



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan  
रेस कोर्स रिंग रोड / Race Course Ring Road  
राजकोट / Rajkot - 360 001



सत्यमेव जयते

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DIN-20211264SX0000555C9F

क्र	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/85/RAJ/2021	24/D/AC/2020-21	11-02-2021
	V2/86/RAJ/2021	24/D/AC/2020-21	11-02-2021

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

**RAJ-EXCUS-000-APP-059 To 060-2021**

आदेश का दिनांक /  
Date of Order: 29.12.2021 जारी करने की तारीख /  
Date of issue: 30.12.2021

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

- ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ महायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा  
उपरलिखित जारी मूल आदेश से मुजित: /  
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. F-Tech Engineering Co. (Mansata Industrial Area, Steet No.1), Gondal Road, ST Workshop, 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) सोमा शुल्क, कन्ट्राय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण क प्रांत अपील, कन्ट्राय उत्पाद शुल्क अधिनियम, 1944 का धारा 35B क अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित 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 सम्बंधित 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, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए।/  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in 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 मांग, ब्याज की मांग 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 क्रमशः 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक 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। स्वयं 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 duty demand/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 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, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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 मांग, ब्याज की मांग 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 क्रमशः 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक 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। स्वयं 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five 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) वित्त अधिनियम, 1994 की 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 सकती 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 Form 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 Commissioner authorizing 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 वित्तीय 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" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
  - सेनबेट जमा की ली गई गलत राशि
  - सेनबेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं- 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा। /
- 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 :
- amount determined under Section 11 D;
  - amount of erroneous Cenvat Credit taken;
  - 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 को पुनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त 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:
- 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
  - 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 छूट (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.
  - यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
  - मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इण्टी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाचिधि पर या बाद में पारित किए गए हैं। / 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.
  - उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत 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 साथ 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.
  - पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहां 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.
  - यदि इस आदेश में कई मूल आदेशों 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 पत्री कार्य में बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
  - यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये 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 adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
  - सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में बर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और 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.
  - उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://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](http://www.cbec.gov.in).



**:: ORDER-IN-APPEAL ::**

The two appeals have been filed by the Appellants (*hereinafter referred to as "Appellant No.1 & Appellant No.2"*), as detailed in Table below, against Order-in-Original No. 24/D/AC/2020-21 dated 11.2.2021 (*hereinafter referred to as 'impugned order'*) passed by the Deputy Commissioner, Central GST and Central Excise, Rajkot-1 Division (*hereinafter referred to as 'adjudicating authority'*) :-

Sl. No.	Appeal No.	Appellants	Name & Address of the Appellant
1.	V2/85/RAJ/2021	Appellant No.1	M/s F-Tech Engineering Co, Mansata Industrial Area, Street No. 1, Gondal Road, ST Workshop, Rajkot.
2.	V2/86/RAJ/2021	Appellant No.2	Shri Jignesh Pambhar, Partner, M/s F-Tech Engineering Co, Mansata Industrial Area, Street No. 1, Gondal Road, ST Workshop, Rajkot.

2. The facts of the case, in brief, are that Appellant No. 1 was engaged in the manufacture of Submersible Pump, Power driven Pump and Openwell Pump falling under Tariff Sub Heading No. 8413 of the Central Excise Tariff Act, 1985. During search carried out by the officers of Headquarter Preventive branch, erstwhile Central Excise, Rajkot at the factory premises of the Appellant on 12.12.2014, unaccounted stock of goods valued at Rs. 20,84,195/- was found lying in the factory. The said goods were placed under seizure under reasonable belief that the same was intended to be cleared without payment of Central Excise duty. The seized goods were handed over to Appellant No. 2 for safe custody under Supartnama dated 12.12.2014.

