excise duty involved in the Sr. No.5,3,7,8 and 10 are not sustainable on merit itself, however the same are erroneously confirmed by the learned adjudicating authority.

- **No role of Shri Ravi Solanki, G.M. of GWIL, Gandhinagar. Penalty imposed erroneous and not sustainable.**

From the said facts it would be transpired that there was no role of Shri Ravi Solanki, General Manager of GWIL, Gandhinagar in getting certificate from the District Magistrate/authorities who have issue certificate for exemption mentioned at Sr. No.5 and 3 above. However, the learned adjudicating authority have held Shri Ravi Solanki responsible for the exemption mentioned at Sr.No.5,3,7,8 and 10. Therefore imposition of penalty under Rule 26 of the Central Excise Rules, 2002 upon Shri Ravi Solanki is without any merits and is not sustainable.

- **The learned adjudicating authority has not fully considered the reversal of Cenvat Credit.**

The learned adjudicating authority in their impugned order has confirmed demand of Rs. 1,25,27,330/-, after considering cum duty benefit and considered adjustment of cenvat reversal of Rs.57,46,598/- and accordingly balance amount of Rs.72,06,376/- is proposed to be recovered in the impugned order.

In this regard, the appellant submitted that originally at the time of first adjudication order it was the claim of the appellant that they have reversed total Cenvat Credit of Rs.91,38,746/-.The demand of Rs. 10,48,492/- was dropped considering the eligibility of exemption and cenvat credit Rs. 9,97,321/- was reversed against this demand. Therefore, after reducing Cenvat of Rs.9,97,321/- from Rs.91,38,746/-, the balance of Rs.81,41,425/- has to be verified and has to be allowed. However, from the following table it could be seen that the learned adjudicating authority has not considered reversal of Rs.23,94,827 /- in their impugned order. While not considering the said Cenvat reversed, the learned adjudicating authority has not given any findings what so ever in the impugned order. Had the said reversal would have been considered, the actual demand would have been Rs.48,09,862/- as worked out in the following;

Table-VI

Sr.N o.	Month and year	Value as per scn	Dem and	Value on giving cum duty benefit	Amount of duty payable after cum duty benefit	Amount of reversal made(as per ER)	Different ial amount payable	Cenvat reversal claimed by the	Ecess /short cenvat reversal not considered in	Diff. paya ble



								appellant in Rs.(Debit Ent)	OIO	
1	Dec-13	22500 0	1350 0	212264	12736	14424	0	14424(25 1/31.12.1 3	0	0
2	Mar- 14	11637 0	1454 6	101824	12728		12728		0	12728
3	Jul-14	22088 98	1326 00	2084904	125094		125094	113815(3 67/21.07. 14	113815	11279
4	Sept- 14	52650 90	3159 05	4967066	298024	273837	24187	273837(5 66,567,5 68 dated 29.09.14	0	24187
5	Oct-14	40378 230	2422 694	3809267 0	2285560	4002608	2361252	4002608	0	236125 2
6	Nov- 14	17500 000	1050 000	1650943 4	990566					
7	Dec-14	54549 957	3272 997	5146222 4	3087733					
8	Jan-15	44720 9	2683 3	421895	25314		25314	15182(10 85/30.01. 15	15182	10132
9	Feb-15	43278 732	2596 724	4082899 2	2449740		2449740	1817800/ 1182/20.	1817800	201402 9
10	Mar- 15	24416 916	1465 015	2303482 6	1382090		1382090	02.15		
11	Apr-15	71399 57	4283 98	6735808	404148		404148	446247(1 20/121/1 24 dt 24.04.15	446247	0
12	Jun-15	38000 00	2280 00	3584906	215094		215094	228000(4 94/29.06. 15)	228000	0
13	Jul-15	73986 86	4439 21	6979892	418794	474497	0	474497	0	0
14	Aug- 15	18566 56	1113 99	1751562	105094	86704	18390	86704	0	18390
15	Dec-15	27588 23	1655 29	2602663	156160	165529	0	165529	0	0
16	Feb-16	13063 28	7837 9	1232385	73943		73943	78379(18 04,1805, 1837 dtd 18.02.16	78379	0
17	Mar- 16	50925 7	3055 5	480431	28826	34989	0	34989	0	0
18	Mar-	73900	9238	69717	8715		8715		0	8715



	16									
19	May-16	67000 0	4020 0	632075	37925	43632	0	43632	0	0
20	May-16	46700	5838	44057	5507		5507		0	5507
21	Sep-16	60896 0	3653 8	574491	34469		34469		0	34469
22	Nov-16	10388 25	6233 0	980024	58801		58801		0	58801
23	Dec-16	54199 827	3251 90	5113044	306783	325189	0	325189	0	0
24	Mar-17	37128	4641	35026	4378		4378	4270	4270	109
25	Apr-17	25063 5	1503 8	236448	14187	325189	0	16323(75 /21.04.17	-308866	0
26	Apr-17	21420	2678	20208	2526		2526		0	2526
		22,13, 24,604	1,32, 98,6 85	20,87,88, 836	1,25,44,934	57,46,598	72,06,37 6	81,41,42 5	23,94,827	48,09, 862

With result, the net demand which should have been confirmed would be Rs. 1,25,44,934/- and after adjustment the net differential amount payable would be Rs.48,09,862/- against Rs.72,06,376/- computed in the impugned order. The actual demand which should have been confirmed would be Rs.48,09,862/- and not Rs. 1,25,44,934/-.

The appellant submitted that while availing exemption, the appellant have already reversed the Cenvat credit. If the exemption is dis-allowed, and demand is raised the Cenvat reversal has to be adjusted at the time of issuance of show cause notice and the demand would be for differential amount only.

Therefore as computed above, the short payment of Central Excise duty would be Rs.48,09,862/- and not Rs. 1,25,44,934 /-. Therefore, the appellant would like to contend the learned adjudicating authority has erred in confirming demand of Rs. 1,25,44,934/- instead of confirming short payment of Rs.48,09,862/-.

◦ **(E) Excess penalty under Section 11A (4) of Central Excise Act, 1944.**

The learned adjudicating authority has imposed penalty of Rs. 1,25,27,330/-under section 11A(4) of Central Excise Act, 1944, which should have been Rs.48,09,862/- being the amount of actual short payment of central excise duty as submitted herein above. The Section 11A provides for issuance of show cause notice for the Central Excise duty short paid. In the case on hand it is the case of the department that the appellant is not entitled for exemption availed, whereas the appellant on the date of availing exemption has already reversed the Cenvat credit. Therefore, while raising demand itself, the appellant have right to claim adjustment on the date of issuance of show cause notice itself. Therefore the show cause notice should have been for the amount



actually short paid i.e.Rs.48,09,862/- This being the case the penalty under Section 11A(4) of Central Excise Act, 1944 has to be Rs.48,09,862/- and not Rs. 1,25,27,330/- as imposed in the impugned show cause notice.

• **Interest to be computed form the relevant date of reversal of Cenvat credit.**

In view of aforesaid submission, the Cenvat reversal has to be considered on the date/month in which exemption was availed and accordingly, the interest has to be computed from the relevant date of filing of ER-1 returns for the respective month.

• **Time barred:**

The appellant during the course of personal hearing submitted their submission dated 19.12.2022 (in person & through mail soft copy) wherein it that demand under consideration is time barred. The appellant would like to contend that they were subjected to CAG Audit and departmental Audit as well, wherein objections with regard to non-reversal of Cenvat credit under Rule 6(3) of CCR, 2004 in connection with the aforesaid Exemption availed by the appellant, to which the appellant had complied by way of reversing Cenvat credit. Details of Audit reports are as under. Further, CAG and Departmental audits were carried out wherein the objection was raised that the appellant is required to reverse the Cenvat credit while the appellant enjoying the exemption was not reversed. The summary of the audit carried out are submitted as under.

