



::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

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20221264SX000000EEC3

क	अपील / फाइल संख्या/ Appeal File No.	मूल आदेश सं / OIO No.	दिनांक/ Date
	V2/16/RAJ/2022	13/AC/NS/2021-22	17-11-2021

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

**RAJ-EXCUS-000-APP-388-2022**

आदेश का दिनांक / Date of Order:	<b>09.12.2022</b>	जारी करने की तारीख / Date of issue:	<b>09.12.2022</b>
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श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संपुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, 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. Flotech Engineering Pvt. Ltd., Plot No. 20 to 27, Survey No. 277, Rani Industrial Area, Opp. Kaneriya Oil Mill, N.H.8-B, Gondal Road, Shaper (Veraval), Rajkot-360024.**

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 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) वार्गीकरण 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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टम) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा 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, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 रजिस्टार 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। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 demanded/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, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 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 है, उसकी प्रति साथ में संलग्न करें (उन्में 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, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 रजिस्टार 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। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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. 1,000/- 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/-.



- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 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 of 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.

- (iii) 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 रुपये से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में 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 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 :

- (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 को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश को पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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:

- (i) यदि माल के किसी नुकसान के मामले में, जहाँ 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 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.

- (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 outside India export to Nepal or Bhutan, without payment of duty.

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी 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 समाविधि 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.

- (v) उपरोक्त आवेदन की दो प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ 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 आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखी पढ़ी कार्य से 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) 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-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 संबंधित 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](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)



## अपील आदेश /ORDER-IN-APPEAL

M/s Flowtech Engineering Pvt. Ltd., Plot No.20 to 27, Survey No.277, Rani Industrial Area, Opp. Kaneriya Oil Mill, N.H.8-B, Gondal Road, Shaper (Veraval), Rajkot-360 024 (*hereinafter referred to as* 'appellant) 'against Order-in-Original No. 13/AC/NS/2021-22 dated 17.11.2021 (*hereinafter referred to as* 'impugned order') passed by the Assistant Commissioner, Central GST Division, Rajkot-II (*hereinafter referred to as* 'adjudicating authority'):-

2. Briefly stated, the facts of the case are that the appellant was engaged in manufacture of submersible pumps and pump sets falling under Chapter 84 of the Central Excise Tariff Act, 1985. During the course of audit for the year 2016-17, it was observed that the appellant had wrongly availed Cenvat credit on services of after sale services during warranty period. Since the service provided was after sale of goods, it appeared that the said service is not covered under definition of 'input service' and hence a show cause notice dated 07.02.2018 was issued for recovery of Cenvat Credit of Rs.12,46,706/-. The notice was decided by Order-in-Original No.05/DC/KG/2019-20 dated 23.08.2019 by which the demand was confirmed and penalty equal to the amount confirmed was imposed under rule 14 of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. The appellant carried forward the matter to Appellate Commissioner who allowed the appeal on merits vide Order-in-Appeal dated 27.02.2020 subjected to verification of certificate dated 04.10.2019 of the Cost Accountant by the adjudicating authority. The adjudicating authority, by the impugned order, has again confirmed the demand on the ground that the appellant did not produce documents showing quantum of warranty and after sales services given to customers free of charge as part of sales conditions. Hence the present appeal.

3. The appellant filed appeal along with application for condonation of delay wherein they, *inter alia*, contended as under:

- The adjudicating authority has travelled beyond the scope of the show cause notice as the case of the department initially was that Cenvat credit was not available as the activity of manufacturing of goods and after sales service are two different activities and that service provided towards repair/ reconditioning of goods which already have been sold by the appellant were not used in relation to manufacture of final product.
- There is no dispute that the appellant was providing after sales service through M/s Gokul Pump Service Centre, Rajkot. Invoices were raised by M/s Gokul Pump Service Centre for providing services to customers during warranty period and the appellant availed Cenvat credit of such input services. The sale price of pumps included cost of repairing of pumps



*[Handwritten Signature]*

during warrant period and becomes part of assessable value for the purpose of paying duty of excise. The Commissioner (Appeals) in his order dated 27.02.2020 had ruled that Cenvat credit is admissible to the appellant.

- The adjudicating authority has passed the order in total disregard to the directions given by the Commissioner (Appeals) as it was not an order for remand, but allowing the appeal after verification.
- All the supporting document were submitted to the adjudicating authority and it was mentioned in the impugned order itself at paragraph 14.1 and paragraph 19. The adjudicating authority has contradicted his findings and wrongly mentioned that the appellant had not produced the required documents.
- The basis on which the Cost certificate has been discarded itself is faulty. The appellant is manufacturing about more than 2200 types of pump sets and submersible pumps and it was not practically possible to prepare cost chart for each type of pump and pump set and only 15 types of pumps which constitute major chunk of sales were selected and cost sheet prepared.
- There is not a single allegation or even mention in the show cause notice based on which extended period invoked and the demand has been confirmed without examining this fact.
- Since the demand of duty/ Cenvat credit itself is not maintainable, no interest is payable and no penalty is imposable.

4. Shri R.C. Prasad, consultant appeared for personal hearing on 29.11.2022 and hand over written submissions. He reiterated the submissions made in the grounds of appeal. He submitted that despite clear directions from the appellate authority that appeal has been allowed and the benefit is admissible subject to verification of cost accountant certificate, the adjudicating authority has mistaken it as de novo proceedings to overturn the Order-in-Appeal. His findings in paragraph 19 and paragraph 23 regarding non-submission of required documents are contradictory. His rejection of Cost Accountant's certificate on grounds of minute difference is cost of raw material and in the profit margin vis-à-vis balance sheet is unfair and without appreciation of operational factors and methods of averaging for various models of the products. He, therefore, requested to set aside the Order-in-Original and allow the appeal.

