

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
PLOT NO. 6776/B1, "SIDDHI SADAN" BUILDING,
NARAYAN UPADHYAY MARG,
BHAVNAGAR – 364 001.

F. No.V/15-94/Dem/HQ/2009

Date of order : 30.12.2011

Date of issue : 29.02.2012

Passed by Shri Harcharan Singh, Additional Commissioner.

Order-in-Original No. 22/ADC/BVR/2011-12

This copy is granted free of charge for private use of the person(s) to whom it is sent.

Any person(s) deeming himself aggrieved by this order may appeal against this order to the Commissioner Central Excise (Appeals), Rajkot, Central Excise Bhavan, Race Course Ring Road, Rajkot-360001 within 60 days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.50 paise only.

The appeal should be filed in form EA-1 in duplicate, as per the provisions of Section 35(1) of the Central Excise Act, 1944 read with Rule 3 of the Central Excise (Appeals) Rules, 2002. It should be signed by the appellants in accordance with the provisions of sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2002.

- It should be accompanied with the following :
- Copy of appeal in duplicate

Copies of the order, one of which shall be certified copy or the other must bear a court fee stamp of Rs. 2.50 paise as per Schedule 1 to Article 6 of the Court Fee Stamp Act, 1870.

Sub.:- Show Cause Notice F. No.V/15-94/Dem/HQ/2009 dated 11.2.2010.

Brief facts:

2.1 An information was received that one unit namely M/s Harihar Agro Industries, Station Road, Near Marketing Yard, Dhari (District Amreli) (*hereinafter referred to as the Noticee*) is engaged in manufacturing of Turbine Pumps primarily designed for handling water without obtaining Central Excise Registration and selling the same without cover of Central Excise Invoice and without discharging liabilities of Central Excise duty leviable thereon. The product is classifiable under Chapter Heading No. 8413 of First Schedule to the Central Excise Act, 1944. As per S. No. (xl) of the Annexure to Notification No. 8/2003-CE dated 1-3-2003 as amended (*hereinafter referred to as the SSI Exemption Notification*), the benefit of the said Notification is available to such Pumps only when the same conform to standards specified by BIS (Bureau of Indian Standards) for such pumps. According to the information, the above unit possessed ISI Certification for one or two of their products / models and for the remaining, they have not obtained such Certification, hence, clearances of such other products / models become liable to Central Excise duty from the 1st clearance.

2.2 In view of the above, search of the factory premises of the Noticee was carried out by a team of officers of Anti- Evasion Section, Central Excise, Hqrs, Bhavnagar on 6-8-2009 in presence of two independent Panchas and Shri Rasikbhai Damjibhai Davda, Proprietor of the Noticee and incriminating documents viz. Sales Invoices, Purchase & Sale Register and some other documents including Pamphlets of the products manufactured by the unit etc were seized under the Panchnama dated 6-8-2009. (**Doc.1**) It was learnt that none of the products (Water-pumps) manufactured by the Noticee conforms to standards specified by Bureau of Indian Standards i.e. they have not obtained ISI Certification / Registration for any of their products. Therefore, the Noticee was not eligible to avail benefit of clearance value based exemption prescribed under the SSI Exemption Notification and liable to pay Central Excise duty right from

the beginning. During the search, 7 Nos. of Water Pumps (Stage Pumps) in marketable condition valued at Rs.23,500/- were found lying in the factory and the same were seized under the reasonable belief that the same were manufactured without obtaining Central Excise Registration in violation of Rule 9 and therefore liable to confiscation under Rule 25 of the Central Excise Rules, 2002 (*hereinafter referred to as the Rules*) and the same were handed over to Shri Rasikbhai Damjibhai Davda, Proprietor of the Noticee for safe custody.