Departmental Audit[collectively at Exhibit-I]	CAG Audit[Collectively at Exhibit-F]
FAR covering period from July, 2011 to February, 2013,as reported in FAR No.235/2015-16	Reply to CAG Audit HM No. 24/29.10.2014 (TAR No. 106/2014-15 dated 0.12.2014.)
FAR-235/2015-16 period covered is March,2013 to March, 2015.	
FAR 399/2016-17 Period covered April,2015 to March 2016	
FAR 660/2018-19 period covered April,2016 to June,2017	

Accordingly, the appellant have reversed following Cenvat Credit against the clearance on which exemption was under Notification No. 12/2012-CE.

- (i) Rs. 18,17,800/- reversed vide Entry No. 1182/47 DT.20.2.15 in RG-23-II against the clearance covered during February, 2015 and March, 2015.The said clearances were pertaining to GWIL herein the certificate from Dist. Collector, Bhuj, Gujarat for "Drinking Water Supply Project" as obtained by GWIL in connection with Audit Report No. FAR-235/2015-16 period covered is March, 2013 to March, 2015.



(ii) In addition to above, 1,03,645/- was paid vide Entry No 572 dated 08.07.2015 in RG-23-II being differential amount of Cenvat reversed on account of rate difference in reversal @ 5.15% against 6% under Rule 6(3) of CCR, 2004 demanded in the Audit Report No. FAR-/2015-16 period covered is March, 2013 to March, 2015.

(iii) Rs.8,97,215/- reversed vide Entry No.704 dated 21.11.2014 in their RG-23-II against the clearance under Notification No. 12/2012-CE for the clearance during May, 2013 on proportionate basis and not @ of 6% in connection with HM.No.24 / 29.10.2014.

(iv) Rs.40,02,608/- reversed vide Entry No. 877/35 dt. 26.12.14 in their RG-23-II against the clearance under Notification No. 12/2012-CE covered during October, 2014, November, 2014, December, 2014 at their own under Rule 6(3) of CCR, 2004 to avoid further query raised in past by CAG.

(v) Thereafter the appellant has started to reverse Cenvat credit regularly either on proportional basis or at the rate of 5%/6% /7% as applicable under Rule 6(3) of Cenvat Credit Rules, 2004 and were showing in their ER-1 returns. Total reversal made was Rs. 91,38,746/- which includes aforesaid reversal.

(vi) Subsequently, the appellant were served with following two show cause notices [As a result of audit] for reversal at @ 6%/7% under Rule 6(3) of CCR, 2004 in relation to exemption availed as well.

SCN No	Issue Involved	Date	Period involved	Amount in Rs.
V.85/15-20/Commr/OA-1/2015	Reversal of an amount @6% under Option 6(3)(i) and not accepted reversal under 6(3A) as provided under Rule6(3)(ii)	07.04.2015	Jan-2013 to Jan-2015	1,14,34,124/-
V.84/15-120/aqua/JV/O & A-1/2015		02.01.2016	Feb-2015 to Mar-2015	40,61,739/-

Further, they were also issued the following SCN denying exemption under Notification no 12/2012 CE date 17.03.2012(Sr. No 233)

SCN No	Issue Involved	Date	Period involved	Amount in Rs.
V.84/4-48/Aqua/OA-1/18-19	exemption under Notification no 12/2012 CE date 17.03.2012(Sr. No 233 & 234 and other are denied & asked for payment of CE duty @6%	04.01.2019	Dec-2013 to April-2017	1,43,47,178/-

From the above it appears the department has accepted exemption availed by the appellant during this period from Jan-2013 to Mar-2015, however, for the said period two show cause notices for recovery of Cenvat credit were issued ignoring the reversal made by the appellant as a





result of previous audit and reversal of Cenvat credit made against the said exemption and reported in ER-1 returns.

Further, in respect of exemption at Sr. No. 5,3,7,8 and 10 the appellant have submitted all the relevant documents on the dates shown in the following table to the jurisdictional Assistant Commissioner well before the clearance took place. These documents were also submitted on dated 19.12.2022 (in person) before the learned adjudicating authority as per the direction in the Order- In- Appeal to determine the eligibility of the said exemptions. The invoice wise details of the exemption availed in respect of Sr. No. 5,3,7,8 and 10 and the authorities who have issued certificate is tabulated herein below:

Table-VII

Pending for DENOVO											
Sr. No.(Table 2)	Invoice No.	Dt. Of Invoice	Duty payable	Docs. Submitted on	Name of the customers	Certificate issued by	Nature of work carried out	Noti.	Sr. No	Condition	
5	18	21.04.2017	16323	19.04.2017	Other than GWIL Bhuj-Bhachhau	Dist. Collector,Banswara,Raj.	Water supply project/ Water Supply Scheme/water supply Plants	12/2012-CE	233	23	
	275	10.12.2014	385691	19.11.2014		Dist. Collector,Bhavnagar,Guj.					
	379	30.12.2016	263848	21.12.2016		Deputy Comm,Tumakuru,karnataka					
	201	30.09.2014	125105	23.09.2014		Dist. Collector,Banswara,Raj.					
	530	30.03.2016	23442	23.12.2015		Dist. Collector,Banswara,Raj.					
	311	30.01.2015	26833	17.10.2023	SPML Infra Ltd	Dist. Collector,Jaisalpur					
	439	10-02-2016	54079	17.10.2023	Unaminious Realty & Infra Developers Ltd	Dist. Collector,Daman					
	440	10-02-2016	17463	17.10.2023							
	377	30-12-2016	61341	17.10.2023	Degree mont Pvt Ltd	Deputy Commr,Mandya Dist.					
			1017759								
3	132	08.07.2015	183455	15.05.2015	Other than GWIL Bhuj-Bhachhau [Rajkot Municipal Corporation]	Dist. Collector, Rajkot,Gujarat for Rajkot Municipal Corp.	Drinking water supply and water treatment Plant	12/2012-CE	233	23	
	377	23.12.2015	165529	23.09.2015							
			348984								
7	204	18.08.2015	37082	20.07.2015	Other than GWIL	Chief Executive Officer,BR	Hydro Poer project	12/2012-CE	336	41	
	251	31.12.	13500	26.12.20							



		2013		13	Bhuj-Bhachhau	BCL, NTPC Ltd.				
			50582							
8	134	09.07.2015	32467	09.07.2015	Other than GWIL Bhuj-Bhachhau	Director, Lupin Ltd. for Research & Development	Super thermal power station	12/2012-CE	338	43
10	298	18.11.2016	62330	01.01.2015	Other than GWIL Bhuj-Bhachhau	Chief Executive Officer, MEJA Thermal Power, thermal power project	Research & Development works	10/97-CE		
	221	22.09.2016	36538	24.05.2016		Regional Executive director, NTPC Mauda, Mumbai for hydro power project				
			98868							
G. Total			1548659							

However, the learned adjudicating authority has not given any findings with regard to the documents submitted and why the exemptions are not available to the appellant. Not only that with regard to the facts submitted in relation to suppression of fact, the learned adjudicating authority failed to give their categorical findings in the impugned order.