4.1 In the written submission the appellant reiterated the submissions made in the grounds of appeal.

First of all I would like to take up the application for condonation of delay



filed by the appellant. I find that the date of communication of the order is 21.11.2021 and the appeal has been filed on 15.02.2022 and thus there is delay in filing appeal. However, as per Order dated 10.01.2022 of Hon'ble Supreme Court in Misc. Application No.21 of 2022 in Misc. Application No.665 of 2021 in Suo Moto Writ Petition (C) No.3 of 2020, the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the period of limitation and all persons shall have a limitation period of 90 days from 01.03.2022. In view of the above, I consider the appeal to be filed within prescribed time limit as per Finance Act, 1994 and proceed to decide the appeal on its merits.

6. I have carefully gone through the facts of the case, the impugned order, the appeal memoranda and written as well as oral submissions made by the Appellants. The issue to be decided is whether the impugned order, in the facts of this case, confirming demand and imposing penalty is correct, legal and proper or not.

7. After going through the facts of the case, I find that the issue regarding availability of Cenvat credit on after sales service during warranty period of the goods was already decided on merit by my predecessor vide Order-in-Appeal No.RAJ-EXCUS-000-APP-042-2020 dated 27.02.2020. In the said order, it mentioned as under:

*"6.1 ..... Therefore, after relying on the above judgments delivered on similar issues, I am of the considered view that the expenses incurred towards maintenance services of the final goods under warranty period are also entitled for input service credit subject to the verification of the contention of the appellant that the element of post manufacturing expenses related to warranty were included in the assessable value of the final goods under warranty period, as Certificate dated 04.10.2019 issued by Shri M.J. Suvagiya, reflecting that the element of warrant expenses/ cost has been added in arriving at the cost of production. In view of above discussion, I hold that the appellant has correctly included cost of after sale service in the transaction value and therefore, entitled for the Cenvat credit subject to verification of certificate dated 04.10.2019 of the Cost Accountant by the adjudicating authority for the relevant period.*

*7. In view of the foregoing paras, the appeal is allowed on merits, subject to the verification, as given at para 6.1 above."*

7.1 From the above, it is evident that the appeal has been decided on merits and the adjudicating authority was only required to verify the certificate dated 04.10.2019 issued by the Cost Accountant as to whether the element of post manufacturing warrant expenses was included in the assessable value. In the impugned order the adjudicating authority, however, observed at paragraph 24.1 of the impugned order that for the appellant it was required under Cenvat Credit Rules, 2004 to maintain proper records when availing CENVAT credit and it was their responsibility and they should have submitted proper documentary evidences showing the quantum of warranty and after sale services given to customers free of charge as part of sales condition. He further observed that the appellant failed to shoulder the responsibility as provided under Cenvat Credit



*Shing*

Rules, 2004. Thus, the adjudicating authority traversed beyond the direction contained in the Order-in-Appeal.

8. I also find that the adjudicating authority at paragraph 19 of the impugned order has given various elements such as material consumed, direct expenses, indirect expenses and warranty expenses in the table. He also observed at paragraph 19.2 of the order as under:

*"19.2 I find that, the noticee has submitted detailed chart / sheet showing the cost of raw material consumed in the production activities of their various finished goods. They also submitted sample copies of purchase invoices of their raw materials consumed in support of their costing pattern. I also find from the sample sale bill / Tax invoices of various final goods / different types of pumps submitted by the noticee that, the price without excise duty as mentioned in the Tax invoices are overall in accordance with the costing pattern mentioned in the above table."*

At the same time, the adjudicating authority at paragraph 23 of the order has mentioned that even after being asked, the noticee failed to produce any documentary evidence and further bifurcation of the expenses. Thus, as pointed out by the appellant in their grounds of appeal, the findings of the adjudicating authority are contradictory. Once appellant produced different elements of costing before the adjudicating authority and if one of the elements for costing is warranty expenses, I am of the considered view that the adjudicating authority ought to have allowed the Cenvat credit. The direction contained in the Order-in-Appeal dated 27.02.2020 was just to verify whether the said element of warrant charges was included in the costing of final products. In the present case, I find that, as per the details mentioned in the table at paragraph 19, the element of costing produced by the appellant contained warranty expenses. Hence there should not be any impediment in implementing the order passed by the Commissioner (Appeal) allowing the Cenvat credit. Accordingly, I hold that the impugned order is not sustainable.

9. In view of above, I set aside the impugned order and allow the appeal with consequential relief, if any.

10. अपीलकर्ताओ द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है ।

10. The appeal filed by the Appellant is disposed off as above.

सत्यापित / Attested

*Joseph*  
Superintendent  
Central GST (Appeals)  
Rajkot

*Shiv Pratap Singh*  
(शिव प्रताप सिंह / SHIV PRATAP SINGH)  
आयुक्त (अपील) / Commissioner (Appeals)

By R.P.A.D.

सेवा में मेस्सेर्स फ्लोटेक इंजीनियरिंग प्राइवेट लिमिटेड प्लॉट नु 20 से 27, सर्वे नु 277 रानी इंडस्ट्रियल एरिया, ओष्प कनेरिया ऑइल मिल ना हाइवे 8-बी, गोंडल रोड, शापर (वेरावल), राजकोट-360 024	To M/s Flowtech Engineering Pvt. Ltd., Plot No.20 to 27, Survey No.277, Rani Industrial Area, Opp. Kaneriya Oil Mill, N.H.8-B, Gondal Road, Shaper (Veravall), Rajkot-360 024
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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 मण्डल राजकोट-II को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