2.3 Statement of Shri Rasikbhai Damjibhai Davda, Proprietor of the Noticee was recorded on 6-8-2009, 20-11-2009 & 27-11-2009 (**Doc.2**) under Section 14 of the Central Excise Act, 1944 (*hereinafter referred to as the Act*) wherein he admitted that he was engaged in manufacturing & selling of Water Turbine Pumps since last four years; **that** he had not obtained ISI Certificate from the Bureau of Indian Standards for pumps manufactured by him; **that** the Water Turbine Pumps manufactured by him were used for drawing water from Wells & Bore-wells and most of their purchasers run them by using diesel, however, the same can also be run by electricity; **that** the Water Turbine Pumps manufactured by him have three main components viz. (1) Stage Pump: the same remain submerged in water and the same is manufactured in his factory. There remains 4 to 11 'bowls' in a stage pump. These bowls are also called 'stage'. The Studs purchased from market are used to connect bowls with one another. There remains one Rotor inside the stage pump, (2) Pipe & Rod: pipe and a rod passing through it connects Stage Pump & Head. They purchase Galvanized Pipes and M. S. Circle Cutting (Flanges) from the market. In their factory, they make holes in the flanges and then they are welded at both the ends of each pipe. While lowering these pipes in a well or bore-well, they are fitted with bolt & nuts and thus they remain connected. Round Bars (rods) are purchased from the market and are cut into pieces equal to the length of pipes. 'Coupling' of three inch length is prepared in their factory from round bars having more thickness by making machining work on it. This coupling is used to connect the pieces of rods. (3) Head: they got prepared C. I. Castings according to their patterns which have two main parts viz. Body and Pulley. They do machining work in their factory and make holes to connect them with each other with bolts & nuts and thus manufacture head and paint it. Pulley remains on the top and is connected to a diesel engine with belt. When diesel engine is started, the pulley rotates & rod connected to pulley rotates which in turn rotates the rotor inside the stage pump and thus water is drawn out of well or bore-well; **that** they sell the pumps at a price which covers installation of the pump at the customer's site and testing it; **that** he had not obtained Central Excise Registration for his unit and sold pumps manufactured by them without payment of Central Excise duty; that he had not maintained any statutory records etc, and assured to pay duty along with interest; **that** in his statement dated 20-11-2009, he produced three Sales Invoice Books containing Invoices Nos. 101 to 150, 151 to 200 and 201 to 250 under his dated signature and in his statement dated 27-11-2009, he produced sample copies of purchase invoices of raw-materials.

2.4 On going through Sales Invoices of the Noticee seized under the Panchnama dated 6-8-2009, it was observed that description of the pumps sold were mentioned either as 'Turbine pump set with column pipe & accessories' or their components were mentioned separately such as "Head, Ass. Bag, Column, Stage Pump/Pipe, Pipe" etc. which on combining function as Water Turbine Pump. In a very few cases, it was also found that a Water Turbine Pump was sold along with Diesel Engine which was used to rotate the pump to extract water from well or tube-well. Further, in the Invoices, it was found printed "Harihar Agro Industries- Manu.: Turbine Pump, operating with Oil Eng." On going through various pamphlets of the Noticee seized along with other documents, it was found that a 'Harihar' was being used as brand name for the turbine pumps manufactured by the Noticee and it was propagated that their pumps can function by Diesel Engine, Electric Motor or Tractor and can draw water from 300 feet depth and can be fitted on 4", 6", 8", 10" bore-wells or in wells.

2.5 From the above, it appeared that the Noticee was engaged in manufacture of "Deep Tube Well Turbine Pumps primarily designed for handling water" classifiable under Heading No. 8413 50 21 of First Schedule to the Central Excise Tariff Act, 1985. Investigation revealed that out of the three main components of the Water Turbine Pumps manufactured by the Noticee, Stage Pump was fully manufactured in the factory of the Noticee whereas Galvanized Pipes were purchased from the market and flanges, after machining and making holds for fitting bolts were welded in their factory at both the ends of each pipe so that the pipes can be attached with one another with bolts. Thus, stage pump is deepened in well or bore-well at the required depth

which remains connected to the Head with pipes & rod passing through it. When Head (Pulley) is rotated by Diesel Engine, it rotates the stage pump and water is drawn out. Thus, all the three components viz. Stage Pump/Pipe, Pipes & Rods and Head together form a Water Turbine Pump which is used for drawing water out of well or bore-well.