Accordingly it is claimed by appellant that there was no suppression on their part in relation to present exemptions as the availment of exemption was in the knowledge of the department well before the clearances made, the said exemptions and Cenvat reversal were reported in the respective ER-1. Therefore the charge of suppression of fact with intention to evade payment is not applicable to them. However, the learned adjudicating authority has not offered any findings nor appreciated the submissions of the appellant in this regard.

Accordingly, the impugned show cause notice is not sustainable on the ground of merit as well as on the grounds of limitation and confirmation of such show cause notice vide impugned order is also not sustainable.

- Penalty imposed upon the Appellant, Shri Abhinaya Patel, Director, Shri Basant Maurya, Accountant, and Shri Ravi Solanki, General Manager, GWIL is erroneously imposed:

Without prejudice to what has been submitted herein above, the appellant submits that the learned adjudicating authority without appreciating correct facts, has imposed penalties under Rule 26 of Central Excise Rules, 2002 on Shri Abhinaya Patel, Director, Shri Basant Maurya, Accountant, and Shri Ravi Solanki, General Manager, GWIL.

In this regard it is submitted that the appellant has been granted exemption mentioned as under:



Table-VIII

Sr. No	Category	Plant scheme name	Clearance value	Rate of duty applied	Duty demanded	Cenvat Reversed
1	GWIL Bhuj Bhachhau-Gujarat	Drinking water supply project	67695648	6%	4061739	1817800
2	Other than GWIL Bhuj	Drinking water supply project	116972457	6%	7018347	4394194
4	Other than GWIL Bhuj	Sewage water treatment plant	10702531	6%	642152	653603
			<b>195370636</b>		<b>11722238</b>	<b>7105328</b>
5	Other than GWIL Bhuj	water supply project/ water supply scheme/water supply plants	16962646	6%	1017759	385691
3	Other than GWIL Bhuj	Drinking water supply and water treatment plant	5816399	6%	348984	379559
7	Other than GWIL Bhuj	Hydro power project, thermal power project	1647785	6%	98867	0
8	Other than GWIL Bhuj	Super Thermal power station, thermal power project	851430	6%	50582	14424
10	Other than GWIL Bhuj	Research & Development works	541110	6%	32467	32467
			<b>25819370</b>		<b>1548659</b>	<b>812141</b>
	<b>G.Total</b>		<b>221190006</b>		<b>13270897</b>	<b>7531778</b>

In this regard it is contended that:

- (i) The Exemption mentioned at Sr. No. 1,2 and 4 are already disputed by the appellant by way of an appeal before the Hon'ble CESTAT, Ahmedabad as the same were denied in the Order In Appeal. Therefore, its adjudication in the present remand back proceeding is unwarranted as submitted elsewhere in this grounds of appeal.
- (ii) As regard to exemption mentioned at Sr. No. 3,5,7,8 10, the appellant have categorically contended elsewhere in this grounds of appeal that the appellant have rightly claim exemption and also submitted the relevant documents, however the learned adjudicating authority has erroneously denied these exemptions.
- (iii) Prior to effecting any clearances for the aforesaid exemption i.e.1,2,4,3,5,7,8 and 10 to comply the conditions of the respective Sr.No. of the notification, the appellant have produced all the documents before the jurisdictional Assistant Commissioner and the said documents were also presented before the learned adjudicating authority in the present proceedings;



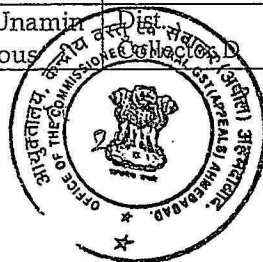
(iv) The appellant was subjected to CAG audit as well as departmental audit. As per the direction of the Audit, the appellant have reversed Cenvat Credit which was not reversed. There are two separate show cause notices demanding to reverse the Cenvat Credit against the exemption availed. Thereby all the activities of the appellant was very much in knowledge of the department about the exemption availed. Neither the appellant suppressed any material facts form the department nor Shri Abhinaya Patel & Basant Maurya did. Therefore, the penalty imposed upon the appellant under Section 11(4) of the Central Excise Act, 1944 and penalty under Rule 26 of Central Excise Rules, 2002 imposed upon Shri Abhinaya Patel, Basant Maurya are erroneous and not sustainable.

(v) As regard to imposition of penalty upon Shri Ravi Solanki, GM of GWIL, his role was confined only for the exemption availed at Sr. No. 1 of the aforesaid table. Against the said exemption the appellant have filed an appeal before the Hon'ble Tribunal and not only that Shri Ravi Solanki have also filed an appeal before the Hon'ble CESTAT, Ahmedabad whereas there was no role on his part for the remaining exemption. Therefore, the imposition of penalty upon Shri Ravi Solanki under Rule 26 of Central Excise Rules, 2002 is erroneous and not sustainable.

- Further they submitted that the invoice wise details of the clearances covered in Sr. No. 3,5,7,8 10 are as under:

Table-IX

Transactions under consideration										
Sr. No.(Table 2)	Invoice No.	Dt. Of Invoice	Duty payable	Docs. Submitted on	Name of the customers	Certificate issued by	Nature of work carried out	Noti.	Sr. No	Condition
5	18	21.04.2017	16323	19.04.2017	Larsen & Turbo Ltd	Dist. Collector,Banswara,Raj.	Water supply project/Water Supply Scheme/water supplyPlants	12/20 12-CE	233	23
	275	10.12.2014	385691	19.11.2014	Vraj Construction Co	Dist. Collector,Bhavnagar,Guj.				
	379	30.12.2016	263848	21.12.2016	EXECUTIVE ENGINEERS	Deputy Comm,Tumakuru,karnataka				
	201	30.09.2014	125105	23.09.2014	SPML INFRA Limited	Dist. Collector,Banswara,Raj.				
	530	30.03.2016	23442	23.12.2015	Larsen & Turbo Ltd	Dist. Collector,Banswara,Raj.				
	57	21.05.2016	43632	30.12.2015	Larsen & Turbo Ltd	Dist. Collector,Su barnapur,Odisha				
	311	30.01.2015	26833	17.10.2023	SPML Infra Ltd	Dist. Collector,Jai pur				
	439	10-02-2016	54079	17.10.2023	Unanimous	Dist. Collector,Banswara,Raj.				



	440	10-02-2016	17463	17.10.2023	Realty & Infra Developers Ltd	aman				
	377	30-12-2016	61341	17.10.2023	Degree mont Pvt Ltd	Deputy Commr, Mandya Dist.				
			1017759							
3	132	08.07.2015	183455	15.05.2015	DOSHI ELECTRIC ENGINEERING CO.	Dist. Collector, Rajkot, Gujarat for Rajkot Municipal Corp.	Drinking water supply and water treatment Plant	12/2012-CE	233	23
	377	23.12.2015	165529	23.09.2015	H. M. Engineers					
			348984							
7	204	18.08.2015	37082	20.07.2015	GENERAL MANAGER (PROJECTS) NTPC LTD	Chief Executive Officer, BR BCL, NTPC Ltd.	Thermal Power project	12/2012-CE	338	43
	251	31.12.2013	13500	26.12.2013	BHARTIYA RAIL BIJLEE COMPANY LTD.					
			50582							
8	134	09.07.2015	32467	09.07.2015	Lupin Ltd	Director, Lupin Ltd. for Research & Development	for Research & Development	10/97-CE, further amended vide NOTIFICATION No. 16/2007-Central Excise		
10	298	18.11.2016	62330	01.01.2015	FANS A. S.	Chief Executive Officer, MEJA Thermal Power, thermal power project	Super thermal power station	12/2012-CE	336	41
	221	22.09.2016	36538	24.05.2016	General Manager NTPC Ltd.	Regional Executive director, NTPC Mauda, Mumbai for hydro power project	Super thermal power station	12/2012-CE		
			98868							
G. Total			1548659							

