



प्रधान आयुक्त का कार्यालय,  
**Office of the Principal Commissioner,**  
केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय  
Central GST , Commissionerate- Ahmedabad South,  
चौथी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.  
4<sup>th</sup> Floor, GST Bhavan, 380015



फा.सं. V.84/4-48/Aqua/OA-1/18-19

**DIN- 20221264WS0000111BDF**

आदेश की तारीख: Date of Order: 30.12.2022

जारी करने की तारीख: Date of Issue : 13.01.2023

**द्वारा पारित /Passed by: Shri Shravan Ram , JOINT COMMISSIONER**

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**मूल आदेश सं./Order-In-Original No.: 64/CGST/Ahmd-South/JC/SR/2022-23**

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यह प्रति उस व्यक्ति लिए (जिनके) जिसके ,को (यों) यह आदेश जारी किया गया है ,उसके (उनके) व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है ।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त , (अपील)केन्द्रीय जीएसटी ,केन्द्रीय जीएसटी भवनअहमदाबाद ,आंबावाड़ी , -को प्रारूप 15 एस.टी.-4 में अपील कर सकता है । उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए । इसपर रुपए -/2.00केवल का न्यायालय शुल्क टिकट लगा होना चाहिए ।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **S.T.4** to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील दो प्रतियों में प्रारूप सं .एस.टी.-4 में दाखिल की जानी चाहिए । उसपर केन्द्रीय उत्पाद शुल्क 2001 ,नियमावली (अपील)के नियम के 3उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए । इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. S.T.4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:

उक्त अपील की प्रति ।

Copy of the aforesaid appeal.

निर्णय की दो प्रतियाँ उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए) जिसके विरुद्ध अपील की गई है -/2.00 अथवा उक्त आदेश की अन्य प्रति जिसपर रु (का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

Two copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त में शुल्क के (अपील)7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है ।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

**संदर्भ/Reference :** कारण बताओ सूचना फा.सं. V.84/4-48/Aqua/OA-1/18-19 dated 01.01.2019 M/s Aqua Machineries Pvt. Ltd., Plot No. 3821, Phase-IV, GIDC, Vatva, Ahmedabad- 382445.

**Brief Fact of the Case**

M/ s. Aqua Machineries Private Limited, Plot No. 3821, Phase-IV, GIDC, Vatva, Ahmedabad-382445 (hereinafter referred to as "the Noticee") was registered with the Central Excise Department under ECC No. AACCP3014AXM001 for manufacture and clearance of excisable goods i.e. Water Submersible Pumps and Parts thereof falling under Chapter Heading 8413 of the First Schedule to the Central Excise Tariff Act, 1985, was availing cenvat credit under CENVAT Credit Rules, 2004, and holds GSTIN No. 24AACCP3014A1ZB.

2. Whereas, on the basis of intelligence received against the Noticee in respect of contract made with M/ s Gujarat Water Infrastructure Limited, (herein. after referred to as 'GWIL'), that the Noticee was evading Central Excise duty by availing wrong exemption under Notification No. 12/2012 C.E. dated 17.03.2012 (Sr.No.233) read with condition No. 23 of the said Notification, in respect of Work Order No. GWIL/K-Network/Bhachau PS/Work Order/2785 dated 31.12.2014, by producing the Certificate No. Mag/Pol/ CEO/2115 dated 24.01.2015, as amended by Certificate No. Mag/Pol/CEO/6115 dated 13.02.2015, issued by the District Magistrate, Kachchh-Bhuj, a verification process was initiated ..

3. Whereas, the Department, vide letter F. No. 50-56/ AR-I/ Aqua/2016-17 dated 30.09.2016, asked the Noticee to submit the details pertaining to the quantity /value of goods cleared to M/ s GWIL, against the above said certificates issued by the District Magistrate, Kachchh-Bhuj, under Notification No.12/2012 C.E. dated 17.03.2012 (Sr. No.233), along with the Contract Agreement/Work Order and they were further asked whether they are eligible for the excise duty exemption. The Noticee, vide their letter no. Ref: AQUA/EXCISE/ 16-17 dated 10.10.2016 submitted the details of the clearances made under the said exemption certificates and the Work Order/Contract Agreement as follows:-

