



**::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- 20230464SX0000419544

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक/ Date
	GAPPL/COM/CEXP/308/2022	62/D/AC/2021-22	29-04-2022

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

**RAJ-EXCUS-000-APP-091-2023**

आदेश का दिनांक / Date of Order:	<b>31.03.2023</b>	जारी करने की तारीख / Date of issue:	<b>10.04.2023</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 / 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. Standard Agro Engineers, Bhavnagar Road, Rajkot-360003.**

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 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 (सिस्टट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 360016 को 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। स्थगन 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 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 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, 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। स्थगन 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 shall 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 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 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.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टट) 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 स्थान अर्ज़ा 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 की 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, 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 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 an 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 क्रेडीट 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 समायाविधि 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 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 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 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-I 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 The Standard Agro Engineers, Bhavnagar Road, Opp. Jaynath Petrol Pump, Rajkot - 360003 (*hereinafter referred to as appellant*) has filed appeal No. GAPL/COM/CEXP/308/2022 against Order-in-Original No. 62/D/AC/2021-22 dated 31.03.2022 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST, Division-I, 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 @6.18% & 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, Show Cause Notice dated 25.01.2017 covering the period January' 2015 to June' 2015 demanding Central Excise duty of Rs.27,45,774/- u/s 11A(10) of the Act. The adjudicating authority, vide impugned order confirmed the Central Excise duty demand of Rs. 27,45,774/- u/s 11A(10) of the Act, with interest under Section 11AA of the Act imposed penalty of Rs. 27,45,774/- under Section 25 of the Act.

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

(i) The adjudicating authority has erred in not appreciating reply dated 25.11.2016 & further submission dated 26.03.2022 and impugned order is liable to be set aside.

(ii) The appellant submitted that the adjudicating authority has erred in holding that the process of putting own manufactured Ignition Combustion Engines (I.C. Engines) along with bought out pumps and Base platform which were cleared as Power Driven Pumps (PD Pumps), did not involve any activity which mounts to manufacture in terms of Section 2(f) of the Central Excise Act, 1944. Adjudicating authority has erred in appreciating following activities/process carried out by the appellant in relation to manufacture of PD pumps which are not disputed:

- a) Appellant purchase raw materials such as crank case, fly wheel, fuel pump, centrifugal pump, MS items etc., for the purpose of manufacturing PD pumps.
- b) Appellant manufacture IC Diesel Engines within factory and after thorough testing same is further used in manufacture of PD pumps.



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- c) Appellant manufactured common base frame or trolley through job work.
- d) Appellant carry out Testing & Analysis of Centrifugal pumps to make it suitable to couple with IC Engines manufactured by appellant. Testing of PD Pumps were also done to check the water force, functioning of engine and further anti-vibration test was undertaken to see that when fitted to trolley, it remains static.
- e) Centrifugal pump is thereafter assembled or coupled with IC Engine on common base frame to manufacture PD pumps.
- f) PD Pumps were thereafter cleared to customers under invoice either as a set in assembled form or in SKD condition as per the requirement of customer. These PD pumps in SKD or assembled for are packed in 2 wooden package for safer transportation. When cleared in SKD form, customer at its premises can easily couple IC Engine and Centrifugal pump to start its use. Required number of nut bolts and rubber coupling ae also supplied.

The appellant has submitted that aforesaid process/ activities carried out in relation to the PD pumps amounts to "Manufacture" in terms of Section 2(f) of the Central Excise Act, 1994.

(iii) Adjudicating authority has erred in not appreciating that principal function of PD pumps is "handling water"; Centrifugal bare pump and I.C. Engines ae the integral part of PD pumps. Both cannot work independently, unless both are coupled, they cannot function as PD pump and hence, cannot be used for "handling water". Therefore, the activity of assembling the same also amounts to manufacture.

(iv) Adjudicating has erred in holding that finding of the Hon'ble Allahabad High Court Judgement in the case of CCE Meerut V/s Honda Seil Power Products Ltd 2016(332)ELT 222(ALL) is applicable to the present case. As the said decision is stayed by the Hon'ble Supreme Court and the facts in volved in the case of Honda Seil Power Products Ltd is different from the present case. Thus, the reliance placed on the said judgement in the Show Cause Notice and impugned order is misplaced.

(v) Adjudicating authority has erred in holding that Circular No. 224/58-98-CX dated 26.06.1996 is not relevant to the fact of the case. Appellant has contended that no where in aforementioned Circular it is considered an essential condition where the pump, prime mover i.e. IC Engine and other component like platform shall be coupled before its removal from the factory. Even if the pump set is cleared in a de-coupled form, it will still remain a pump set and therefore, the benefit of concessional rate of duty granted to "Power driven pump primarily designed for handling water' would still be available to such pump sets.

