::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,
द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142 Email: commrappl3-cexamd@nic.in

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :- **DIN-20210764SX0000000E38**

क	अपील / फाइलसंख्या/ Appeal /File No.	मूलआदेशसं / OIO No.	दिनांक/ Date
	V2/98/RAJ/2020	**18/D/AC/2020-21**	**31.08.2020**

ख अपील आदेश संख्या(Order-In-Appeal No.):

RAJ-EXCUS-000-APP-030-2021

आदेश का दिनांक / Date of Order:	**30.06.2021**	जारी करने की तारीख / Date of issue:	**02.07.2021**

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता** & प्रतिवादी का नाम एवं पता /Name & Address of the **Appellant** & Respondent :-

M/s. Hariom Agro Industries Dhebar Road, Atika (South), Nehrunagar Main Road, Rajkot.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील,केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखि+त जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग , ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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.5000/-, Rs.10,000/- where amount of dutydemand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में चार प्रतियाँ में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित अधिनियम,1994की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) &9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissionerauthorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal..

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वितीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" मे निम्न शामिल है

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वितीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगे।/
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

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

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार कोपुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई,वित मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs 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

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी 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.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outsideIndia export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायावधि पर या बाद में पारित किए गए है।/
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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case,if the order covers variousnumbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं । /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER-IN-APPEAL ::

M/s. Hariom Agro Industries, Rajkot (hereinafter referred to as "Appellant") has filed Appeal No. V2/98/Raj/2020 against Order-in-Original No. 18/D/AC/2020-21 dated 31.8.2020 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner (in situ), Central GST Division, Rajkot-I (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Appellant was engaged in the manufacture of Turbine Pumps primarily designed for handling water falling under Chapter No. 84 of the Central Excise Tariff Act, 1985 and was availing the benefit of SSI Exemption Notification No. 8/2003-CE dated 1.3.2003, as amended. Investigation carried out by the Preventive unit of Central Excise, Rajkot revealed that V8 and V10 size of Turbine Pumps being manufactured by the Appellant were not conforming to the standards specified by Bureau of Indian Standards (BIS) and hence, they were not eligible for benefit of SSI exemption notification supra.

2.1 On culmination of investigation, the Show Cause Notice No. V. 84(4)86/ MP/D/09 dated 19.1.2010 was issued to the Appellant calling them to show cause as to why Central Excise duty amount of Rs. 1,77,741/- should not be demanded and recovered from them under proviso to Section 11A(1) of the Central Excise Act, 1944 (hereinafter referred to as 'Act') along with interest under Section 11AB of the Act and proposed imposition of penalty under Section 11AC of the Act.

2.2 The above Show Cause Notice was adjudicated by the Assistant Commissioner, erstwhile Central Excise, Division-I, Rajkot vide Order-in-Original No. 16/D/AC/2010-11 dated 28.1.2011 who confirmed demand of Central Excise duty of Rs. 1,77,741/- under Section 11A(1) of the Act, along with interest under Section 11AB ibid and imposed penalty of Rs. 1,77,741/- under Section 11AC of the Act.

2.3 The Appellant filed appeal before the then Commissioner (Appeals), Central Excise, Rajkot who vide his Order-in-Appeal No. 71/2011/Commr(A)/ CMC/RAJ dated 8.4.2011 allowed the benefit of cum-duty but upheld the

remaining part of impugned order. The Appellant filed appeal before the Hon'ble CESTAT, Ahmedabad who vide its Order No. A/10691-10695/2019 dated 15.4.2019 remanded the matter to the adjudicating authority with the observation that there is no requirement of registration with BIS in order to get benefit of SSI exemption and that it only needs to be proved that the product is in conformation of BIS standard.

2.4 In remand proceedings, the adjudicating authority confirmed Central Excise duty of Rs. 1,64,210/- under Section 11A(1) of the Act, along with interest under Section 11AB ibid and imposed penalty of Rs. 1,64,210/- under Section 11AC of the Act.