TABLE- 1

Inv. no.	Invoice date	Description as per invoice	Tariff classifica	Qty	Value
332	20/02/2015	Exempted pumps model ARS 2552 mm 400 with 15 mtr. cable & horizontal portable stand & wire rope & suction strainer and flange	84137010	5	1,80,32,805/-
336	24/02/	do	84137010	4	1,44,26,244 /-
340	26/02/	do	84137010	3	1,08,19,683/-
350	07/03/	do	84137010	3	1,08, 19,683/-
351	07/03/2015	Exempted pumps model ARS 2037 mm 110 with 15 mtr. cable & horizontal portable stand & lifting chain &	84137010	3	27,77,550/-
354	10/03/2015	Exempted pumps model ARS 2552 mm 400 with 15 mtr. cable & horizontal portable stand & wire rope & suction strainer	84137010	3	1,08,19,683/-
		<b>Total</b>		<b>21</b>	<b>6, 76, 95,648</b>

4. Whereas, the Noticee vide their letter dated 28.11.2016 further clarified that they are legally entitled to the exemption of Notification No.12/2012-CE dated 17.03.2012 for the goods supplied by them to GWIL for the project of **supply, installation, testing and commissioning of submerged Centrifugal Pump and allied equipments and construction of sump and panel room** with 10 years comprehensive O&M at Bhachau, District-Kutch; that in the tender documents, it is clearly stated at Annexure-II that the bidder shall quote his rates without excise duty; that for the purpose of availing benefits/ concessions in accordance with Central Excise Notification No. 47 /2002 dated 06.09.2002, and its latest revision or any other applicable notification, GWIL will issue the Project Eligibility Certificate duly signed by the Collector and GWIL; that it is also stated in Annexure-II of the tender documents

that the excise duty exemption will be applicable for all electro-mechanical items, M.S. pipes and all kind of valves, flow-meters etc. and submitted the extracts of Annexure-II of the relevant tender documents, which reads as under:-

*"The bidder shall quote his rates without the Excise duty for the purpose of availing benefits/concessions in accordance with Central Excise Notification No.47/2002-CE dated 6.9.2002 and its latest revisions or any other applicable notifications, the GWIL will issue the Project eligibility certificate duly signed by the Collector and GWIL.*

*The Excise duty exemption will be applicable for all Electro•mechanical items, MS pipes and all kind of Valves, Flow meters, etc. It **will be responsibility of the bidder to make assessment of benefits due to the Notifications and Certificate as above. In case the contractor does not get the Excise duty exemption benefits, no payments against Excise duty will be made by GWIL.***

5.1 The relevant text of Notification No. 12/2012-CE dated 17.03.2012 is reproduced hereunder for reference:

*"In exercise of the powers conferred by sub-section (j) of section 5A of the Central Excise Act, 1944 (I of 1944) the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below read with relevant List appended hereto and falling within the Chapter, heading or sub• heading or tariff item of the First Schedule to the Central Excise Tariff Act; 1985 (5 of 1986) (hereinafter referred to as the Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions annexed to this notification, if any, specified in the corresponding entry in column (5) of the Table aforesaid: ...*

... ..

Table -2

Sl. No	Chapter or heading or sub-heading or tariff item of the First	Description of excisable goods	Rate	Condition No
1	2	3	4	5
233	84 or any other Chapter	<p>The following goods, namely=</p> <p>(1) All items of machinery, including instruments, apparatus and appliances, auxiliary equipment and their components or parts required for setting up of water treatment plants;</p> <p>(2) Pipes and pipe fittings needed for delivery of water from its source to the plant (including the clear treated water reservoir, if any, thereof), and from there to the first storage point;</p> <p>(3) Pipes and pipe fittings of outer diameter exceeding 10 cm when such pipes are integral part of the water supply projects.</p>	Nil	23

ANNEXURE

Condition	Condition
No. 23	<p>If, a certificate issued by the Collector or District Magistrate or Deputy Commissioner of the District in which the plant is located, is produced to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be having jurisdiction to the effect that such goods are cleared for the intended use specified in column (3) of tire Table.</p>

5.2 Whereas, clause (1) of Sr. No. 233 of Notification No. 12/2012-CE dated 17.03.2012 exempts Central Excise duty on all items of machinery (falling under Chapter 84 or any other Chapter), including instruments, apparatus and appliances, auxiliary equipments and their components or parts **required for setting up of water treatment plants.**

5.3 Clause (2) of Sr. No. 233 of Notification No. 12/2012-CE dated 17.03.2012 exempts Central Excise duty on pipes and pipe fittings needed for delivery of water from its source to the

plant (including the clear treated water reservoir, if any thereof), and from there to the first storage point.

