 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015	 GST Building, 7 th Floor., Near Polytechnic, Ambavadi, Ahmedabad- 380015
टेलीफोन : 079-26305065	टेलीफैक्स : 079 - 26305136	

क फाइल संख्या : File No : **V2(39)141,142/AHD-III/2016-17 & V2(39)2 /GNR/17-18 / 10950**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0148 to 150-17-18**

दिनांक Date : **16.11.2017** जारी करने की तारीख Date of Issue: **01.12.17**

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
AHM-CEX-003-ADC-DSN-042-043-16-17 दिनांक : **01.12.2016** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-DSN-042-043-16-17**, Date:
01.12.2016 Issued by: Additional Commissioner, Central Excise, Div: Mehsana,
 Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Dukeplasto Technique Pvt. Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सूक्ष्म अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

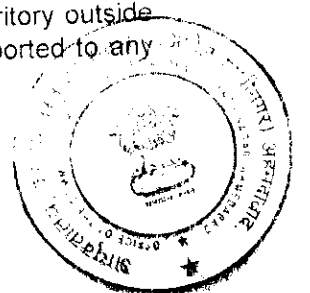
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

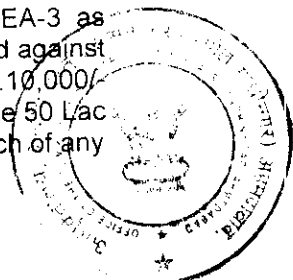
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number 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 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे 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 adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014) की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

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

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

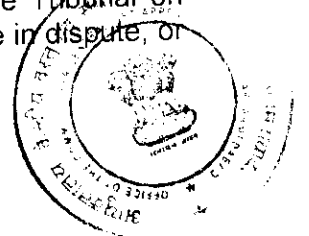
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten 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.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, 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."

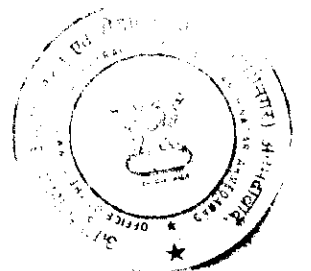


ORDER-IN-APPEAL

S No	Appeal No	Period involved	Duty involved	Penalty involved
1	141/Ahd-III/16-17	April 2010 to Dec.2014 January 2015 to July 2015	Rs.1,39,71,470/- Rs.10,62,911/-	Rs.1,39,71,470/- Rs.1,06,290/-
2	02/GNR/17-18	August 2015 to February 2016	Rs.45,75,248/-	Rs.45,75,248/-
3	142/Ahd-III/16-17	April 2010 to Dec.2014	-	Rs.5,00,000/-

The appeal mentioned at Sr.No.1 and 2 mentioned above have been filed by M/s Duke Plasto Technique Pvt Ltd, Palanpur [hereinafter referred to as "the appellant"] against Orders-in-Original No.AHM-CEX-003-ADC-DSN-042-043-16-17 dated 01.12.2016 and 01/AC/CE/Meh/2017 dated 20.04.2017 [*impugned orders*] passed by the Additional Commissioner of Central Excise, Ahmedabad and Assistant Commissioner of Central Excise Division, Mehsana [*adjudicating authorities*] respectively. The appeal mentioned at Sr.No.3 has been filed by Shri Dineshbhai Patel, Director of the appellant against Order-in-Original No.AHM-CEX-003-ADC-DSN-042-043-16-17 dated 01.12.2016 *supra*.

2. Briefly stated, the facts of the case are that the appellant is engaged in manufacture of PVC pipes, submersible pumps and electrical motors. Based on scrutiny of records of the appellant by the jurisdictional Central Excise officers, it was observed that the appellant were purchasing completely manufactured S.S submersible pump and availing Cenvat credit thereon; that the said submersible pump was cleared by them along with electrical motors as pump set, by availing concessional rate of duty under notification No.12/2012-CE dated 7.03.2012. Scrutiny of records revealed that the appellant had availed Cenvat credit amounting to Rs.58,17,515/- for the period from April 2014 to July 2015 and Rs.21,89,018/- for the period from August 2015 to February 2016 wrongly on bought out submersible pump under which no manufacturing activities was done and short paid amounting to Rs.92,16,866/- and Rs.23,86,230/- for the above referred periods respectively, by availing notification No.12/2012 *ibid* wrongly on clearance of said bought out submersible pump along with electric motors as Pump set. Accordingly, a show cause notices were issued for the relevant periods to the appellant for reversal of Cenvat credit wrongly taken and demand of short paid duty with interest and imposition of penalty thereof. The appellant has paid an amount of Rs.71,56,766/- towards demand and Rs.10,00,000/- towards interest during investigation of the case.



