



:: 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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रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20230164SX00009959F0

क	अपील / फाइल संख्या / Appeal / File No.	पूरा आदेश नं / OIO No.	दिनांक / Date
	V2/72 & 73/RAJ/2022	69 & 70/JC(MAN)/2021-22	31-03-2022

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

**RAJ-EXCUS-000-APP-410 TO 411-2022**

आदेश का दिनांक / Date of Order:	<b>28.12.2022</b>	जारी करने की तारीख / Date of issue:	<b>11.01.2023</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/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधामा द्वारा उपरोक्त 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/प्रतिकार्यी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

**M/s. P.M.Diesels Pvt. Ltd. (Unit-II), Mira Industrial Society Ltd., Plot No. 144/146, Ring Road, Rajkot-360002.**

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) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद 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, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) 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, 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 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 नियमवली, 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 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 Assst. 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 प्रतियां 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 (सेट्टलमेंट) को 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 अपीलित देय राशि इस क्रोड़ रूप 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 शुल्क  
(ii) सेनवेट जमा की ली गई 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 स्थान अर्जी एवं अपील को लागू नहीं होगी।  
For an appeal to be filed before the GSTAT, 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  
(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 कोपनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपूरतक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, आयात प्रविष्टि, 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 outside India export to Nepal or Bhutan, without payment of duty.  
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी 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.  
(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 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 साक्ष्य के तौर पर TR-6 की प्रतियां 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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 चाहिये। इस तथ्य के होते हुए भी की लिखा पत्रों 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 बर्णित एवं अन्य संबंधित मामलों की 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.  
(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 P.M. Diesels Pvt. Ltd (Unit-II), Mira Industrial Society Ltd, Plot No.144/146, Ring Road, Rajkot-360 002 (*hereinafter referred to as appellant*) has filed two appeals No.V2/72 & 73/RAJ/2022 against Order-in-Original No. 69 & 70/JC (MAN)/2021-22 dated 31.03.2022 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Central GST, Rajkot (*hereinafter referred to as 'adjudicating authority'*).

2. Briefly stated, the facts of the case are that the appellant was engaged in manufacture of Ignition Combustion Engines (I.C. Engine) and Centrifugal Pump Sets (Couple Set) falling under CETH No.84089090 and 84137010 respectively, of the Central Excise Tariff Act, 1985. The appellant had assembled Centrifugal Pump Sets and cleared the same on payment of concessional rate of Central Excise duty @6% availing benefit of Sr.No.235 of Notification No.12/2012-CE dated 17.03.2012. It appeared that on clearances of power driven/ Centrifugal pump sets comprising of I.C. engine, Pumps and Trolleys, the appellant was required to pay duty @12.36%/ 12.5% on the I.C. Engines and Trolleys. Therefore, two show cause notices dated 28.06.2016 and 19.06.2018 covering the period June 2014 to May 2016 and June 2016 to June 2017 demanding Central Excise duty of Rs.1,06,62,763/- and Rs.5,04,524/- respectively. Vide impugned order the adjudicating authority had confirmed the demand and imposed penalty.

3. Being aggrieved, the appellant filed appeals wherein they, *inter alia*, submitted that;

(i) The findings of the adjudicating authority, contrary to the facts of the case and evidences produced, are baseless and are not supported by any independent evidences and hence are liable to be set aside.

(ii) The appellant submitted that the adjudicating authority has erred in confirming the demand by relying on the statement of Shri Jagdishbhai which has been retracted by way of an affidavit. They contended that the photograph and brochures prove beyond doubt that the product can be assembled at factory and no customer can assemble the pump of its own. The certificate of the chartered engineer and the affidavit of customers proved beyond doubt that monoblock pump sets are cleared in assembled condition.

(iii) The appellant submitted that the adjudicating authority erred in confirming the demand relying on the decision of Allahabad High Court in the case of *Honda Siel Power Products Ltd* in as much as the facts of the case and facts of present case are totally different.



*(Signature)*

(iv) The appellant contended that assembly is nothing but manufacturing activity and the CBEC in its circular has clarified that Diesel Oil Engine when used in assembly of pump set, is an integral part of such pump set..

(V) The appellant submitted that department was in the knowledge of the fact of clearance of pump set and the same was audited by the department regularly. Therefore the demand beyond period of two years is barred by limitation.

(vi) The appellant contended that the imposition of penalty and demand of interest are also not sustainable.

4. Advocate Paresh Sheth appeared for personal hearing on 13.12.2022 and reiterated the submissions made in the appeal. He submitted that DGCEI is not the proper authority to issue the SCN. The SCN being issued without proper jurisdiction, entire proceedings are void *ab initio*. Further, the demand raised is partially time barred in the absence of ingredients for invoking extended period. He further submitted that their case is different from the case of M/s Honda Siel Power Product Ltd relied by the revenue where the bought out pumps, diesel engines and base plates were being cleared without being assembled together. In the present case the appellants are procuring bare pumps from the market and after removing its casing and impeller, such dismantled pumps are fitted with the semi-finished diesel engine manufactured by them. Such properly fitted mono-block pump sets manufactured by the appellant using bare pumps from the market as inputs are sold as one complete unit. They have clearly mentioned the same in the invoice description. He submitted coloured images of such pumps as already enclosed in black & white format with the appeal pages 262 to 265. He submitted that the adjudicating authority, instead of relying upon expert Chartered Engineer certificate, has wrongly relied upon the case law of M/s *Honda Siel Power Product Ltd*, where facts are different. He undertook to submit detailed written submission with supporting case law within two weeks. He, therefore, requested to set aside the order-in-original and allow the appeal.