3. Being aggrieved, the Appellant has filed the present appeal, *inter alia*, on following grounds:

(i) The adjudicating authority has erred in confirming the demand of Rs. 1,64,210/- without appreciating the facts of the case. The findings of the adjudicating authority without producing any contrary evidence is improper and unjustified and consequently the impugned order is bad in law and is liable to be set aside. In any case the findings of the adjudicating authority is beyond the scope of show cause notice as also the observation given by the Honorable CESTAT and hence, the same is liable to be set aside

(ii) They are manufacturing power driven pump sets and has sold / cleared power driven pump sets only and therefore the restriction as narrated in notification no. 8/2003-CE dated 1-3-2003 as amended is not applicable and consequently the demand raised by the department was ought to have been set aside. The adjudicating authority has also erred in confirming the demand without considering the fact that the Hon'ble CESTAT in the case of Patel Field Marshal Industries, Rajkot have clearly held that the pumps and the pump sets are separate product. The said decision was binding on the adjudicating authority and consequently the demand was ought to have been set aside.

(iii) The adjudicating authority has also erred in confirming the demand without properly appreciating the fact that the value adopted by the department was based on the presumptions and assumptions only in as much as the value of Prime mover is liable to be excluded from the

assessable value and consequently the duty should have been quantified. The adjudicating authority has also erred in confirming the demand without allowing the deduction available under the provisions of Section 4 of the Central Excise Act. The assessable value is liable to be reduced by the duty payable as also by the amount of goods traded or sold in the capacity of trader.

(iv) The adjudicating authority has erred in imposing the penalty of Rs. 1,64,210/- and liable to be set aside in view of the above grounds as also the facts of the case. In any case, the issue under consideration is that of interpretation of the relevant provisions and therefore also the penalty is liable to be set aside.

4. Personal hearing in the matter was conducted in virtual mode through video conferencing on 25.5.2021. Shri Paresh Sheth, Advocate, appeared on behalf of the Appellant. He reiterated the grounds of appeal memorandum and submitted additional submission dated 24.5.2021.

4.1 In additional submission, the Appellant has contended that,

(i) They had produced BIS certificate of one of the products and has produced Chartered Engineer's certificate and also the drawings of their another product during the remand proceedings over and above the documentary evidences produced at the time of original proceedings which proves beyond doubt that the product under consideration are in conformity with the similar product for which they hold certificate. The Department has not produced any evidence rebutting such certificate or has produced any evidence to prove that the product is not in conformity with BIS certificate. In absence of such evidences rejection of our claim is not proper and valid.

(ii) The Department had proposed rejection of SSI exemption benefit on the ground that the pumps manufactured by them were not confirming ISI certification and are also not holder of registration under BIS. The said exemption can be denied only if the Bureau of Indian Standard has specified some standard and the assessee does not manufacture pump/ Pump set as per the said standard. Since the said institute has not specified any standard they are not obliged to manufacture Pump/Pump set as per the so called standard specified by the said institute and hence,

the show cause notice under consideration is liable to be set aside.

(iii) They were engaged in manufacturing of pump set and not the pump as alleged in the show cause notice. They have enclosed copy of catalogue for the respective product in our appeal, which clarifies beyond doubt that they have not cleared bare pump but has cleared pumping set which is eligible for exemption under notification no. 8/2003 dated 1-3-2003 as amended. From the catalogue, it can be seen that the pumps are attached with the head and is not a bare pump and therefore the allegation of the department is not proper and justified and relied upon case law of Patel Field Marshal Industries - 2003 (158) E.L.T. 483, wherein it has been held that pump and Pump set are different product.

(iv) That the intention of the Appellant was not to evade the payment of duty and therefore the penalty proceedings initiated under the provisions of Section 11AC is also not proper and correct and is liable to be set aside and relied upon case laws of Fas Kusum Ispat (P) Ltd.- 2009 (240) E.L.T. 13 and Kisan Mouldings Ltd.- 2010 (260) E.L.T. 167 (S.C.).

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal memorandum and additional written submission as well as oral submission made at the time of hearing. The issue to be decided in the present appeal is whether the appellant was eligible for benefit of SSI Exemption Notification No. 8/2003-CE dated 1.3.2003 or not.

6. On perusal of the records, I find that an offence case was booked against the Appellant for wrong availment of benefit of Exemption Notification No. 8/2003-CE dated 1.3.2003, as amended. Investigation carried out against the Appellant revealed that V8 and V10 size of Turbine Pumps manufactured by them during the years 2007-08 and 2008-09 were not conforming to the standards specified by Bureau of Indian Standards (BIS) and hence, they were not eligible for benefit of SSI exemption notification *supra*. The impugned order has confirmed demand of Central Excise duty of Rs. 1,64,210/- under Section 11A(1) of the Act, along with interest under Section 11AB ibid and imposed penalty of Rs. 1,64,210/- under Section 11AC of the Act.