2.1 On culmination of investigation, Show Cause Notice No. II/11-3/PI/2015-16 dated 30.4.2015 was issued to Appellant No. 1 calling them to show cause as to why seized goods valued at Rs. 20,84,195/- should not be confiscated under Rule 25 of the Central Excise Rules, 2002 (*hereinafter referred to as 'Rules'*) and proposing imposition of penalties upon Appellant No. 1 under Rule 25 *ibid* and upon Appellant No. 2 under Rule 26 *ibid*.

2.2 The above said Show Cause Notice was adjudicated vide Order-in-Original No. 47/D/AC/2016-17 dated 2.12.2016 by the Assistant Commissioner of

*erstwhile Central Excise, Rajkot-I Division, who ordered for confiscation of seized goods under Rule 25 of the Rules with an option to redeem the goods on payment of redemption fine of Rs. 2,57,607/- under Section 34 of the Central Excise Act, 1944 and imposed penalty of Rs. 2,57,607/- upon Appellant No. 1 under Rule 25 of the Rules and imposed penalty of Rs. 1,00,000/- upon Appellant No. 2 under Rule 26 of the Rules.*

2.3 Being aggrieved, the Appellants filed appeals before the then Commissioner(Appeals), Central Excise, Rajkot who vide his OIA No. RAJ-EXCUS-000-APP-105 TO 106-2017-18 dated 2.12.2016 upheld the order passed by the adjudicating authority and rejected the appeals of Appellant No.1 & Appellant No. 2.

2.4 Being aggrieved, the Appellants filed appeals before the Hon'ble CESTAT, Ahmedabad who vide its Order No. A/10996-10997/2018 dated 9.5.2018 remanded the matter to adjudicating authority for *de novo* adjudication with a direction to verify the fact whether the goods were in semi-finished condition or in finished condition.

2.5 In *de novo* adjudication, the adjudicating authority vide the impugned order ordered for confiscation of seized goods under Rule 25 of the Rules with an option to redeem the goods on payment of redemption fine of Rs. 2,57,607/- under Section 34 of the Central Excise Act, 1944 and imposed penalty of Rs. 2,57,607/- upon Appellant No. 1 under Rule 25 of the Rules and imposed penalty of Rs. 1,00,000/- upon Appellant No. 2 under Rule 26 of the Rules.

3. Being aggrieved, Appellants No. 1 & 2 have preferred appeals on various grounds, *inter alia*, as below:-

Appellant No. 1:-

(i) The adjudicating authority failed to follow the instructions of the Hon'ble CESTAT to verify the fact that the goods lying in factory are semi finished goods as per the Chartered Engineer certificate or not.

(ii) That the seized goods were lying in their own factory in un-finished condition. The goods manufactured are pumps for drawing water and motors used along with such pumps. Since the said pumps and motors are used for domestic purposes by consumers, it has to be properly tested and packed before dispatch. The process of manufacturing is complete only when the said goods are packed and kept ready for dispatch. Briefly, the processes involve: manufacturing of motors, manufacturing of pumps,



assembly of pumps sets. Further, once the pump / motor is ready, it is subjected to various testing, for quality, output, power, etc., and then if found okay, then it is sent for colouring. After colouring, the pumps and motors are marked with distinct serial no, date of manufacture etc, for identification, as it is consumer goods. After marking with the serial no, the pumps and motors are sent for packing, and once packing is done, the said pumps, motors or pump sets are said to be finished goods and then such quantity manufactured is entered in RG-1 Stock Register.

(iii) In the present case, the goods seized by the Department are 'work in process', and various processes as discussed above are still pending to be undertaken. The testing, colouring and serial numbering of the pumps, motors were pending and even packing was also pending. Therefore, such goods cannot be cleared as pumps, or motors or pump Sets. Since the said goods were not completely finished, the same were kept as 'work in process', and not in RG-1 stock register. This fact is evident even today because the panchnama does not record the serial nos of the pumps/motors seized by them. The goods are still lying in the factory premises, and can always be verified, by the officers of central excise.