5.4 Clause (3) of Sr.No. 233 of Notification No. 12/2012-CE dated 17.03.2012 exempts Central Excise duty on pipes and pipe fittings of outer diameter exceeding 10 cm when such pipes are integral part of the water supply projects.

5.5 The exemption under clauses (1), (2) and (3) of Entry No. 233 of Notification No. 12/2012-CE referred above is subject to condition 23 annexed to the said notification. Condition No.23 specifies that a certificate issued by the Collector or District Magistrate or Deputy Commissioner of the District in which the plant is located, is produced to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be having jurisdiction, **to the effect that such goods are cleared for the intended use specified in column (3) of the Table to the Notification**

5.6 The term Water Treatment Plant has been explained under the explanation below Sr.No.233 of Notification No. 12/2012-CE wherein it is stated that Water Treatment plant includes a plant for desalination, demineralisation or purification of water or for carrying out any similar process or processes intended to make the water fit for human or animal consumption, but does not include a plant supplying water for industrial purposes.

6. Whereas, from the Certificate No. Mag/Pol/CEO /2115 dated 24.01.2015 and its amendment vide certificate No. Mag/Pol/CEO/6115 dated 13.02.2015 issued by the District Magistrate, Kachchh-Bhuj and submitted by the said Noticee,

it appeared that the materials as per Annexure~ 1 to the Contract/work order are required for executing the work of **supply, installation, testing and commissioning of submerged Centrifugal Pump and allied equipments and construction of sump and panel room** with 10 years

comprehensive O&M at' Bhachau and are meant for intended use as integral part of water supply projects and are exempted from excise duty. The relevant text of the certificate issued by the District Magistrate is reproduced hereunder:-

"Contract Agreement and work order no. GWIL/K-Network/Bhachau PS/ Work Order/2785 dated 31.12.2014, signed between M/s. Aqua Machineries Pvt. Ltd.(JV Classic Network Pvt. Ltd.), Plot no. 3821, Phase - IV, GIDC, Vatva, Ahmedbad-

382445 and Senior Manager (C), Gujarat Water Infrastructure Limited (Govt. Of Gujarat Undertaking), Bhachau, Distt. Kutch

This is to certify that the materials as per Annexure-1 are executing for the work of supply, installation, testing and commissioning of submerged Centrifugal Pump and allied equipments and construction of sump and panel room with 10 years comprehensive O&M at Bhachau, Distt. Kachchh(NC-10) at Bhachau and are meant for intended use of the integral part of water supply projects. Department of Revenue, Ministry of Finance and Company Affair, Government of India has exempted water projects from excise duty leviable thereon in accordance with notification no. 47/2002-CE dated 06.09.2002 as amended from time to time (amending notification no. 06/2006-CE dated 01.03.2006, 06/2007-CE dated 01.03.2007, 06/2008-CE Dated 01.03.2008, 26/2009-CE dated 04.12.2009 and 06/2011-CE dated 01.03.2011 (entry no. 7) and under notification no. 12/2012-CE dated 17.03.2012(column no. 3, sr. no. 233) and therefore exempted from excise duty.

It is certified that these materials shall form an integral part of above mentioned drinking water supply project."

Annexure-1

Sr. No.	Item Description	Qty	Unit	Name of Manufacturing	Name of Agency placed order
1	2	3	4	5	6
1.0	Submerged Centrifugal Pump sets with Horizontal, Portable, Water Immersed, Dry Air filled, Class "F" insulated, induction motor, Vacuum pressure impregnation treatment, non-driven insulated bearing, Discharge Capacity (QJ 924m3/ hr. @ 80 m Head (HJ each, Approx. 300KW,	18	Set	Aqua Machiner ies Pvt. Ltd. , Plot no. 3821, Phase-iv GIDC, Vatva, Ahmedab ad- 382445	Aqua Machinerie s Pvt. Ltd. , Plot no. 3821, Phase-IV, GIDC, Vatva, Ahmed abad