2.6 On the basis of Sales Invoices and other documents seized under the Panchnama dated 6-8-2009, an Annexure-1 (**Doc.3**) is prepared showing Invoice No. & Date, Name of the Purchaser, description, quantity and value of the water turbine pumps sold by the Noticee during the period from 1-1-2007 to 31-7-2009 and the same is attached with this Notice. Accordingly, the Noticee sold Water Turbine Pumps valued at Rs. 1,51,04,579/- during the period from 1-1-2007 to 31-7-2009 without payment of Central Excise duty.

2.7 The SSI Exemption Notification issued under Section 5A of the Act exempts clearances for home consumption of the excisable goods of the description specified in the Annexure appended to the Notification. As per S. No. (xl) of the Annexure to the said Notification, the benefit of the said Notification is not available w.e.f. 1-1-2007 to such Pumps primarily designed for handling water which do not conform to standards specified by BIS (Bureau of Indian Standards) for such pumps. Therefore, the clearances of the water turbine pumps manufactured by the Noticee not conforming to standards specified by BIS for such pumps is not eligible to the SSI Exemption Notification and therefore, the Noticee was required to obtain Central Excise Registration before indulging in manufacture of such pumps; to clear such pumps under Central Excise Invoice; to maintain proper records as prescribed under the Act and to discharge the duty liabilities under the Act.

2.8 In view of the above facts, it was found that Noticee had contravened the provisions of the Central Excise Act, 1944 and Rules framed thereunder specifically provisions of Section 6 of the Act read with Rule 9 of the Rules inasmuch as they failed to obtain Central Excise Registration before indulging in manufacture of the excisable goods viz. Water Turbine Pumps; Rule 10 of the Central Excise Rules, 2002 inasmuch as they failed to account for the production and clearance of the pumps manufacture and sold by them in their Daily Stock Account; Rule 11 of the Central Excise Rules, 2002 inasmuch as they removed the excisable goods viz. Water Turbine Pumps from their factory without cover of an Invoice prepared in the manner prescribed under Rule 11; Rule 8 of the Central Excise Rules, 2002 in as much as they failed to pay duty on the pumps removed from their factory during the period from 1-1-2007 to 31-07-2009 in the manner prescribed under the Rule.

2.9 It was also found that the Noticee had by not obtaining Central Excise Registration suppressed the facts of manufacture of the excisable goods from the Department and its clearance without cover of Invoice with intend to evade payment of Central Excise duty leviable thereon. Further, it was found that the Noticee had contravened various provisions of the Act and the Rules as discussed hereinabove with intend to evade payment of duty. Therefore, extended period as contemplated under proviso to Section 11 A of the Act has been invoked for recovery of Central Excise duty not levied and paid by the Noticee.

2.10 From the Para supra it was revealed that the Noticee acting in the manner as discussed above, had committed offences as described in clauses (a), (b), (c) of Rule 25 (1) of the Rules and that these goods were liable to confiscation and thereby have rendered seized goods viz. 7 Nos. of Water Pumps (Stage Pumps) valued at Rs.23,500/- liable to confiscation under Rule 25(1) of the Rules. It also revealed that Central Excise duty amounting to Rs.11,51,281/- as calculated and shown in the Annexure-II (**Doc.4**) attached to this Notice is liable to be recovered from them under Section 11A of the Act along with interest under Section 11AB of the Act. Further, it revealed that the Noticee is liable to penalty under Section 11AC of the Act for suppression of facts and contravention of various provisions of the Act and the Rules with intend to evade payment of duty as discussed hereinabove and also liable to penalty under Rule 27 of the Rules for violation of the provisions of Rules 8, 9, 10 & 11 of the Rules as discussed hereinabove.