## (i) For Invoice No 18 dtd 21.04.2017:

M/s Larsen & Toubro Ltd., L&T Construction, Water & Effluent Treatment, Mount Poonamalle Road, Manapakkam, P.B. No 979, Chennai -600089 got work order No/Chittor/ACE-Udaipur NIT-02(Surwaniya)/20 13-14/1598-1609 dated 23.09.13 from the Additional Chief Engineer (BP & SP) PHED Rajasthan Jaipur for executing the works of Regional Water Supply Scheme of 334 Villages of Choti Sarwan and Talwada Panchayat Samiti District Banswara and Peepalkhunt Panchayat samiti District Pratapgarh and their Dharies in District Banswara and Pratapgarh from Jaipur. For the same M/s Larsen & Toubro Ltd has



been placed order for the various type of Pumps to M/s Aqua Machineries Pvt. Ltd and provided the Certificate, duly signed by the proper authority for exemption of excise duty as per Notification 12/2012-CE dtd 17.03.2012(Sr no 233 &condition no 23) in which it is clearly mentioned that "the subject pumps are an integral part of the aforementioned Water Treatment Plant.". Hence the benefit of the Notification 12/2012-CE dtd 17.03.2012(Sr no 233 &condition no 23) to the appellant requires to be extended.

**(ii) For Invoice No 275 dtd 10.12.2014**

M/s Vraj Construction Co., Amreli ordered to M/s Aqua Machineries Pvt. Ltd. for pump sets required to M Vraj Construction Co. Palitana Nagarpalika, Palitana, Dist. Bhavnagar for executing the Works of "Palitana Water Supply Scheme" and provided the Certificate, duly signed by the proper authority for exemption of excise duty as per Notification 12/2012-CE dtd. 17.03.2012(Sr. no 233 &condition no 23) mentioning that the pumps are "intended use as specified in column 3, Sr. No. 233 of Notification No: 12/2012 dated: 17-03-2012. The said pump sets are integral part of aforesaid water supply project." Hence the benefit of the Notification 12/2012-CE dtd 17.03.2012 (Sr no 233 &condition no 23) to the appellant is available.

**(iii) For Invoice No 379 dtd 30.12.2016**

The Karnataka urban water body & Drainage Board, Division Tamakuru entrusted the works to M/s Subhodaya Engineers, M.G. Road, Manglore on tender basis for supply, erection, electrification and commissioning of suitable HP submerged centrifugal pump sets at raw water pump house at Bugudanahally, pure water pump house at WTP and IPS santhemaiddana along with allied accessories under providing continuous pressurized water supply scheme to tumakuru city under UIDSSMT agreement No 47/2016-17 dated 18.10.2016.

M/s Subhodaya Engineers ordered to M/s. Aqua Machineries Private Limited for various type of Pump sets to be-supplied to Executive Engineer, KUWS&DB. Division Tumakuru for executing/ providing water supply scheme and provided the Exemption certificate duly signed by the proper authorities. In the said certificate it is mentioned that said pump sets are for the use as specified in item No (1) , column 3 of Sr. No. 233 of the notification No. 12/2012 - Central Excise de. 17/03 2012. The said equipments/pump sets are integral part of the aforesaid water supply project intended to make the water fit for human & animal consumption under Water supply scheme to Tumakuru City. Therefore, the benefit of the Notification 12/2012-CE dtd. 17.03.2012(Sr. no 233 &condition no 23) to the appellant is available.

**(iv) For Invoice No 201 dtd. 30.09.2014**

Ms SPML INFRA LIMITED, Gurgaon-122001, Haryana got work order of Additional Chief Engineer, PHED, Projects Region Jaipur under work order no. 3198 dated 08.03.2013. Ms SPML INFRA LIMITED ordered to M/S AQUA MACHINIRIES PVT. LTD., Plot no 3821 Phase IV, G.I.D.C. VATVA, Ahemdabad 382445 to supply Drain Pumps for execution of the work of process to Drain the wastage water under work of Extension of WTP from 400 MLD to



600 MLD at Surajpura under Bisalpur Jaipur Water Supply Project sanctioned by the competent authority of the State Government for carrying clear water from Bisalpur Dam to Jaipur City. For the same they have provided the Exemption certificate duly signed by the proper authorities in which it is clearly mentioned that subject Drain Pumps are meant for intended use of the integral part of the water supply projects mentioned in notification no. 6/2007 dated 1st March, 2007 and subsequent amendment vide notification no. 26/2009 CE dated 4.12.2009 and 12/2012 dated 17.03.2012 of department of Revenue, Ministry of Finance and Company Affairs, Govt. of India and therefore exempted of Excise Duty. It is certified that these Drain Pumps, shall form an integral part of above mentioned drinking water supply scheme. These pumps shall be used for Drain the wastage water under work of Extension of WTP, Surajpura. Therefore, the benefit of the Notification 12/2012-CE dtd. 17.03.2012(Sr. no 233 & condition no 23) to the appellant is available.

**(v) For Invoice No 530 dtd. 30.06.2016**

M/s Larsen & Toubro Ltd., L&T Construction, Water & Effluent Treatment, Mount Poonamalle Road, Manapakkam, P.B. No 979, Chennai -600089 got work order No/Chittor/ACE-Udaipur NIT-02(Surwaniya)/2013-14/1586-1597 dated 23.09.13 from the Additional Chief Engineer (BP & SP) PHED Rajasthan Jaipur for executing the works of Regional Water Supply Scheme of 82 Villages & there dhanies of Tehsil Bagidora & Banswara of District Banswara (Raj.) from Suwaniya dam. For execution of the same, M/s Larsen & Toubro Ltd has placed order for Submersible Pumps and its Accessories to M/s. Aqua Machineries Pvt. Ltd, Plot no. 3821, Phase - IV, GIDC, Vatva, Ahmedabad - 382445, Gujarat, India, and provided the exemption certificate issued by the proper authority. In the Certificate, it is clearly mentioned that the above goods is for intended use as specified in SI.NO.233, in Column (3). Item (1) of the Notification No. 12/2012- Central Excise dated 17.03.2012. The above said Submersible Pumps are an integral part of the aforementioned Water Supply Project. Hence, the benefit of the Notification 12/2012-CE dtd. 17.03.2012(Sr. no 233 & condition no 23) to the appellant is available.

**(vi) For Invoice No 57 dtd. 21.05.2016**

The work of 'Execution of 15 nos. of Lift Irrigation Schemes in the Tel Sub basin having Command area between 500Ha to 2000 Ha in the Cluster No. XV in the districts of Balangir, Subarnapur & Boudh including its distribution network, up to 20 Ha Chak having total planned Culturable Command Area of 21,150 Ha on "PC -Turn Key" basis comprising work of Detailed Survey, Planning, Design, Drawing, Estimation, Preparation of Land Acquisition Cases, Preparation of cases for forest land if any, Installation of electrical system connectivity from the Local Grid Substations, and commissioning of all the LI schemes along with the distribution system and Operation & Maintenance of complete commissioned schemes for five years." Has been entrusted to M/s. Larsen & Toubro Limited, ECC Division, 2nd & 3rd Floors, Plot No. 414/2396, Main Road, Chandrasekharpur, Land Mark: SBI Damana Square, Bhubaneswar - Odisha - 751016, Vide agreement No. 100/2013-14 dt. 06.08.2013 by the Department of



Water Resources, Government of Odisha. In this regard M/s. Larsen & Toubro Limited order to M/s Aqua Machineries Pvt Ltd, to supply various type of pump sets intended to use in the completion of the above work. They have provided the duly signed exemption certificate from the authority regarding the same. In this certificate it is mentioned that "All items of machinery, including instruments, apparatus and appliances, auxiliary equipments and their components/parts required for setting of water supply plants" is issued under the notification no. 3/2004 - Central Excise, Dt.: 08.01.2004 to enable the supplier to supply the above goods at 'Nil' rate of Excise duty.

