



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

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 - टेलिफैक्स 07926305136



DIN : 20230464SW0000331603

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/494/2022 *AS-52*
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-09/2023-24
दिनांक Date : 25-04-2023 जारी करने की तारीख Date of Issue 26.04.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 07/AC/Sabar Pumps/Div2/A'bad-South/JDM/2022-23 दिनांक:
29.09.2022 passed by Assistant Commissioner, CGST, Division II, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Sabar Pumps Pvt Ltd
3704-A, GIDC Estate,
Phase-IV, Vatva,
Ahmedabad - 382445

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

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

भारत सरकार का पुनरीक्षण आवेदन :

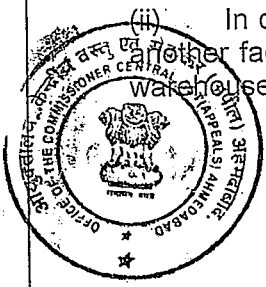
Revision application to Government of India:

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

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी 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 प्रकिया के दौरान हुई हो।

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



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

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

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी 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।

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

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित 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.

(2) 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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

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



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर. रू.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

197 सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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:

- (cliv) amount determined under Section 11 D;
(clv) amount of erroneous Cenvat Credit taken;
(clvi) amount payable under Rule 6 of the Cenvat Credit Rules.

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

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

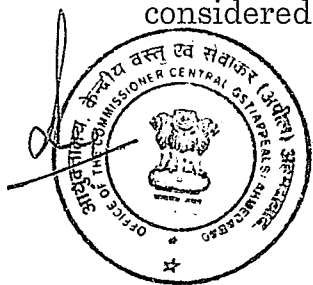


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Sabar Pumps Pvt. Ltd., 3704-A, GIDC Estate, Phase-IV, Vatva, Ahmedabad – 382 445 (hereinafter referred to as the “appellant”) against Order in Original No. 07/AC/Sabar Pumps/Div2/A’bad-South/JDM/2022-23 dated 29.09.2022 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, Division-II, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were holding Central Excise Registration No. AADCS0870JST001. They were engaged in manufacturing Submersible Pumps falling under Chapter Heading No. 84135090 of the First Schedule to the Central Excise Tariff Act, 1985. During the course of EA-2000 Audit of the records of the appellant for the period from F.Y. 2016-17 to June, 2017, it was observed that the appellant had cleared Submersible Pumps and parts to M/s. Sabar Enterprises, a related firm. From the copies of the invoices submitted by the appellant, it was seen that they had sold the goods @ 112% of the basic price shown in the invoice. However, in the case of sales to independent buyers, the appellant had sold the goods at the basic price indicated in the invoices. It appeared that in terms of Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2002 (hereinafter referred to as the Valuation Rules), the transaction value of the excisable goods sold by the appellant to M/s. Sabar Enterprises should be the normal transaction value at which similar goods are sold by M/s. Sabar Enterprises to their buyers.

2.1 The appellant were requested to provide details of the invoices issued by them to M/s. Sabar Enterprises as well as the corresponding invoices issued by M/s. Sabar Enterprises to their buyers. The appellant vide their letter dated 05.02.2020 informed that they do not know the details of the goods sold by M/s. Sabar Enterprise and, therefore, they cannot calculate or charge excise duty on that basis in the invoices issued to M/s. Sabar Enterprises. They had considered the average gross profit of M/s. Sabar Enterprises for the last three



to five years, which was 12% and had calculated the assessable value as 112% of the basic price in respect of the goods sold to M/s. Sabar Enterprises.

2.2 The differential excise duty payable by the appellant, in terms of Rule 9 read with Rule 11 of the Valuation Rules, was arrived at by adopting the sales value of M/s. Sabar Enterprise as the assessable value at which the appellant were liable to pay excise duty. Accordingly, the central excise duty payable by the appellant was determined at Rs. 13,40,877/-.

2.3 It was also observed that the appellant had also sold parts of submersible pumps to M/s. Sabar Enterprises. It was stated by the appellant that they would not be able to submit the details and transaction value of the parts sold to M/s. Sabar Enterprises @ 12.5 ad valorem as the invoice wise details and other information were not mentioned on the invoices of these goods sold to M/s. Sabar Enterprises. Therefore, in terms of Rule 9 read with Rule 11 of the Valuation Rules, the assessable value was arrived at by adopting the sales value of M/s. Sabar Enterprise as the assessable value at which the appellant were liable to pay excise duty. Accordingly, the excise duty payable by the appellant was determined at Rs. 5,01,626/-.