6.1 I find that the impugned order was passed pursuant to remand directions of the Hon'ble CESTAT, Ahmedabad. It is, therefore, pertinent to examine the

relevant portion of the Hon'ble Tribunal's order, which is reproduced as under:

> "4. Heard both sides and perused the record. On going through the entry No. (xi) given in annexure to Notification No. 8/2003-CE dated 01.03.2003, we find that there is no requirement of registration under BIS. The only requirement is that specification of the product should be in conformation to BIS standards in respective product manufactured and cleared by the appellant. In this regard, the appellant have submitted Chartered Engineer's certificate. It is observed that the lower authorities denied the exemption contending that the product manufactured and cleared by the appellant is not registered with BIS. We do not agree with the contention of the lower authority as there is no requirement of registration as per entry serial No. (xi) of annexure of the notification. Even on the basis of any acceptable evidence if it is established that the product specification is in conformation to BIS standard, it is eligible for exemption. Accordingly, the matter needs reconsideration by the lower authorities. Since the product is not registered, the same cannot be criteria for denying exemption. The appellant only needs to prove on the basis of all the facts and the specification of the product that the same is in conformation to the standard described in BIS.
>
> 5. Accordingly, we set-aside the impugned order and remand the matter to the Adjudicating Authority to pass a fresh order. The other issues are also kept open. Appeals are allowed by way of remand."

6.2 It is also pertinent to examine the findings of the adjudicating authority. The relevant portion of the impugned order is reproduced as under:

> "15. It is on record that the noticee has obtained BIS Certification for one of their products i.e. V6 bore type turbine pumps. However, the show cause notice issued by the department is related to clearance of Turbine Pumps of V8 and V19. During the Personal Hearing, Shri Pravin Damji Davda submitted a copy of BIS Registration Certificate. Further he submitted a certificate dated 20.03.2019 issued by Shri Babulal A. Ughreja, Patcon Consultancy, Chartered Engineer, Rajkot certifying that their products, other than V6, are also having standards mentioned in BIS. I have gone through the certificate issued by Shri Babulal A. Ughreja dated 20.03.2019. It is mentioned in the certificate that "on the basis of our inspection of vertical turbine pump" he has given the certificate. The period of dispute in the show cause notice is 2007-08 & 2008-09. The inspection of the goods Shri Babulal A. Ughreja was carried out in the

year 2019. Therefore, I find that the certificate given by Shri Babulal A. Ughreja does not help the noticee. Other than the certificate, the noticee has not brought on record any evidence which indicates that the turbine pumps manufactured by him during the relevant period were conforming to the standards specified in BIS. In view of this, I hold that the noticee is not eligible for exemption under Notification No. 08/2006-C.E. dated 01.03.2006 as amended. Therefore, excise duty of Rs. 1,64,210/- (duty amount arrived after re-working in terms of OIA dated 08.04.2011) is required to be recovered under Section 11A(1) of the Central Excise Act, 1944 along with interest under Section 11AB of the Central Excise Act, 1944."

6.3 I find that the Hon'ble Tribunal had observed that registration of BIS is not necessity for claiming exemption of SSI exemption Notification No. 8/2003-CE dated 1.3.2003, as amended, and if it is established on the basis of any acceptable evidence that the product specification was in conformation to BIS standard, then product is eligible for SSI exemption. As per findings recorded by the adjudicating authority in impugned order passed in *de novo* proceedings, the Appellant had produced Chartered Engineer's Certificate dated 20.03.2019, wherein it was mentioned that certificate was issued on the basis of inspection of Vertical Turbine pump. The adjudicating authority discarded the said Certificate by observing that period of dispute in the Show Cause Notice was 2007-08 & 2008-09 but inspection of the product was carried out by the Chartered Engineer in the year 2019. The adjudicating authority further observed that the Appellant had not brought on record any other evidence which indicate that the turbine pumps manufactured by them during the relevant period were conforming to the standards specified by BIS. I find that the adjudicating authority was justified in rejecting the Certificate issued by the Chartered Engineer as an evidence. Apparently, Certificate issued based on inspection of product in the year 2019 cannot be admitted as an evidence to certify clearance of goods by the Appellant in the years 2007-08 and 2008-09. The Appellant was required to furnish evidence to prove that the disputed products cleared by them in the years 2007-08 and 2008-09 were conforming to BIS standard. Further, the Appellant has also not produced any other evidence before me in support of their contention that products manufactured by them at the relevant period were conforming to BIS standards. After careful examination of facts, I am of the opinion that the adjudicating authority was justified in disallowing the SSI exemption benefit under notification No. 8/2003-CE dated

1.3.2003, as amended.