For reference notification no. 3/2004 - Central Excise, Dt.: 08.01.2004 is re-produced as under:

*In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts -*

- (i) *All items of machinery, including instruments, apparatus and appliances, auxiliary equipment and their components/parts required for setting up of water supply plants; and*
- (ii) *Pipes needed for delivery of water from its source to the plant and from there to the storage facility, falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from whole of the duty of excise leviable thereon under the said First Schedule, subject to the condition that a certificate issued by the Collector/ Deputy Commissioner/District Magistrate of the District in which the project is located, is produced to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction, to the effect that such goods are cleared for the intended use specified above.*

*Explanation.- For the purpose of this notification, water supply plant includes a plant for desalination, demineralization or purification of water or for carrying out any similar process or processes intended to make the water fit for agricultural or industrial use.*

While going through the exemption certificate & Invoice submitted by the Appellant, it appears that the goods supplied were for irrigation/agriculture purpose. Therefore, the benefit of the notification no. 3/2004 - Central Excise, Dt.: 08.01.2004 is available to them.

**(VII) For Invoice No 311 dtd. 30.01.2015**

M/s SPML INFRA LIMITED, Gurgaon-122001, Haryana was awarded work order of Additional Chief Engineer, PHED, Projects Region Jaipur under work order no. 3198 dated 08.03.2013.

In this work order, they were required to Supply Drain Pumps(Manufactured by M/s Aqua Machinery Pvt. Ltd.) to Superintending Engineer, PHED Project Circle, Tonk, Rajasthan. These Pumps were intended to use for the process to Drain the wastage water under work of Extension of WTP from 400 MLD to 600 MLD at Surajpura under Bisalpur Jaipur Water Supply Project sanctioned by the competent authority of the State Government for carrying clear water from Bisalpur Dam to Jaipur City.





In this regard, M/s Aqua Machinery Pvt. Ltd. has furnished the duly signed excise exemption certificate issued by the proper authorities specified in (condition 23) SI.NO.233 of the Notification 12/2012-CE dtd. 17.03.2012. In the certificate, it is clearly mentioned that " *These Drain Pumps shall be used in the work of process to Drain the wastage water under work of Extension of WTP from 400 MLD to 600 MLD at Surajpura under Bisalpur Jaipur Water Supply Project sanctioned by the competent authority of the State Government for carrying clear water from Bisalpur Dam to Jaipur City. The above mentioned Drain Pumps are meant for intended use of the integral part of the water supply projects mentioned in notification no. 6/2007 dated 1st March, 2007 and subsequent amendment vide notification no. 26/2009 CE dated 4.12.2009 and 12/2012 dated 17.03.2012 of department of Revenue, Ministry of Finance and Company Affairs, Govt. of India and therefore exempted of Excise Duty. It is certified that these Drain Pumps, shall form an integral part of above mentioned drinking water supply scheme.*

Therefore, the benefit of the Notification 12/2012-CE dtd. 17.03.2012(Sr. no 233 &condition no 23) to the appellant is available.

**(VIII) For Invoice No 439 dtd. 10.02.2016**

M/s. Vishnu prakash R. Pungalia Ltd. 103, Desire Bldg. Dunes Co-operative Housing Society, Dunetha, daman-396210 ordered to M/s Aqua Machinerics Pvt. Ltd to provide/supply the Submerged Centrifugal Pump Sets with Accessories and Non-Clog Submersible Pump Set with Accessories. Further They submitted that the same intended to use in " Implementation of water supply scheme at Dunetha, Daman".

They provided the duly signed excise exemption certificate issued by the proper authorities specified in (condition 23) SI.NO.233 of the Notification 12/2012-CE dtd. 17.03.2012. In the certificate, it is clearly mentioned that "these items are for the intended use as specified in Column 3, sr. no. 233 of the notification no. 12/2012 dated 17

Therefore, the benefit of the Notification 12/2012-CE dtd. 17.03.2012(Sr. no 233 &condition no 23) to the appellant is available.

**(IX) For Invoice No 440 dtd. 10.02.2016**

M/s. Vishnu prakash R. Pungalia Ltd. 103, Desire Bldg. Dunes Co-operative Housing Society, Dunetha, daman-396210 ordered to M/s Aqua Machinerics Pvt. Ltd to provide/supply the Submerged Centrifugal Pump Sets with Accessories and Non-Clog Submersible Pump Set with Accessories. Further They submitted that the same intended to use in the water supply project of "Implementation of water supply scheme at Dunetha, Daman".

They provided the duly signed excise exemption certificate issued by the proper authorities specified in (condition 23) SI.NO.233 of the Notification 12/2012-CE dtd. 17.03.2012. In the certificate, it is clearly mentioned that "these items are for the intended use as specified in Column 3, sr. no. 233 of the notification no. 12/2012 dated 17. Therefore, the benefit of the Notification 12/2012-CE dtd. 17.03.2012(Sr. no 233 &condition no 23) to the appellant is available.

**(X) For Invoice No 377 dtd. 30.12.2016**

M/s Degremont Private Limited, Unitech Business Park, Tower-A,2nd Floor, South City-1, Gurgaon 122001 ordered to Ms Aqua Machinerics Pvt. Ltd, Plot No. 3821, Phase-IV, G.I.D.C., Vatva, Ahmedabad to supply the submersible pumps to The Executive Engineer (K-3), BWSSB- Cauvery Water Supply Scheme Stage I & II at T.K. Halli. They have furnished the duly signed excise exemption certificate issued by the proper authorities specified in (condition 23) SI.NO.233 of the Notification 12/2012-CE dtd. 17.03.2012. In the certificate, it is clearly



mentioned that "The pumps will be used for Water Treatment Plant in Lieu of Existing Cauvery Water Supply Scheme (CWSS) Stage I & II at T.K. Halli Project and are for the intended use as specified in Column 3, SI.No.233(1) of the Notification 12/2012 dated 17.03.2012. The said all items of machinery, including instruments, apparatus and appliances, auxiliary equipment and components or parts required for setting up of Drinking Water Treatment Project.

Therefore, the benefit of the Notification 12/2012-CE dtd. 17.03.2012(Sr. no 233 &condition no 23) to the appellant is available.

**(XI) Invoice No 132 dtd. 08.07.2015**

Contract Agreement and Work Order No. Wtr. Works/East Zone/Out. No. 533 Dt. 23/2/2015 was signed between M/s. Doshi Electric Engineering Co., Rajkot and Municipal Commissioner, Rajkot Municipal Corporation, Rajkot.

In this regard, M/s. Doshi Electric Engineering Co., Rajkot order to M/s . Aqua Machineries Pt Ltd for the work of Design, Manufacturer, Supply, Erection, Testing & Commissioning of Submerged Centrifugal Pump Motors, Electrical Equipments, instrumentation and Manifold with MS piping system at Bedi head works under Rajkot water supply scheme base on Narmada pipeline for 1) Pure water pumping 2) Raw water pumping with two years Comprehensive Operation & Maintenance and also provided the duly signed exemption certificate from the authority regarding the same. In this certificate, it is mentioned that " the goods to be supplied are for the project of Drinking Water Supply and Water Treatment Plant. Hence, the benefit of the Notification 12/2012-CE dtd. 17.03.2012(Sr. no 233 &condition no 23) to the appellant is available.