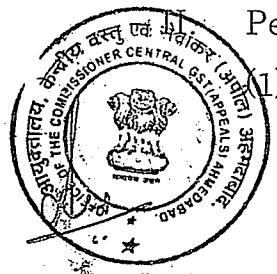
3. Subsequently, the appellant were issued Show Cause Notice bearing No.VI/1(B)-93/C-I/AP-3/AUDIT/AHD-18-19 dated 11.02.2021, wherein it was proposed to :

- a) Recover the central excise duty totally amounting to Rs. 18,42,503/- under Section 11A(4) of the Central Excise Act, 1944 along with interest under Section 11AA of the Central Excise Act, 1944.
- b) Impose penalty under Section 11AC(1)(c) of the Central Excise Act, 1944.

4. The SCN was adjudicated vide the impugned order wherein :

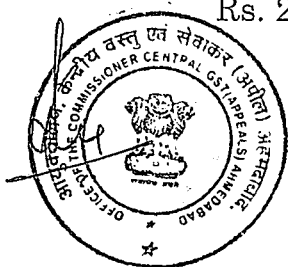
- I. The central excise duty totally amounting to Rs. 18,42,503/- was confirmed under the proviso to Section 11A(4) of the Central Excise Act, 1944 along with interest under Section 11AA of the Central Excise Act, 1944.

Penalty amounting to Rs. 18,42,503/- was imposed under Section 11AC(1)(c) of the Central Excise Act, 1944.



5. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds :

- i. The adjudicating authority has erred in confirming the demand on the ground that their plea is not substantiated by documentary evidence and that no evidences were submitted in respect of the actual payment of duties/VAT/taxes.
- ii. The adjudicating authority has failed to appreciate that they had sold Submersible Pumps and Parts partly to M/s. Sabar Enterprises and partly to independent buyers at the same basic price.
- iii. The adjudicating authority has failed to appreciate that they had sold Submersible Pumps and Parts to M/s. Sabar Enterprises @ 112% of the basic prices by considering the average gross profit of M/s. Sabar Enterprises. Whereas the goods sold to independent buyers was at the same basic price.
- iv. The adjudicating authority has failed to appreciate that M/s. Sabar Enterprises had purchased Submersible Pumps and Parts from them as well as from other suppliers and sold the same through their dealer network.
- v. The adjudicating authority failed to appreciate that they cannot know the details regarding the price at which M/s. Sabar Enterprise sold the goods to their dealers.
- vi. The adjudicating authority has failed to appreciate that they had paid duty on the assessable value arrived at by adding gross profit of 12% to the basic price charged from M/s. Sabar Enterprise.
- vii. The Audit has erred in calculating the value of the goods sold by M/s. Sabar Enterprises to their buyers by increasing sales income @ 114.104%.
- viii. While ascertaining the total value of Pump sets and Parts sold by M/s. Sabar Enterprises to their buyers, the Audit has taken total value by them to M/s. Sabar Enterprises as Rs. 21,33,43,382/-, which is wrongly ascertained.
- ix. The total value of Rs. 21,33,43,382/- includes the value of Parts amounting to Rs. 25,84,213/-. Hence, the correct value of Pump Sets is Rs. 21,07,45,985/-.