(vi) The demand duty has been raised under the proviso to Section 11A (1) of the Act. Extended period of limitation is inapplicable in the facts of the present

Appellant has maintained records and filed ER1 returns timely and EA



*Aim*

2000 audit was also conducted from time to time but no such objections were raised. As such demand to the extent beyond normal period of limitation is not sustainable.

4. Shri Rahul Gajera, Advocate, appeared for personal hearing in virtual mode and submitted that this appeal against Order-In-Original involves issue of classification of Diesel engines coupled with pump sets. He submitted that the pump sets purchased from market undergo further processes amounting to manufacture and the diesel engines coupled with pump sets are sold as a single unit and are eligible for concessional rate of duty. He relies upon Order-In-Appeals No. GAPPL/COM/CEXP/246-247/2022 in this regard. He had discussed other Order-In-Originals issued on identical issue, in respect of same appellant and requested to set aside the impugned order and to allow the appeal.

5. Appellant, vide submissions in the application dated 08.07.2022 for condonation of delay, has submitted that Order-In-Original dated 29.04.2022 was received by them on 05.05.2022 and delay in filing of appeal occurred because regular consultant could not prepare appeal due to personal difficulties, thereafter appellant appointed new consultant who took two weeks' time to prepare the appeal. Applicant made pre-deposit on 5<sup>th</sup> July 2022 and filed the appeal. Appeal was received by this office on 08.07.2022.

6. As the Appellant has filed appeal with condonation of delay, I would first like to examine first whether the delay, if any, is condonable and whether the appeal can be admitted. Date of communication of the decision or order appeal against is shown as 05.05.2022 and appeal filed by the appellant is received by this office on 08.07.2022. As per provision of relevant rules, appeal should have been filed within stipulated time limit i.e. two months from the date of communication i.e. on 04.07.2022. Appeal is filed by the appellant on 08.07.2022, i.e. late by 4 days. Looking to the ground advanced by the Appellant, I condone the delay of 4 days.

7. 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 pay the difference of Central Excise duty @ 6.18%/6.5% (12.36% - 6.18/ 12.5% - 6.5%) on the I.C. Engines used in the pump sets cleared by them.

In this regard, I find that, the demand has been made and confirmed on



*(Signature)*

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"

9. I find that the CBEC has 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.

10. I also find that the adjudicating authority has inappropriately referred 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. Further, the packing contained two buyers' manual, one pertained to their own I.C Engine and other pertained to pumps purchased. In the present case, it is an admitted fact that the appellant had **assembled pump set** and cleared the same in assembled or in SKD (Semi Knocked Down) condition. As per the manufacturing



process submitted by the appellant, for manufacturing pump set, appellant purchases raw materials such as crank case, fly wheel, fuel pump, centrifugal pump, MS items etc. They manufacture IC Diesel Engines within the factory and after testing the same, is further used in manufacture of PD pumps. Appellant manufactured Common base frame or trolley through job work. A Centrifugal pump and same is coupled with Diesel Engine manufactured by them. Appellant carry out testing & analysis of centrifugal pump to make it suitable to couple it with IC engines and further anti-vibration test is also undertaken to see that after fitting, it remains static. Centrifugal pump is coupled with IC engine on common base frame to manufacture PD pumps. PD pumps were cleared to customers under invoice either as a set in assembled form or in SKD condition as per the requirement of customer. When cleared in SKD form, customer at its permises can couple IC Engine and Centrifugal pump to start its use. Required number of nut bolts and rubber coupling are also supplied. The show cause notice as well as the impugned order has not adduced any evidence to the effect that the appellant had sold diesel engine, pump and trolley separately. 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/Diesel Engine and trolley, when they have cleared a complete pump set, is not sustainable and consequently the penalty also is not sustainable.

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

सत्यापित / Attested

*Savlan*

*Shiv*  
31.3.23

के. जी. सावलाणी / K. G. SAVLANI  
अधीक्षक / Superintendent

(शिव प्रताप सिंह / SHIV PRATAP SINGH)  
आयुक्त (अपील) / Commissioner (Appeals)

By R.P.A.D.

के. म. राजू सिंग / K. M. Raju Singh  
आयुक्त, राजकोट  
CGST Appeals, Rajkot

सेवा में मेसेर्स थ स्टैंडर्ड एगरो इंजीनीयर्स, भावनगर रोड, जयनाथ पेट्रोल पम्प के सामने, राजकोट 360003	To The Standard Agro Engineers, Bhavnagar Road, Opp. Jaynath Petrol Pump, Rajkot - 360003
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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- I

फाइल ।