**(XII) Invoice No 377 dtd. 23.12.2015**

Contract Agreement and Work Order No. Wtr. Works/East Zone/Out. No. 305 dt. 15-09-2015 was Signed between M/s. H.M Engineers, Ahmedabad and Municipal Commissioner, Rajkot Municipal Corporation, Rajkot for the project of drinking water supply and water Treatment plant Aji Filter Plant GSR No.-11 (Capacity 10ML).

In this regard, M/s. H.M Engineers order to M/s. Aqua Machineries Pvt. Ltd. to supply the pump sets and provided the duly signed exemption certificate from the authority regarding the same. In this certificate, it is mentioned that the goods to be supplied are for the project of drinking water supply and water Treatment plant as per relevant notification of Central Excise Department No. 12/2012-Central Excise de: 17.03.2012 Column 3 SI. No. 233(1,2,3) for supply goods at "NIL" Excise duty. Hence, the benefit of the Notification 12/2012-CE dtd. 17.03.2012(Sr. no 233 &condition no 23) to the appellant is available.

**(XIII) Invoice No 204 dtd. 18.08.2015**

NTPC vide project authority Certificate(PAC) Ref No CS-9575-137-2-PAC dtd 26.03.2013 awarded the contract to M/s McNally Bharat Engineering Company Limited, Kolkata for Pre-treatment plant package for Mouda STPP, Stage-I (2x660 MW).further vide amendment No 06



of the said PAC, ordered to M/s. Aqua Machineries Pvt. Ltd. to supply the Drainage pump sets with motor and provided the duly signed exemption certificate confirming Mouda thermal power project as mega thermal power project as per relevant notification of Central Excise Department No. 12/2012-Central Excise dt: 17.03.2012( SI. No. 338(condition no 43) for supply goods at "NIL" Excise duty.

For the reference, Sr. No 338(condition no 43) of Notification No. 12/2012-Central Excise dtd. 17.03.2012 is reproduced as under:

338	Any Chapter	<p>All items of machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipments, power cables used within the power generation plant, 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 aforesaid items and their components, supplied to mega power projects from which the supply of power has been tied up through tariff based competitive Nil43 bidding or a mega power project awarded to a developer on the basis of such bidding.</p> <p>Explanation. -For the removal of doubts, it is clarified that goods required for setting up of "mega power project" include the goods required for development of facilities such as ash disposal system including ash dyke, water intake including treatment and storage facilities and coal transportation facilities for such a project, notwithstanding the fact that such facilities are set up inside or outside the power plant's designated boundary.</p>	Nil	43
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43	<p>If,-</p> <p>(a) an officer not below the rank of Joint Secretary to the Government of India in the Ministry of Power certifies the project as Mega Power Project;</p> <p>(b) in case the certificate regarding mega power project status issued as above is provisional, the chief executive officer of the project furnishes a security in the form of a fixed deposit receipt or Bank Guarantee from any scheduled bank for a term of thirty six months or more, in the name of the President of India for an amount equal to the duty of excise payable but for this exemption, to the Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, having jurisdiction and if the project developer fails to furnish the final mega power status certificate within a period of thirty six months from the date of clearance of excisable goods, the said security shall be appropriated towards duty of excise payable on such clearances but for this exemption;</p> <p>(c) an officer not below the rank of Chief Engineer in the Central Electricity Authority certifies that the said goods are required for the setting up of the said mega power project under the Government of India initiative, indicating the quantity, description and specification thereof;(d)the Chief Executive Officer of the project furnishes an undertaking to the Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, having jurisdiction, to the effect that-</p> <p>a. the said goods will be used only in the said project and not for any other use; and</p> <p>b. (ii)in the event of non-compliance of sub-clause (i), the project developer will pay the duty which would have been leviable at the time of clearance of goods, but for this exemption.</p>
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Therefore, the benefit of the above notification is available for them.

(XIV) Invoice No 251 dtd. 31.12.2013



Bhartiya Rail Bijlee Company Ltd. (A subsidiary of NTPC Ltd.) awarded a contract for Supply of various type of goods to M/s Jyoti Ltd., Industrial Area, P.O. Chemical Industries, Vadodara-390003 against Contract Agreement No. CS-0270-133C-2-FC-COABRBCL/NABINAGAR/10-11/4A dated 18/05/10 for execution of work of NABINAGAR THERMAL POWER PROJECT, BRBCL SITE, VILLAGE & PO: NABINAGAR, DISTRICT: AURANGABAD (BIHAR) 824 303.

In this regard, M/s Jyoti Ltd ordered to M/s Aqua Machinerics Pvt. Ltd. to supply the "Submersible(Portable) type pump with drive for dewatering for disilating & MUV system. M/s Jyoti Ltd also provided the duly signed exemption certificate confirming NABINAGAR THERMAL POWER PROJECT as mega thermal power project as per relevant notification of Central Excise Department No. 12/2012-Central Excise dtd. 17.03.2012( SI. No. 338(condition no 43) for supply goods at "NIL" Excise duty. Therefore, the benefit of the above notification is available for them.

**(XV) Invoice No 134 dtd. 09.07.2015**

Lupin Research Park, 46A/47A, Village Nande, Taluka Mulshi, Pune vide their duly signed excise exemption certificate date 01.07.2015 order to M/s Aqua Machinerics Pvt. Ltd. to supply the pump sets to its Research & Development activities. In the certificate it is clearly mentioned that the goods in receipt for which exemption from excise duty is claimed under the notification No 10/97 as amended vide Noti. No 16/2007 dtd 01.03.2007 are required for research purpose only. The goods shall not be transferred or sold by the company for a period of five years from the date of installation.

Para 2 of the No 10/97 97 as amended vide Noti. No 16/2007 dtd 01.03.2007 is re-produced as under:

S.No	Name of the Institutions	Description of the goods	Conditions
2	Research institution, other than a hospital	(a) Scientific and technical instruments, apparatus, equipment (including computers) (b) accessories, parts and consumables; (c) computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches (d) prototypes	1) The institution - (i) is registered with the Government of India in the Department of Scientific and Industrial Research; (ii) Head gives a certificate in each case of clearance of goods, certifying that the said goods are essential for research purposes and will be used for the stated purpose only. (2) The aggregate value of prototypes received by an institution does not exceed fifty thousand rupees in a financial year. (3) The goods falling under (1) and (2) above shall not be transferred or sold by the institution for a period of five years from the date of installation."

Therefore, the benefit of the above notification is available for them.

**(XVI) Invoice No 298 dtd. 18.11.2016**

MEJA URJA NIGAM(P) LIMITED(a joint venture of NTPC Ltd & U.P. Rajya Vidyut Utpadan Nigam Ltd.) has awarded Contract No. MUNPL/C&M/Contracts/12-13/FC-COA-0016 dated 15.06.2012 to M/s FANS a.s., Czech Republic the supply of cooling tower package for MEJA



Thermal Power Project(2x660 MW) as main contractor. For execution of the above work M/s FANS a.s., Czech Republic order to M/s Aqua Machineries Pvt. Ltd. to supply the Sludge pump with motor .Along with above, they have also provided Excise duty exemption certificate, PAC dated 20.01.2014(duly notarized) mentioning that *"the supply of the goods under the contract made to Mega Power Project in India is under the procedure of ICB(International Competitive Bidding) in accordance with the provisions of paragraph 8.2 9f) of FTP and the import content of the order is NIL"* as per relevant notification of Central Excise Department No. 12/2012-Central Excise dtd. 17.03.2012( SI. No. 336(condition no 41) for supply goods at "NIL" Excise duty. Therefore, the benefit of the above notification is available for them.