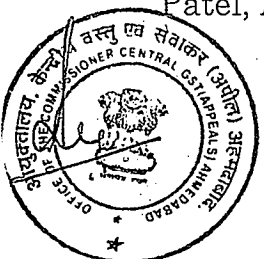
- x. The Audit has made substantial error in calculating the total value of goods and also the difference in total value of goods sold by the related party i.e. M/s. Sabar Enterprises to their independent buyers.
- xi. They submit the recalculation sheet wherein the correct figures of differential duty payable has been arrived at as amounting to Rs. 2,65,962/- for Pump Sets and Rs. 6,916/- for Parts of Pump Sets.
- xii. In the SCN the value of Pump Sets is considered as Rs. 18,48,90,389/- instead of Rs. 21,07,45,985/-. The amount of Rs. 2,84,52,993/- is considered as value of Parts of Pump sets which is factually wrong.
- xiii. The amount of Rs. 2,58,55,596/- should be considered as Pump Sets instead of Parts as the Pump sets were purchased from them but not sold and was lying in stock with M/s. Sabar Enterprises.
- xiv. Permissible deductions to be excluded from the manufacturer's sales price would also be excludible from the related person's sales price.
- xv. The adjudicating authority failed to appreciate that the duty demanded has been directly calculated on the basis of the percentage increase in sales income of M/s. Sabar Enterprises which included C.Ex. duty, Sales Tax/CST paid on purchase of goods. The differential short payment of duty has been calculated without ascertaining the correct total value of goods sold by M/s. Sabar Enterprises in terms of Rule 9.
- xvi. The duties and taxes paid by M/s. Sabar Enterprises at the time of purchase of goods have not been abated.
- xvii. The definition of transaction value as per Section 4 of the Central Excise Act, 1994 excludes whatever amount actually paid or is payable to the Government by way of excise, sales tax and other taxes.
- xviii. It is now settled law that in case of sale to related person, the provision of Section 4 provides that instead of manufacturer's sale price, it is the related person's sales price which would be the basis of assessment. Thus, what is permissible to be excluded from the manufacturer's sales price would also be excludible from the related person's sale price.
- xix. The adjudicating authority has failed to appreciate that M/s. Sabar Enterprises has sold goods at basic value amounting to Rs. 21,33,30,198/- to their buyer after abating excise duty and VAT/CST paid amounting to Rs. 2,08,25,169/-. The assessable value @ 114.104% amounts to Rs. 24,34,18,289/- from which the taxes paid amounting to Rs. 2,08,25,169/- to be deducted. Accordingly, the assessable value of the goods amounts



to Rs. 22,25,93,120/- on which central excise duty amounting to Rs.1,35,19,232/- (@ 12.5%+6%) was payable. They have paid total central excise duty amounting to Rs. 1,45,23,884/-. Hence, they have paid excess central excise duty amounting to Rs. 10,04,652/-.

- xx. The adjudicating authority has failed to appreciate that while quantifying the duty payable, the permissible deductions from the sale price of the related person, like discounts, is also to be allowed.
- xxi. They had explained to the Audit party that M/s. Sabar Enterprises had given various discounts, which average 2%, which was given separately through Credit Note issued to the buyers. However, the discounts were not considered while calculating the ratio of 114.104% for calculating short payment of central excise duty.
- xxii. If the discounts @ 2% is considered, then the ratio would be 112% which matches with their assessable value on which duty was paid. Hence, there is no question of any differential/short payment of duty as alleged.
- xxiii. They are not liable to pay any interest and penalty for the reason that when no duty is liable to be paid, the question of interest and penalty does not arise.
- xxiv. The finding of the adjudicating authority that their plea is not substantiated by any documentary evidence regarding sale value of Pump sets instead of Parts lying in stock is not correct as they had submitted detailed documentary evidence in respect of the value of Pump Sets amounting to Rs. 2,58,55,596/-.
- xxv. The adjudicating authority has also erred in arriving at the finding that they had not submitted any evidence regarding actual payment of duties/VAT/taxes. It is stated in the SCN itself that they had charged and paid central excise duty @ 6% on Pump Sets and @ 12% on Parts. Hence, actual payment of central excise duty is proved in the SCN itself.
- xxvi. They had paid CVAT/GVAT amounting to Rs. 62,31,870/- and in support they rely upon the VAT returns filed by them during the relevant period. However, the adjudicating authority failed to consider the said evidences of actual payment of duties/VAT.

6. Personal Hearing in the case was held on 14.02.2023. Shri Harshad Patel, Advocate, and Shri Bhaveshkumar Rameshchandra Sheth, Accountant,



appeared on behalf of appellant for the hearing. They reiterated the submissions made in appeal memorandum.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made during the personal hearing and the materials available on records. The dispute involved in the present appeal relates to the confirmation of demand of central excise duty amounting to Rs. 18,42,503/- along with interest and fine and penalty. The demand pertains to the period from April, 2016 to June, 2017.