3. Later on, vide the impugned orders, the adjudicating authorities has ordered for reversal of Cenvat credit taken wrongly/confirmed demand with interest and imposed penalties as mentioned in the table above, under Rule 15 of Cenvat credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944. A penalty of Rs.,5,00,000/- was also imposed on Shri Dineshkumar Patel, Director of the appellant under Rule 26 of the Central Excise Rules, 2002 .

4. Being aggrieved, the appellant has filed the appeals mentioned at Sr.No.(1) and (2) of the above table to set aside the recovery of Cenvat credit/demand of duty with interest and penalty imposed thereof. Shri Deneshkumar Patel has filed the appeal mentioned (3) of above table to set aside the penalty imposed on him. They have filed these appeals on the following grounds:

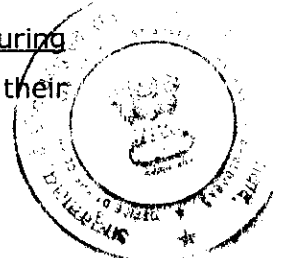
- The pump sets cleared by the are customized as per the demand of customer; that the electrical motor is manufactured depending upon the configuration of pump as per the requirement and pump sets are then tested together to ensure the customers demand are met with; that the activities under taken by them are clearly amounted to manufacture and accordingly, the submersible pumps are their inputs.
- The law makes no distinction between a manufactured items cleared as an assembled integral unit or cleared as part in an unassembled form, because whether an item is fully put together or cleared as parts is merely a matter of convenience of packing and transport; that what is relevant for the purpose of classification/valuation and duty of the product under the law; the product cleared by the appellant was a pump set and not merely the components like pumps and motors as erroneously understood by the department.
- The bought pump is being a part of new manufactured commodity i.e pump sets, the said goods are eligible for taking Cenvat credit and the final product cleared by availing concessional rate of duty is proper and correct. Therefore, the whole demand with interest is not sustainable.
- Since there is no specific allegation of suppression of facts or wil-full mis-statements, extended periods cannot be invocable and no penalty is imposable.
- The appellant has relied on certain case laws in favour of their arguments.

5. A personal hearing in the matter was held on 01.11.2017. Shri Paritosh R Gupta, Advocate appeared for the same and reiterated the grounds of appeal. The learned Advocate further relied on citation in case of M/s Walchandnagar Industries Ltd [2014-311-ELT-274 Tri. Mum].

6. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandums as well as at the time of personal hearing.

7. It is mainly alleged in the impugned orders that since there is no manufacturing activities undertaken on the bought out goods viz. Bare pumps/submersible pump, It cannot be considered as their input and no Cenvat credit on such goods is admissible to the appellant; that when no manufacturing activities is undertaken on the said bought goods and cleared as such with their





own manufacturing goods i.e electric motor, concessional rate of duty under the notification *supra* is not admissible to them. The adjudicating authorities have relied on Hon'ble Supreme Court's decision in the case of M/s Delhi Cloth & General Mills [1977 (1) ELT-J 199]; M/s Kores India Ltd [2004 -174- ELT 7] and Hon'ble High Court of Allahabad in case of M/s Honda Siel Power Products Ltd [2016-332-ELT 222] wherein it has been held that "manufacture" means bringing into existence a new substances known to the market and not merely producing some change in a substance; that a process amounts to manufacture only when due to it original identity of products undergoes transformation and it becomes a distinct and new product.