**(XVII) Invoice No 221 dtd. 22.09.2016**

M/s NTPC, Ltd awarded the contract no WRHQ-C & M-9561-001-2-FC-COA-13 dated 28.07.2010 to Ms. Unitech Machines Limited, "UM House" Plot No.35P, Sector-44, Gurgaon-122 022, Haryana, to supply of the goods for ASH Water Recirculation System package Mauda STPP(2x500MW) for Mauda Thermal Power Project, under the procedure of International competitive Bidding in accordance with the provisions of paragraph 8.2(g) and 8.4.4(iv) of the Policy.

For execution of the above work Ms. Uni-tech Machines Limited order to M/s Aqua Machineries Pvt. Ltd. to supply the Portable submersible pumps. They provided the Excise duty exemption certificate, PAC dated 20.01.2014(duly notarized) and certifying the Mauda Thermal Power Project as Mega Power Project as per relevant notification of Central Excise Department No. 12/2012-Central Excise dtd. 17.03.2012( SI. No. 336(condition no 41) for supply goods at "NIL" Excise duty. Therefore, the benefit of the above notification is available for them.

- The Appellants have requested to set aside the impugned OIO and allow their appeal on the above ground.

6. The appellants were granted opportunity for personal hearing on 11.09.2023 . Shri Vijay N Thakkar, consultant along with Shri Abhinaya Patel & Shri Basant Maurya appeared for personal hearing as authorized representative of all the four appellants. They re-iterated the submissions made In the Appeal Memorandum. They submitted that the appellant provided pumps for setting up of water treatment plant to the Government of Gujarat through, Gujarat Water Infrastructure Ltd, and claimed exemption from payment of Central excise duty under the notification number 12/2012-CE serial number 233 and submitted a certificate from the District Magistrate in compliance to the condition number 23 of the notification. Similarly, appellant also supplied power driven pumps against international competitive bidding and claimed exemption from Central excise duty under serial number 336 of the same notification and complied with the condition number 41 for the same. The appellant also supplied pumps and machinery to power plants and claimed exemption under serial number 338 of the same notification subject to compliance of condition number 43. However, the departmental officers have made a case by wrong interpretation of the purpose of the supply and have questioned validity of the certificates



issued by the competent authorities. They further, submitted that the appellant had supplied the machineries and pumps etc. as per Government conditions for the bidding and had not factored excise duty in their bidding price.

Further, even if there is any dispute on interpretation and scope of their exemption, the same cannot be called suppression on part of the appellants with intention to evade duty or to gain any undue advantage. Therefore, they requested to set aside the impugned order and the penalties on the co-appellants.

Due to change in the appellate authority, the appellant was given another opportunity of personal hearing on dated 18.12.2023. Shri Vijay N. Thakkar, Tax Consultant and Shri Basant maurya appeared for personal hearing as authorized representative of all the four appellants. They re-iterated the contents of the written submission and requested to allow their appeal.

7. I have carefully gone through the facts of the case available on record, grounds of appeal in respective appeal memorandum filed in all the four appeals and submissions made by the appellants at the time of hearing,

8. As the demand mentioned against Sr No 1,2 & 4 of the above mentioned "Table-1" was upheld vide OIA No AHM-EXCUS-001-APP-14 to 17/2021-22 dated 27.08.2021(issued on 11.10.2023) against which all the appellants preferred appeal before the Hon'ble CESTAT and the same are pending for disposal. Therefore, I refrain from offering any comment in that respect.

8.1 Now, the Issues to be decided is only in r/o Sr. No 3,5,7,8 & 10 of the "Table-1" under the present appeals which are as under:

(1) Whether the main appellant i.e. 'appellant-1', as contended, is eligible for and has correctly availed the benefit of exemption of Notification No. 12/2012-CE (Sr. No. 233, 336, 333 & 339) and Notification No. 10/97-CE (as amended vide Notification No. 16/2007-CE from time to time in respect of the clearances of Submersible Pumps & Parts thereof manufactured and cleared as per 'Annexure-1' of the show cause notice or otherwise?

(2) Whether the demand raised and confirmed against the main appellant i.e. 'appellant-1' invoking the extended period of 5 years is correct or otherwise?

(3) Whether the penalty/fine imposed on the main appellant i.e. 'appellant 1' under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 is correct or otherwise?

(4) Whether penalty imposed upon Shri Abhinay Jayantilal Patel, Director [appellant-2] to the tune of Rs. 1,25,27,330/- under Rule 26 of Central Excise Rules, 2002 is correct or otherwise?

(5) Whether penalty imposed upon Shri Basant Maurya, Senior Accountant 'appellant-3' to the tune of Rs. 41,75,776/-, under Rule 26 of Central Excise Rules, 2002 is correct or otherwise?



(&) Whether penalty imposed upon Shri Ravi Solanki, CGM of GWIL ['appellant-4'] to the tune of Rs. 20,00,000/- under Rule 26 of Central Excise Rules, 2002 is correct or otherwise?

9. Now, as per submission before me, It is observed that the demand has been raised on clearances of power driven water pumps falling under CTH 8413. The clearances covered in Sr. No 5 & 3(**Table-IX**) were made by the appellant availing the exemption under Notification No. 12/2012-CE (Sr. No. 233 & Condition No 23). Therefore, it is relevant to analyze the provisions of Notification No. 12/2012-CE dated 17.03.2012 where relevant text is re-produced below:

Sr. No	Chapter heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition no
1	2	3	4	5
233	84 or any other Chapter	<p>The following goods, namely:</p> <p>(1) All items of machinery, including instruments, apparatus And appliances, auxillary equipment and their components or parts required for setting up of water treatment plants</p> <p>(2) Pipes and pipe fitting needed for delivery of water from its source to the plant(including the clear treated water reservoir, if any, thereof), and from there to the first storage point</p> <p>(3) Pipes and pipe fittings of outer diameter exceeding 10 cm when such pipes- are integral part of the water supply projects.</p> <p><b>Explanation.-.</b> For the purposes of this entry, water treatment plants includes a plant for desalination, demineralisation - or purification of water or for carrying out any similar process or processes intended to make the water fit for human or animal consumption, but: does. not include a plant supplying water for industrial</p>	Nil	23



		purpose..		
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Condition no	Condition
23	if, a certificate issued by the Collector or District Magistrate or Deputy Commissioner of the District in which the plant is located, is produced to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction, to the effect that such goods are cleared for the intended use specified in column (3) of the Table.

While going through the invoice wise certificates issued by the appropriate authorities it is observed that in case of invoice no 18 dated 21.04.2017, 377 dated 30.12.2016, 132 dated 08.07.2015 and 377 dated 23.12.2015, in certificates, it is clearly mentioned that subject goods are cleared to be used in water treatment plant. Therefore the benefit of the above Noti. No 12/2012-CE (Sr. No. 233 & Condition No 23) is available to the appellant.

Further, in one of the certificate issued against the Invoice No 57 dated 21.05.2016, it is mentioned that "All items of machinery, including instruments, apparatus and appliances, auxiliary equipments and their components/parts required for setting of water supply plants" is issued under the notification no. 3/2004 - Central Excise, Dt.: 08.01.2004 to enable the supplier to supply the above goods at 'Nil' rate of Excise duty. While going through the exemption certificate & Invoice submitted by the Appellant, it appears that the goods supplied were for irrigation/agriculture purpose. Therefore, the benefit of the notification no. 3/2004 - Central Excise, Dt. 08.01.2004 is available to them.