7. The Appellant has contended that they were engaged in the manufacture of pump sets and not bare pumps, as alleged in the Show Cause Notice and that pump sets were eligible for exemption under Notification No. 8/2003 dated 1.3.2003, as amended and hence, demand confirmed in the impugned order is not sustainable. The Appellant has further contended that value of Prime mover is required to be excluded from the assessable value and consequently the duty should have been quantified. I find it is pertinent to examine the relevant entry appearing in Notification No. 8/2003-CE dated 1.3.2003, as amended by Notification No. 8/2006-CE dated 1.3.2006, which is as under:

> "(xi) all goods falling under Chapter 84 {other than power driven pumps primarily designed for handling water which do not conform to standards specified by BIS (Bureau of Indian Standards) for such pumps}."

7.1. As per above entry, power driven pumps conforming to standards specified by BIS were eligible for SSI exemption. In the said entry, phrase used is 'power driven pumps' and not bare pumps. The power driven pump includes bare pump and prime mover i.e. motor. The Appellant, admittedly, manufactured and sold pump sets i.e. pump and motor. Thus, in order to become eligible for SSI exemption, the pump sets manufactured by them were required to be conforming to the standards specified by BIS. Since, the Appellant could not produce evidence that the product manufactured by them were conforming to the BIS standards, they were not eligible for SSI exemption benefit as held by me supra. Further, prime mover being part of pump set, its value was correctly included in the assessable value for the purpose of determining duty liability. I do not find any merit in the contention raised by the Appellant.

8. The Appellant has further contended that the assessable value is required to be reduced to the extent of goods sold in the capacity of trader. I find that the Appellant has not submitted any documentary evidence before me regarding purchase and sale of traded goods. I, therefore, have no other option but to discard this contention.

9. The Appellant has contended that SSI exemption can be denied only if the Bureau of Indian Standard has specified some standard and the assessee does not manufacture pump/ Pump set as per the said standard. Since BIS has not

specified any standard they are not obliged to manufacture Pump/Pump set as per the so called standard specified by the said institute and hence, the impugned order is liable to be set aside. I find that the contention raised by the Appellant is contradictory. On one hand, the Appellant has produced certificate issued by the Chartered Engineer certifying that products manufactured by the Appellant were in conformation to BIS specification and on other hand, they contend that BIS has not specified any standard for manufacture of pumps. The contention is discarded being devoid of merit.

10. In view of above discussion and findings, I uphold the impugned order confirming demand of Central Excise duty of Rs. 1,64,210/- under Section 11A(1) of the Act. Since confirmation of demand is upheld, it is natural that confirmed demand is required to be paid along with interest. I, therefore, uphold recovery of interest under Section 11AB *ibid*.

11. As regards penalty imposed under Section 11AC of the Act, the Appellant has pleaded that their intention was not to evade payment of duty and therefore, penalty imposed under Section 11AC of the Act is liable to be set aside. I find that wrong availment of benefit of exemption notification No. 8/2003-CE dated 1.3.2003, as amended in respect of V8 and V10 size of Turbine Pumps was unearthed during investigation carried out against the Appellant. Had there been no investigation by the Department, the wrong availment of exemption notification and consequent evasion of Central Excise duty by the Appellant would have gone unnoticed. So, the Appellant has been rightly held liable for penalty under Section 11AC of the Act. I, therefore, uphold the imposition of penalty of Rs. 1,64,210/- under Section 11AC of the Act.

12. In view of above, I uphold the impugned order and reject the appeal.

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

13. The appeal filed by the Appellant stand disposed off in above terms.

30 June, 2021

(AKHILESH KUMAR)
Commissioner (Appeals)

सत्यापित,

विपुल शाह
अधीक्षक (अपील)

By RPAD

To, M/s. Hariom Agro Industries Dhebar Road, Atika (South), Nehrunagar Main Road, Rajkot.	सेवा में, मैसर्स हरिओम एग्रो इंडस्ट्रीज़ ढेबर रोड, अटिका (साउथ), नेहरुनगर मैन रोड, राजकोट।

प्रतिलिपि :-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
3) उप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट -1 मण्डल, को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।