8. On other hand, the appellant has contended that their activities are very well within the meaning of "manufacture" as the pump sets cleared by the are customized as per the demand of customer and the electrical motor is manufactured by them depending upon the configuration of pump; that accordingly they had taken cenvat credit correctly and cleared the final goods on concessional rate of duty. They relied on the decision of Hon'ble Tribunal in case of M/s Walchandnagar Industries [2014 (311) ELT 274-Tr.Mum]; Hon'ble Supreme Court decision in case of M/s J G Glass [1998 (97) ELT 5] and CBEC's Circular No.224/58/96-CX dated 26.06.2016.

9. From the facts of the case, I observe that the issue involved in these case are as to whether the appellant is eligible for [i] availing Cenvat credit on bought out goods viz. submersible pumps which said to be not undergone any manufacturing activities while clearing with goods viz. electric motors manufactured by them; and [ii] eligible for the benefit of reduced rate of Excise duty as granted under Notification No. 12/2012-C.E., dated 17.3.2012, more specifically under Sr. No. 235, while clearing the submersible pump and electric motor in a single package. Before deciding the above issue, it is to be decided firstly as to whether the clearance of above said bought items (bare pump/submersible pump) along with appellant's own manufactured goods (electric motors) in a single package is amounts to manufacture or otherwise.

10. The factual matrix which is undisputed that the appellant are manufacturer of submersible pumps and electrical motors falling under Chapter Heading No. 84 during the material period. It is also undisputed that the appellant is also purchasing Bare pumps/Submersible pumps from various manufacturers on payment of duty in fully manufactured condition; that after necessary testing and painting, such bought out goods are cleared along with their own manufactured electric motors in their packaging as a "Pump Set", by classifying under chapter 8413 of Central Excise Tariff Act and availing concessional rate of duty under Notification No.12/2012-*ibid*.

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11. I observe that the adjudicating authorities have discussed the term "manufacture" at length, based on Hon'ble Supreme Court's judgment in case of M/s Delhi Cloth & General Mills and M/s Kores India Ltd *supra*, hence not reproduced the gist of the judgments. According to the decisions of Hon'ble Court, in case of M/s Delhi Cloth & General Mills, manufacture means bringing into existence a new substance known to the market and not merely producing some change in a substance. The decision of M/s Kores India Ltd mandates that for a process to be called as manufacture, a new and distinct product/article should be emerged during the process. In the instant case, the appellant undertakes the activities of testing, repainting on the bought out goods which do not bring out any change in the original character. Further, it is an admitted fact by the appellant that they had not undergone any process on the bought out goods except testing and painting; that such bought out goods duly tested and painted are repacked with their own manufactured goods.

12. I further observe that the Hon'ble High Court of Allahabad has decided a similar issue in case of M/s Hond Siel Power Products Ltd [2016 (332) E.L.T. 222 (All.)], wherein it has been held that :

"Placing bought out P.D. Pump and own manufactured I.C. Engine in a single carton - Whether amounting to manufacture - A clear finding of fact, based on evidence and relevant material, recorded in adjudication order that aforesaid bought out item and own manufactured item complete in all respects including carrying respective user manuals - These items also carrying logo and label of respective manufacturers in their individual packing - Tribunal erred in setting aside adjudication order without considering and discussing aforesaid factual finding and evidence - Tribunal ignoring fact of clearance of own manufactured item on payment of duty while not paying any duty when same merely placed in carton along with bought out item - Merely putting together one bought out item with own manufactured item in one carton, not amounting to manufacture as no new item coming into existence -"

13. From the admitted facts by the appellant, it is apparent that no manufacturing process took place in respect of the bare pumps/submersible pump in the factory of the appellant, except testing and painting; that such bought out pumps were not used within the factory of production for the manufacture of pump set. Therefore, in view of definition of "manufacture" as defined in the Hon'ble Supreme Court's judgment and clear finding of Hon'ble High Court of Allahabad *supra*, I am of the considered opinion that clearing of own manufactured electric motors by placing them in a carton containing bought out pump does not amount to manufacture of pump sets.