2.11 In view of the above facts, a subject show cause notice was issued asking as to why:

1. Central Excise duty amounting to Rs. 11,51,281 (**Rupees eleven lacs, fifty one thousands, two hundred and eighty one only**) (**Basic duty Rs. 11,17,749/-+ Edu. Cess Rs. 22,355/- + S. H. Edu. Cess Rs. 11,177/-**) (calculation as shown in the Annexure-II to the Notice) should not be demanded and recovered under proviso to Section 11A of the Act along with the interest at the appropriate rate as applicable till the date of payment of the duty as provided under Section 11 AB of the Act ;
2. 7 Nos. of Water Pumps valued at Rs 23,500/- should not be confiscated under Rule 25(1) of the Rules ;
3. Penalty should not be imposed upon them under Section 11AC of the Act ;
4. Penalty should not be imposed upon them under Rule 27 of the Rules ;

2.12 Personal Hearing :

Shri Paresh Sheth, Advocate attended personal hearing on behalf of the Noticee on 21.11.2011 and submitted written submissions.

3 Defense, Discussion and findings:

3.1 I have gone through the facts of the case, defence reply filed by the Noticee and all the relevant documents placed in the file. On going through the facts of the case, I find that the Noticee is engaged in the manufacture and selling of water pumps falling under Chapter heading No.8413 of the First Schedule to the Central Excise Tariff Act, 1985. In the present case it is undisputed fact that the Noticee is not having ISI certificate issued by the Bureau of Indian Standards for manufacture of water pumps. Notification No. 8/2003-CE dated 01.03.2003 as amended provides exemption from the payment of central excise duty to the water pumps listed at Sr. No. (xl) of Annexure to the said Notification. On going through the said Notification, it can be seen that the exemption from the payment of duty to the water pump listed at S. No. (xl) of the Annexure is available only if the water pumps having standards specified by the Bureau of Indian standards.

3.2 In the subject Show Cause Notice, the case of the Department is that the Noticee has manufactured water pumps without having BIS standards and hence they are not eligible for an exemption benefit as provided in Notification No. 08/2003-CE dated 01.03.2003 as amended. In the defence reply, the Noticee has vehemently argued and contended that the actions proposed in the subject show cause notice are legally not tenable and required to be quashed on the following grounds:

(a) The view of the Department that the Noticee is not having ISI registration for the manufacture of water pumps having BIS standards and hence they are not eligible for the exemption benefit provided to the water pumps listed at S. No. (xl) of the Annexure to the Notification No. 08/2003-CE dated 01.03.2003 is not legally correct and tenable as the relevant Notification does not lay down the condition that the Noticee should obtain registration with the BIS and therefore without any specific observation / testing of the product as per the standards specified, it can not be said that the product manufactured by the Noticee is not as per the specification given by the BIS. I do not agree with this argument / contention as it is obligatory on the part of the Noticee to obtain the ISI certificate issued by the Bureau of Indian Standards (BIS). Revenue Department is not the competent authority to decide Standards for any product. Notification No. 08/2003-CE dated 01.03.2003 provides exemption benefit from payment of duty to water pumps listed at S. No. (xl) of the Annexure attached therewith. In the said Notification, it has been clearly explained that which kind of water pumps are eligible for the exemption benefit. As per the Notification, only the water pumps having specification prescribed by the BIS are exempted from the payment of duty. It is well settled position of the law that the person who intends to take benefit of the exemption has to comply with the conditions of the Notification. In the subject case, the Noticee has failed to produce any evidence showing that the water pumps being manufactured by them are having standards specified by the BIS authority. As the Noticee has not complied with the said condition of the

Notification, I hold that the Noticee is not eligible for the exemption benefit provided to water pumps in Notification No.08/2003-CE dated 01.03.2003 as amended.