In the certificates issued against the rest of invoices covered in Sr No 5 & 3 (Table-IX), it is mentioned that the pumps are "intended use as specified in column 3, Sr. No. 233 of Notification No: 12/2012 dated: 17-03-2012" and the integral part of the water supply projects/drinking water supply scheme. Here, "water supply project" consists a planning, designing, construction, improvement, acquisition of facilities, equipment, sites, treatment, distribution and transport of water. The goal of the project is to ensure the integrity and quality of water. The project generally consists water collection unit, conveyance system, unit for treatment, purification and further distribution. Distribution may be made for human and animal consumption, industry or irrigation purpose. From the above it can be seen that collection of water, treatment of water and further supply of clean water is covered in a water supply scheme or project. Since the certificates issued by the authorities fulfil the condition 23 of the Sr. No 233 of Notification No: 12/2012 dated: 17-03-2012, the appellant is eligible the exemption for the same.

10. Further, The clearances covered in Sr. No 7 (Table-IX) were made by the appellant availing the exemption under Notification No. 12/2012-CE (Sr. No. 338 & Condition No. 43). In support





of their claim they furnished the duly signed exemption certificates confirming Mouda thermal power project & Nabinagar Thermal Power Project as mega thermal power projects. Therefore, the benefit of the said Notification is available to them.

11 The clearances covered in Sr. No 8 (**Table-IX**) was made by the appellant availing the exemption under Notification No. 10/97-CE further amended vide Noti. No. 16/2007-CE. In the certificate furnished as per condition mentioned against para 2 of the above Noti., it is clearly mentioned that the goods in receipt for which exemption from excise duty is claimed under the notification No 10/97 as amended vide Noti. No 16/2007 dtd 01.03.2007 are required for research purpose only. The goods shall not be transferred or sold by the company for a period of five years from the date of installation. Therefore, the benefit of the said Notification is available to them.

12. The clearances covered in Sr. No 10 (**Table-IX**) were made by the appellant availing the exemption under Notification No. 12/2012-CE (Sr. No. 336 & Condition No 41). They have furnished the exemption certificates wherein it is mentioned that *"the supply of the goods under the contract made to Mega Power Project in India is under the procedure of ICB (International Competitive Bidding) in accordance with the provisions of paragraph 8.2 9f) of FTP and the import content of the order is NIL"* as per relevant notification of Central Excise Department No. 12/2012-Central Excise dtd. 17.03.2012( SI. No. 336(condition no 41) for supply goods at "NIL" Excise duty. Therefore, the same is available to them. The relevant extract of Noti. No. 12/2012-Central Excise dtd. 17.03.2012( SI. No. 336(condition no 41) are as under:

Sr. No	Chapter heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition no
336	Any Chapter	All goods supplied against International Competitive Bidding. <b>Condition No.41</b> If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under section 3 of the said Customs Tariff Act when imported into India	Nil	41



13. In view of the above, I am of the considered view that the appellant is eligible for the exemption Notification No 12/2012 dated 17-03-2012 (Sr. No. 233) and notification no. 3/2004 - Central Excise, Dt.: 08.01.2004 for the clearances covered in Sr. No 5 & 3(Table-IX).The appellant is also eligible for the exemption under Notification No. 12/2012-CE (Sr. No. 338 & Condition No 43) for the clearances covered in Sr. No 7(Table-IX) and under notification No 10/97 as amended vide Noti. No 16/2007 dtd 01.03.2007 for the clearances covered in Sr. No 8(Table-IX) .They are also eligible for the exemption under Notification No. 12/2012-Central Excise dtd. 17.03.2012( SI. No. 336(condition no 41) for the clearances covered in Sr. No 10(Table-IX). The benefit of the same is required to be extended to them.

13.1 Further, The adjudicating authority has considered cenvat reversal only of Rs.57,46,598/- and balance amount of Rs.72,06,376/- is proposed to be recovered. While going through the submission made by the appellant-I i.e. ER-I & RG-23-Part-II, it is seen that the appellant-I has reversed additional amount Rs. 23,94,827 /- from their cenvat account(The total Cenvat debited amount Rs. 81,41,425/-). Therefore, not considering the said Cenvat reversed, is legally not correct and the contention of the 'appellant-1' against the same is sustainable .

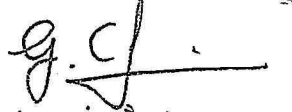
14. On careful consideration of the relevant documents and submission made by the appellant and in view of the discussions made in the foregoing paras, my findings are summarized as under:

- (i) As the Appeal before CESTAT is pending against OIA No AHM-EXCUS-001-APP-14 to 17/2021-22 dated 27.08.2021(issued on 11.10.2021) wherein the demand was upheld against Sr No 1,2 & 4 of the above mentioned "Table-1". Therefore, I refrain from offering any comment in that respect.
- (ii) It is conclusively held that the main appellant i.e. 'appellant-1' is eligible for the benefit of exemption claimed by them as discussed in para 13 in respect of the clearances of Submersible Pumps & Parts thereof cleared by them, as mentioned at Sr. No. 3,5,7,8 & 10 of the Table-IX. Since the demand of Excise duty is not sustainable on merits, there does not arise any question of charging interest or imposing penalties on the 'appellant-1' and others.
- (iii) Additional reversal of Rs.23,94,827 /- as verified from the submission i.e. ER-I & RG-23-Part-II made by the appellant-I is considered and the contention of the 'appellant-1' is sustained .

15. Hence, the contention of the 'appellant-1' against the same is accepted as sustainable and impugned order passed by the adjudicating authority is legally not proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.




16. All the appeals i.e. (I) 'appeal-1' (II) 'appeal-2' (III) 'appeal-3' and (IV) 'appeal-4' filed by the respective appellants, as mentioned in above paras stand disposed off in above terms.

  
(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date: 09.02.24

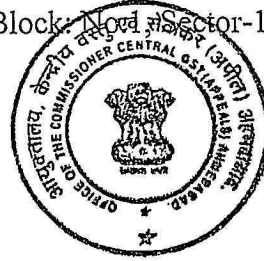
Attested

  
(Manish Kumar)  
Superintendent (Appeals)  
Central Excise, Ahmedabad



By Regd. Post' A. D

- i. Appellant- 1: M/s. Aqua Machineries Private Limited,  
Plot No. 3821, Phase-IV, GIDC Vatva,  
Ahmedabad-382445
- (2) Appellant-2: Shri Abhinaya Jayantibhai Patel,  
Director of M/s. Aqua Machineries Privale Limited,  
Plot No. 3821, Phase-IV, GIDC Vatva,  
Ahmedabad
- (3) Appellant-3: Shri Basant Maurya,  
Senior Accountant and Authorized Signatory of M/s. Aqua Machineries  
Private Limited Plot No. 3821, Phase- IV, GIDC Vatva,  
Ahmedabad
- (4) Appellant-4: Shri Ravi Solanki,  
Chief General Manager (Project), M/s. Gujarat Water Infrastructure  
Limited, Dr. Jivraj Mehta Bhavan, Block: Nova, Sector-10;  
Gandhinagar-382010



Respondent

The Joint Commissioner,  
CGST,  
Ahmedabad South

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Joint Commissioner, CGST, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South  
(for uploading the OIA)

- 5) Guard File
- 6) PA file