8. It is observed that the appellant was issued SCN demanding central excise duty in respect of their sales to the related entity, M/s. Sabar Enterprises. It is the contention of the department that since the sales is to a related firm, the assessable value has to be determined in terms of Rule 9 and Rule 11 of the Valuation Rules. It is observed that the appellant have *per se* not disputed the contention of the department regarding valuation of the goods cleared to the related firm, in terms of Rule 9 and Rule 11 of the Valuation Rules. The appellant have challenged confirmation of demand on the following grounds:

- A) The value of Pump sets, amounting to Rs. 25,84,213/-, cleared to M/s. Sabar Enterprises and which are lying in stock, has been wrongly considered to be that of Parts;
- B) Permissible deductions on account of duty/VAT/taxes have not been allowed while determining the assessable value of the goods cleared by the related firm M/s. Sabar Enterprises; and
- C) No deduction of the discounts given by M/s. Sabar Enterprises to their buyers has been allowed while arriving at the assessable value.

8.1 I have perused the impugned order and find that the above contentions of the appellant have been summarily dismissed by the adjudicating on the grounds that the appellant have not substantiated their claim by any documentary evidences. The appellant have, on the other hand contended in their appeal memorandum, that they had submitted detailed documentary evidences of the differential value of Pumps lying in stock with M/s. Sabar Enterprises. They have also contended that the SCN itself acknowledges that they had cleared goods to M/s. Sabar Enterprises on payment of central excise



duty, but the same was not considered while determining the assessable value of M/s. Sabar Enterprises for the purpose of charging central excise duty. The appellant have also stated that they rely upon the Central Excise returns and VAT returns filed by them during the relevant period in support of their claim for deduction of the taxes for determining the assessable value of the goods sold by M/s. Sabar Enterprises. As regards deduction of the discounts, given by M/s. Sabar Enterprises, for determining the assessable value, the appellant have contended that the same are given by way of Credit Notes to the buyers of M/s. Sabar Enterprises.

8.2 Having gone through the case records, I find that the department has not correctly determined the assessable value of the goods sold by the related firm M/s. Sabar Enterprises for charging central excise duty. The duties paid by the appellant as well as the other taxes paid by M/s. Sabar Enterprises have to be factored in as deductions from the sale price of M/s. Sabar Enterprises for determining the assessable value of the goods sold by M/s. Sabar Enterprises. Further, the element of discounts claimed by the appellant to have been given by M/s. Sabar Enterprises is also required to be considered, if substantiated by evidence, for arriving at the correct assessable value. However, the appellant have not produced any Credit Note as part of their appeal memorandum to enable this authority to give any definitive finding. In so far as the contention of the appellant regarding the value of Pump Sets being wrongly considered as Parts, it is observed that hereto the appellant have not submitted any evidence to substantiate their claims. The determination of whether the goods are Pump Sets or Parts is very essential as there are different rates of central excise duty for Pump Sets and Parts.

8.3 Considering the above facts, I am of the considered view that the matter is required to be remanded back to the adjudicating authority to re-calculate the differential central excise duty payable by the appellant. The adjudicating authority should consider the claim of the appellant and allow the deductions permissible in terms of Explanation (d) to Section 4(3) of the Central Excise Act, 1944. The appellant are directed to submit before the adjudicating all the relevant documentary evidences in support of their contentions, within 15 days of the receipt of this order. The adjudicating authority shall consider the documents submitted by the appellant and re-calculate the differential central



excise duty payable by the appellant. Needless to state, the principles of natural justice are to be adhered to in the remand proceedings. In view thereof, the impugned order is set aside and the appeal filed by the appellant is allowed by way of remand.

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

The appeal filed by the appellant stands disposed of in above terms.

Akhilesh Kumar
25th April, 2023..
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 25.04.2023



Attested:

N. Suryanarayanan. Iyer
(N.Suryanarayanan. Iyer)
Assistant Commissioner (In situ),
CGST Appeals, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Sabar Pumps Pvt. Ltd.,
3704-A, GIDC Estate,
Phase-IV, Vatva,
Ahmedabad – 382 445

Appellant

The Assistant Commissioner,
Division- II, CGST,
Commissionerate : Ahmedabad South.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
(for uploading the OIA)
4. Guard File.
5. P.A. File.