(b) The Noticee has produced a certificate given by the Chartered Engineer certifying that water pumps manufactured by them are having equivalent quality standards as specified by the BIS. On perusal of the Certificate given by the Chartered Engineer dated 15.11.2011, I observe that the Chartered Engineer has given this certificate on the basis of arrangement of testing of the pumps regarding quality of the product manufactured by the Noticee with other private unit viz. M/s .Harihar Agro Enterprise, Rajkot. Whether any item having a specific standards or not is certified by the competent authority and M/s. Harihar Agro Enterprise, Rajkot is not competent authority. It is also important to note here that the Noticee has produced the Chartered Engineer's Certificate at the time of adjudication. In this regards, an inquiry of the subject case was conducted by the Department and a statement of Shri Rasikbhai Damjibhai Davda, a proprietor of the Noticee was recorded under Section 14 of the Central Excise Act, 1944 on dt. 06.08.2009, 20.11.2009 and 27.11.2009 wherein he stated that they were engaged in the manufacture of water Turbine pump and had not obtained ISI certificate from the Bureau of Indian Standards; that the water turbine pumps manufactured by them were used for drawing water from wells as well as from bore wells; that they sell the pumps at price which covers installation of the pump at the customer's site; that they had not obtained Central Excise registration required for manufacture of the water pump; that the water pumps being manufactured by them were sold without payment of duty and have also not maintained records. On going through the details of the inquiry conducted by the Department, I observe that nowhere the Noticee have said that they were undertaking a testing of their water pumps by the another factory situated at Rajkot and having such testing facility. So, I hold that a production of Chartered Engineer's certificate at the time of adjudication is nothing but an afterthought and preparation of a certificate after inquiry so as to get relief from the charges levelled in the show cause notice.

(c) The Noticee further contended that the allegations contained in Show Cause Notice are not proper and justified inasmuch as the Department has not produced any evidence to prove such allegation or any evidence to prove as to how the said pumps were not as per the BIS specification. I do not agree with this contention as for taking or claiming any benefit of the exemption Notification, it is obligatory on the part of the Noticee to comply with the condition of the Notification. I hold that the Noticee have not complied with the condition of the exemption Notification and has tried to throw a ball in the court of Department which will not help them in any way.

(d) The Noticee have stated that they would like to draw a kind attention of the adjudicating authority to the manufacturing process clarified in the statement by Shri Rasikbhai. In the said statement, it is clarified that the pump manufactured and cleared by them was nothing but the assembly of Head with pump. In other words, this assembly is nothing but the assembly of pump set and since the exclusion prescribed in the Notification is for the pump and not for the pump set and hence proposal made in the show cause notice is liable to be set aside. I hold that the contention made by the Noticee is legally not tenable as it can be seen from the statement of Shri Rasikbhai Damjibhai Davda recorded under Section 14 of the Central Excise Act, 1944 wherein he has admitted that they were engaged in the manufacture of water Turbine pumps used for pumping of water from the wells and bore wells. If any person manufactures water pump and also undertakes an activity of trading of any other materials with the selling of water pumps does not mean that the person is not manufacturing water pumps. From the invoices placed on record, I have seen that the Noticee has also sold diesel engine along with the water pumps. So, I hold that the Noticee is engaged in the manufacture of water pumps on which duty is required to be paid as proposed in the Show Cause Notice.

(e) In support of his above contention, the Noticee has placed reliance on the decision passed by the Hon'ble CESTAT (Mumbai) in the case of M/s. Patel Field Marshal Industries v/s CCE, Rajkot reported in 2003 (158) ELT 483. On going through the said decision, it can be seen that in the said case the centrifugal pumps were attached with the diesel oil engine whereas in the present case, pumps are not attached with the diesel oil engine. In the present case, a specially designed water pumps are manufactured by the Noticee and sold to the customer for drawing of water from the wells and bore wells. It is very common to understand that water cannot be

pumped out from the well or bore well without pipe line. If any person manufactured water pump and sold it to the customer along with pipe it does not mean that a person is not engaged in the manufacture of turbine pump. In view of this fact, I hold that this decision is not relevant with the facts of the present case and hence it will not help to the Noticee.

(f) The Noticee have contended that their intention was not to evade payment of duty and therefore penalty proceedings initiated under the provisions of Section 11 AC was not proper and correct. In this regard I hold that the Noticee was aware of the fact that water pumps listed at Sr No. (xl) of the Annexure attached to the Notification No. 08/2003-CE dated 01.03.2003. Once the Noticee was aware of the exemption benefit of the Notification, he must be aware with the condition of the said Notification that a benefit of exemption is available to such water pumps having BIS standards. It was obligatory on the part of the Noticee to comply with condition of the Notification for enjoying exemption benefit provided therein. Instead the Noticee started availing benefit which shows clear intention of to evade a payment of duty. Therefore, I hold that action proposed in the subject Show Cause Notice to demand the duty under the provisions of Section 11 AC of the Central Excise Act, 1944 is legally correct.