4.1 The advocate for the appellant submitted written submission vide letter dated 21.12.2022 wherein he reiterated the submissions made in the grounds of appeal as well as those made at the time of personal hearing. He referred to decision of Tribunal No.C-I/1581 to 1595/WZB/2003 dated 23.07.2003 in the case of Patel Field Marshal Industry and Usha International Ltd-2018 (364) ELT.1103 (Tri)

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and written as well as oral submissions made by the appellants. The contentious issue before me is whether the appellant is liable to



*[Handwritten signature]*

pay Central Excise duty @12.36%/ 12.5% on the I.C. Engines used in the pump sets cleared by them.

6. In this regard, I find that, the demand has been made and confirmed on the premises that assembly does not amount to manufacture and the final product cleared viz. pump set comprises of I.C. Engine, pump and trolley and the pumps were separate manufactured items. The show cause notice has also referred to the decision of *Honda Siel Power Products Ltd-2016 (332) ELT.222 (All)*. Though the appellant cited Board's Circular No.224/58/96-CX dated 26.06.1996, the adjudicating authority proceeded to decide the issue against the appellant relying upon the decision of *Honda Siel Power Products Ltd-2016 (332) ELT.222 (All)*. The clarification given by the Board with regard to classification of pump sets vide Circular No. 224/58/96-CX dated 26.06.1996 is as under:

"2. The matter has been examined in depth. Board in its F.No. 151/13/92-CX.4 (Pt.) (Circular No. 11/11/94, dated 2-2-1994/224/58/96-CX dated 26.06.1996) has held that electric motors or rotors or stators are components parts of P.D. Pumps. Following the same analogy, the prime mover, i.e. I.C. Engine may be treated as an integral part of P.D. Pump. The Board takes note of Note 3 of Section XVI of Central Excise Tariff which states that composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function. As the principal function of a pump set is that of the pump, the pump set is rightly classifiable under Chapter sub-heading 84.13.

3. Hence, the Board is of the view that Power Driven Pump Sets are classifiable under Chapter Heading 84.13 and if such Power Driven Pump Sets are primarily meant for handling water, the benefit of Notification No. 56/95, dated 16-3-1995 will be admissible to the whole pump set"

6.1 I find that the CBEC has clearly clarified that principal function of the pump set is that of pump, the pump set is rightly classifiable under chapter heading 84.13. It is also well settled law that the department is prevented from arguing against the clarifications issued by the Board. Since the position has been clarified by the Board, the power driven pump sets manufactured by the appellant are classifiable under chapter heading 84.13 and will be eligible for the benefit of concessional rate of duty as provided under Sr.No.235 of Notification No.12/2012-C dated 17.03.2012. The inference drawn by the adjudicating authority that the assembling is not amounting to manufacture is of no significance in view of the clarification by the Board that pump sets are classifiable under chapter heading 84.13. The I.C. Engine is falling under CETH No.84089090 and when it is couples with pump, in view of the clarification of the Board, it becomes part of pump set and its classification changes to 84.13.

6.2 I also find that the adjudicating authority has incongruously made reference to the case of *Honda Siel Power Products Ltd (supra)* as the said decision was rendered in a case where the assessee purchased pumps from outside and placed the same inside a single carton in **unassembled** condition.

present case, it is an admitted fact that the appellant had **assembled** pump set and cleared the same in assembled condition. As per the Chartered



*[Handwritten signature]*

Engineer's certificate the IC engine is manufactured in the factory of the appellant. During the manufacturing process, before the IC engine reaches the finished stage, while fitting the shaft inside the engine, it is kept on one side in such a way that one end of shaft remains outside. Thereafter, casing and impeller of the centrifugal bare pump purchased from the market are removed. Then the end of the shaft which remaining outside the IC engine is fitted inside the dismantled centrifugal pump to make it a completely manufactured mono-block pump set. The photographs and documents such as invoices, affidavit of buyers and certificate of Chartered Engineer submitted by the appellant also confirmed the fact that the appellant had cleared the same as pump set in assembled form and not separately. The show cause notice as well as the impugned order has not adduced any evidence to the effect that the appellant had sold I.C. Engine and trolley separately. The reliance placed in the statement of Shri Jagdish Goswami, Assistant Manager (Excise) of the appellant by the adjudicating authority in concluding that the appellant has cleared I.C Engine and Pumps separately is misplaced as the said person is not a technical expert and his statement stands retracted by filing an affidavit of rebuttal. The documentary evidences produced by the appellant also proved that the goods viz. pump sets were cleared in assembled condition. As such, the demand of Central Excise duty separately on I.C. Engine and trolley, when they have cleared a complete pump set, is not sustainable and consequently the penalty also is not sustainable.

7. In view of above, I set aside the impugned order and allow the appeal.
8. अपीलकरता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।
8. The appeals filed by the Appellant are disposed off as above.

सत्यापित / Attested

*Joseph*  
Superintendent  
Central GST (Appeals)  
Rajkot

*Shiv Pratap Singh*  
20-12-2022  
(शिव प्रताप सिंह/ SHIV PRATAP SINGH)  
आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

सेवा में नेस्सेर्स पी एम दीसेल्स प्राइवेट लिमिटेड यूनिट-॥ मिरा इंडस्ट्रियल सोसाइटी लिमिटेड प्लॉट 144/146, रिंग रोड राजकोट-360 002	To M/s P.M. Diesels Pvt. Ltd (Unit-II), Mira Industrial Society Ltd, Plot No.144/146, Ring Road, Rajkot-360 002
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल राजकोट-1
- 4) गार्ड फाइल