(iv) That there is no statement of the partner recorded, in the entire inquiry process, and after panchnama, the SCN was issued. The submissions made in the reply to SCN was also not considered. The basic facts was also ignored. The non-recording of statement of the appellant is also violation of the principles of natural justice, because, the appellant did not get any opportunity to explain their stand. The officers are not technical experts to decide, whether the seized goods which are electrical devices in the nature of consumer durables, can be treated as finished goods, and ready for dispatch. The excise officers also did not bother to take the technical opinion of any chartered engineer, to substantiate their claim.

(v) As certified by the Chartered Engineer, the goods are not ready for sale or it is still in unfinished condition, the allegation of the department that the goods which are still lying inside the factory were intended for clandestine removal, is not at all correct, and the seizure and imposition of fine and penalty is not sustainable.

(vi) That they had made a specific request also that the Deputy Commissioner may, as directed by the Hon'ble CESTAT, verify the seized goods physically to see the finished or semi-finished condition, as per the



*du*

Chartered Engineer's certificate, and after due verification set aside or drop the proceedings.

(vii) Since the ingredients of Section 11AC is not available in the SCN nor the same has been invoked, the confiscation under Rule 25 cannot be invoked directly, and the confiscation of goods under Rule 25 becomes infructuous, and not sustainable. Since the goods have never left the factory, and there cannot be any demand of duty, and equally there cannot be any penalty under Section 11AC, and consequently, there cannot be any confiscation under Rule 25 and there cannot be any penalty under Rule 26 either. That the confiscation of unfinished goods lying inside the factory is not at all liable for confiscation, and therefore the confiscation of the same is not sustainable. Consequently, there cannot be any penalties on the appellant, as they have not rendered any goods liable for confiscation in any manner.

Appellant No. 2:-

(i) The ingredients of Rule 26 are not applicable to him as the goods are not liable for confiscation because the goods were un-finished and still lying in the factory. There cannot be any duty demand on such goods, and the adjudicating authority also has not demanded any duty on the confiscated goods. Hence, the provisions of Rule 26 is not applicable to the appellant, and no penalty can be imposed on them, and the penalties imposed is not sustainable, and is liable to be set aside. :

(ii) That under Rule 26, the maximum penalty leviable is either two thousand rupees or the duty evaded whichever is more. Since, there is no duty involved in the present case, the maximum penalty that can be imposed should not exceed rupees two thousands. However, in the present case, the goods are finished goods, and the semi-finished goods lying in the factory awaiting further manufacturing and testing processes, were erroneously seized by the excise officers.

(iii) The appellant is a partner of the main appellant firm. The main appellant has also been imposed a penalty under Rule 25 of the CER, 2002. It is a settled law, that when the main partnership firm has been penalized, then individual partner cannot be penalized under the Rule 26. Therefore, under this ground also, the penalty imposed on the appellant is not sustainable and relied upon following case laws:

- (a) Pravin N Shah - 2014 (305) ELT 480 (Guj)  
 (b) Mukesh Jatania - 2016 (344) E.L.T. 128 (Guj.)



*dy*  
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(c) Mulchand M Zaveri - 2020 (372) E.L.T. 417 (Tri. - Ahmd.)

4. Personal Hearing in the matter was scheduled in virtual mode through video conference on 17.12.2021. Shri R. Subramanya, Advocate, appeared on behalf of both Appellants. He reiterated the submission of appeal memorandum and stated the goods are still lying in factory and that the veracity of Chartered Engineer Certificate can be verified by the Department.

5. I have carefully gone through the facts of the case, the impugned order, and grounds raised in appeal memoranda and oral submission made during hearing. The issue to be decided is whether the impugned order, in the facts of this case, confiscating the seized goods and imposing penalty on Appellants No. 1 & 2 is correct, legal and proper or not.

6. I find that the impugned order was passed in pursuance of the remand direction of the Hon'ble CESTAT, Ahmedabad vide Order No. A/10996-10997/2018 dated 9.5.2018. It is, therefore, pertinent to examine relevant portion of the said Order, which is reproduced as under:

“6. Heard both the sides and perused the records.