(g) The Noticee has also argued that an action proposed in the subject show cause notice to recover the duty under the provisions of Section 11A, 11AB and 11AC of the Central Excise Act, 1944 and Rule 25 (1) and Rule 27 of the Central Excise Rules, 2002 are legally not correct and entire proceedings are required to be quashed. With regards to action proposed under Section 11A, 11AC and 11AB of the Central Excise Act, 1944, I hold that the Noticee was required to comply with condition of the Notification for availing benefit provided therein. As the Noticee has deliberately and intentionally suppressed the material facts from the Department by not following Central Excise procedure inasmuch as have not obtained registration, have failed to file return in the prescribed manner and time, have failed to pay appropriate duty and have failed to maintain proper accounts of their goods, I hold that the actions proposed in the subject Show Cause Notice are legally correct.

In view of the above facts, evidences, discussion and findings I pass the following orders.

ORDER

- 1) I confirm amount of Central Excise duty of Rs.11,51,281/- (Rupees eleven lacs fifty one thousand two hundred and one only) as calculated in Annexure-II under the provisions of Section 11A of the Central Excise Act, 1944.
- 2) In addition to the above confirmed Central Excise duty of Rs.11,51,281/-, the Noticee shall pay interest on the said amount as provided under Section 11AB of the Central Excise Act, 1944.
- 3) I confiscate 7 Nos water pumps valued at Rs.23,500/- under the provisions of Rule 25(1) of the Central Excise Rules, 2004. However, I give option to the Noticee to redeem the said goods on payment of redemption fine of Rs .6,000/- (Rupees six thousand only) under Section 34 of the Central Excise Act, 1944.
- 4) I impose penalty of Rs.11,51,281/- (Rupees eleven lacs-fifty one thousands two hundred and eighty one only) upon the Noticee under the provisions of Section 11AC of the Central Excise Act, 1944. If the amount as determined under para 1 above is paid within 30 days from the receipt of the order along with the interest payable then as per proviso to Section 11AC, the penalty will be only 25% of the duty determined at para 1 above. The benefit of reduced penalty shall be available only if the amount of penalty so determined has also been paid within the period of thirty days from the receipt of this order.
- 5) I impose a penalty of Rs.5,000/- (Rupees five thousand only) upon the Noticee under the provisions of Rule 27 of the Central Excise Rules, 2004 for not obtaining Central Excise registration as provided under Rule 9 of the said Rules *ibid*.

- 6) I impose a penalty of Rs.5,000/- (Rupees five thousand only) upon the Noticee under the provisions of Rule 27 of the Central Excise Rules, 2004 for not filing returns as provided under Rule 12 of the said Rules ibid.
- 7) I impose a penalty of Rs.5,000/- (Rupees five thousand only) upon the Noticee under the provisions of Rule 27 of the Central Excise Rules, 2004 for not maintaining Daily Stock Account as provided under Rule 10 of the said Rules ibid.
- 8) I impose a penalty of Rs.5,000/- (Rupees five thousand only) upon the Noticee under the provisions of Rule 27 of the Central Excise Rules, 2004 for not removing the goods under proper invoices as provided under Rule 11 of the said Rules ibid.

sd/-

(HARCHARAN SINGH)
ADDL. COMMISSIONER

To,
M/s Harihar Agro Industries,
Station Road,
Near Marketing Yard, Dhari,
District: Amreli.

Copy to.

- (i) Commissioner, Central Excise, Bhavnagar.
(ii) Assistant Commissioner (AE), Central Excise, Bhavnagar.
(iii) Assistant Commissioner, Central Excise Division-Rural, Bhavnagar.
(iv) Superintendent, Central Excise, AR- Mahuva.
(v) Superintendent (Recovery Cell), Central Excise Hqrs, Bhavnagar.
 (vi) Guard File.

sd/-
29/2/2012

ADDL. COMMISSIONER