14. The appellant has relied on Hon'ble Tribunal's judgment in case of M/s Walchandnagar Industries Ltd *supra*. Since the said case speaks the issue relating to inclusive of value of bought items and supplied to the customers in terms of their purchase order, hence not applicable to the facts of the instant case. Further, the appellant has cited CBEC's Circular dated 26.06.2006 which is also not relevant to the facts of the instant case as the said circular clarifies the classification of power driven pump. Further, in the instant case, the bought out bare pump/submersible

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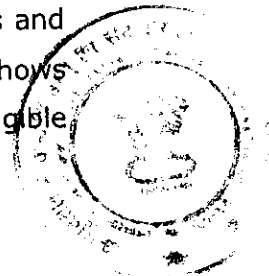
pump and electric motors manufactured by the appellant are separate products and merely packed together cannot be termed as power driven pump.

15. Now, the question arises regarding availment Cenvat credit on bought out goods viz. bare pumps/submersible pumps and concessional rate of excise duty availed by the appellant under Notification No. 12/2012-C.E., dated 17.3.2012, on clearance of bought out goods along with electric motors manufactured by them as a "Pump Set".

16. As per Cenvat Credit Rules, Cenvat credit on inputs can be availed when it used in the manufacture of final products. As already discussed above, the process of bought out goods are not amounts to manufacture. In the circumstances, the said bought out goods cannot be considered as their inputs within the definition of inputs given under Rule 2 of Cenvat Credit Rules. Therefore, the credit taken on such goods are not eligible to the appellant and the adjudicating authorities have rightly denied the same and ordered for its reversal with interest. Further, the appellant are manufacturing and clearing electrical motors, by paying rate of duty under Central Excise Tariff Act. However, while clearing the said electrical motors along with bought pumps, declaring as "pump set", the appellant pays duty at concessional rate of duty under notification No.12/2012-CE *supra*. When the bought pump are not their inputs and also not undergoes any manufacturing activities, the electric motors are not eligible for concession rate of duty. Accordingly, the benefit of the notification *supra* is not available to the appellant in respect of electrical motors cleared with bought out Pumps as Pump Sets. Therefore, I hold that the appellant should have discharged the duty liability on the electric motors at full rate of duty and the adjudicating authority has rightly denied the benefit of notification *supra* and demand the short payment of duty with interest.

17. As regards penalty, I observe that the adjudicating authorities have has imposed penalty on the appellant as well as Shri Dineshbhai Patel, Director of the appellant. In view of above discussion, I observe that the act of the appellant resulted in wrong availment of Cenvat credit amounting to Rs. 58,17,515/- and Rs.21,89,018/- and short payment of excise duty amounting to Rs. 92,16,866/- and Rs.23,86,230/-. Looking into the apt of the case, penalty is imposable in the instant appeals, therefore, do not require any interference.

18. As regards penalty imposed on the Director of the appellant, I observe that the involvement of Shri Dineshbhai Patel, Director of the appellant in wrong availment of Cenvat credit and short payment of duty stand established in view of facts and circumstances of the case. In his statement dated 28.09.2013, he has accepted the fact that no process has been undertaken on submersible pumps and these pumps cannot be "input" to the motors they are manufacturing. This shows that Shri Patel was well aware of everything and deliberately acted to take ineligible

credit. In the circumstances, the adjudicating authority has correctly imposed the penalty on Shri Dineshbhai Patel and do not require any interference.

19. In view of above discussion, I reject the appeals filed by the appellant and partly allow the appeal filed by Shri Dineshbhai Patel, Director of the appellant. All the three appeals are disposed of accordingly.

Usha Shankar

(उमा शंकर)

आयुक्त (अपील्स)

Date: /11/2017.

Attested

Mohanan V.V
(Mohanan V.V)
Superintendent (Appeal)

By RPAD

To
M/s Duke Plasto Technique Pvt Ltd
At Badarpur, Deesa Highway, Palanpur.

Shri Dineshbhai Patel, Director
M/s Duke Plasto Technique Pvt Ltd
At Badarpur, Deesa Highway, Palanpur.

Copy to:-

1. The Chief Commissioner, CGST Zone, Ahmedabad.
2. The Commissioner, CGST, Gandhinagar
3. The Additional Commissioner, Gandhinagar.
4. The Addl./Joint Commissioner, (Systems), CGST, Gandhinagar
5. The Dy. / Asstt. Commissioner, CGST ,Division -Gandhinagar
6. Guard file.
7. P.A