7. I find that on the day of visit of the officers to the factory of the appellant, unaccounted goods were found lying in the premises of the appellant. It is the contention of the appellant that the said goods were in semi-finished condition. However, no evidences were produced even though in the reply such a plea was taken by the appellant. It is the contention of the Ld. Advocate for the appellant that the said goods are still lying in the factory premises and can be subjected to verification. In support of his contention that the goods are in semi finished condition, Chartered Engineer Certificate is placed on record. Considering the fact that, no finding has been recorded by the adjudicating authority, even though in their defence, the appellant has vehemently argued about the fact that the goods were semi-finished condition, in my opinion, on the face of the Chartered Engineer's Certificate and also since the goods are still lying in the factory premises, the matter is to be remanded to the adjudicating authority to verify the fact whether the goods are in semi-finished condition or in finished condition, in the interest of justice. In the result, the impugned order is set aside and the appeals are allowed by way of remand to the adjudicating authority. All issues are kept open. Needless to mention a reasonable opportunity of hearing be allowed to the appellant.”

7. On examining the findings of the adjudicating authority recorded in impugned order in light of the directions of the Hon'ble Tribunal *supra*, I find that the adjudicating authority has relied upon evidences collected during investigation while passing the impugned order but no verification of seized goods has been carried out, as directed by the Hon'ble Tribunal *supra*. Further, adjudicating authority discarded reliance placed on Chartered Engineer's Certificate dated 22.3.2018 on the ground that inspection was carried out by the




Chartered Engineer in absence of Departmental Officers.


8. It is pertinent to mention here that the Appellants had pleaded before the Hon'ble Tribunal that the goods seized by the Department were in semi-finished condition and accordingly not entered in RG-1 Register. The Appellants also produced Chartered Engineer's Certificate to that effect before the Hon'ble Tribunal. Considering the contention of the Appellants, the Hon'ble Tribunal vide Order *supra* remanded the matter to the adjudicating authority to verify the fact whether the goods are in semi-finished condition or in finished condition. However, the adjudicating authority failed to follow the directions of the Hon'ble Tribunal while passing the impugned order in *de novo* proceedings. It has been brought to my notice during Personal Hearing that goods are still lying in factory and that the veracity of Chartered Engineer Certificate can be verified by the Department. Since, the directions of the Hon'ble Tribunal were not followed in *de novo* proceedings and the fact that the seized goods are reportedly lying in the factory premises of Appellant No. 1, I find it fit to remand the matter to the adjudicating authority for *de novo* proceedings with a direction to carry out verification of seized goods, as directed by the Hon'ble Tribunal vide Order dated 9.5.2018 *supra*. Needless to mention that principles of natural justice shall be adhered to.

9. In view of above, I set aside the impugned order and dispose the appeals of Appellants No. 1 & 2 by way of remand for *de novo* proceedings.

10. अपीलकर्ताओं द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeals filed by the Appellants are disposed off as above.

सत्यापित,  
  
 विपुल शाह  
 अर्थात्ताका (अपील्स)

  
 (AKHILESH KUMAR)  
 Commissioner (Appeals) 2021

By R.P.A.D.

To, 1. M/s F-Tech Engineering Co, Mansata Industrial Area, Street No. 1, Gondal Road, ST Workshop, Rajkot.	सेवा में, मेसर्स एफ-टेक इंजीनियरिंग कंपनी, मानसता औद्योगिक क्षेत्र, गली नंबर 1, गोंडल रोड, एसटी कार्यशाला, राजकोट।
2. Shri Jignesh Pambhar, Partner, M/s F-Tech Engineering Co, Mansata Industrial Area, Street No. 1, Gondal Road, ST Workshop, Rajkot.	श्री जिग्नेश पांभर, भागीदार, मेसर्स एफ-टेक इंजीनियरिंग कंपनी, मानसता औद्योगिक क्षेत्र, गली नंबर 1, गोंडल रोड, एसटी कार्यशाला, राजकोट।





प्रतिलिपि :-

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