1.1	Discharge Capacity (Q) 587m <sup>3</sup> /hr. @ 37 m Head (H) each, Approx, 82KW, 0.415KV, 1500 RPM	3	Set		- 382445.
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7.1 Whereas, it appeared from the above said certificate that the materials supplied by the Noticee as per Annexure - 1 of the said certificate is certified to be for intended use of the integral part of **Water Supply Project** Clause 3 of Sr.No. 233 of Notificaiton No. 12/2012-CE exempted 'pipes and pipe fittings of outer diameter exceeding 10 cm when such pipes are integral part of the **Water Supply Project** The materials supplied by the Noticee as per Annexure - 1 of the said certificate are not "Pipes and Pipe Fittings of outer diameter exceeding 10 cm" and therefore do not appear to be covered by Clause 3 of Sr. No. 233 of Notificaiton No. 12/2012-CE. The descriptions of the items as per Annexure-1 to the Contract agreement/Work order and on the invoices (as mentioned at Table-1 below Para-3 to the SCN) does not match with the description specified at clause (3) of Sr.No.233 of the Notification No. 12/2012-CE and therefore, it appears that exemption of clause (3) of Sr.No.233 of the said notification is not admissible to the Noticee.

7.2 From the Annexure-1 attached to contract agreement/work order, it is seen that the Noticee was required to supply Submerged Centrifugal Pumps sets with Horizontal, Portable, Water Immersed Dry Air filled Class "F" insulated; induction motor, Vacuum pressure impregnation treatment, non-driven insulated bearing, (of different discharge capacity) and the said goods as per certificate issued by the District Magistrate, Kachchh-Bhuj were certified as meant for intended use of the integral part of water supply projects.

7.3 Whereas, further from the description of the items mentioned in the Annexure-1 of the contract agreement/work order issued by the District Magistrate, Kachchh-Bhuj and from the description and Tariff classification mentioned in the invoices for the goods supplied by the Noticee (mentioned at Table-1 below Para-3 to the

SCN), it appeared that the goods cleared by the said Noticee, are items of machinery falling under CTH 84137010. The items of machinery appears exempt from Central Excise duty leviable thereon in accordance with clause (1) of Sr.No.233 of Notification No. 12/2012-CE dated 17.03.2012, if the same are **required for setting up of water treatment plants**, subject to condition No. 23 that a certificate issued by the Collector /District Magistrate/ Deputy Commissioner of the District in which the plant is located, is produced to the Deputy/ Assistant Commissioner of Central Excise, having jurisdiction, to the effect that such goods are cleared for the intended use specified in column (3) of the Table i.e. **for setting up of water treatment plants**.

8.1 Whereas, further inquiry was caused by the jurisdictional Central Excise Authorities and summons dated 06.01.2017 was issued to M/s Aqua Machineries Private Limited to appear before the Range Superintendent along with all the relevant documents. In pursuance of the above said summons, Shri Basant Maurya, Senior Accountant and Authorized Signatory on behalf of the Noticee appeared before the Range Superintendent on 31.01.2017 and gave his statement under Section 14 of the Central Excise Act, 1944 (herein after referred to as the 'CEA, 1944'). In his statement, Shri Basant Maurya, stated that he works as Senior Accountant and Authorized Signatory of M/s. Aqua Machineries Pvt. Ltd; that he is aware with the day to day activity related to Central Excise matters of the firm; that he is authorized to give statement, which is binding to the company and their Directors for all Central Excise matters; that M/s. Aqua Machineries Pvt. Ltd. is engaged in the manufacture of Water-submersible pumps, Submersible pumps and parts thereof falling under Chapter 8413 of the First Schedule to the Central Excise Tariff Act, 1985 and they are availing the facility of CENVATCredit under CENVATCredit Rules, 2004; that he has been mainly attending the general office work including Central Excise matters and he is well conversant with the law, procedure and practice of Central Excise Act, 1944 and the rules made there under. On being asked about the certificates issued by District Magistrate certifying that the materials are

integral part of drinking water supply project and not for Water Treatment plants and therefore the exemption is wrongly availed to which he stated that they have cleared the goods based on certificate issued by District Magistrate Kutch under notification no. 12/2012 CE dated 17.03.2012 (sr. no. 233). On being further asked as to whether the goods supplied by them is fit for setting of water treatment plants such as machinery items capable of carrying out process of desalination, demineralization or purification of water he stated that it is an integral part of the process.

**8.2** Whereas, from the statement of Shri Basant Maurya, Authorised Signatory of the M/ s. Aqua Machineries Private Limited, it **reveal that the said Noticee had knowledge that the said project did not involve water treatment plant and deliberately availed exemption on the basis of erroneous certificates to evade payment of Central Excise duty at applicable rate on the value of the finished goods.**

9. Whereas, as clarified by the Noticee vide their letter dated 28.11.2016, the said project is for **supply, installation, testing and commissioning** of submerged Centrifugal Pump and allied equipments and construction of sump and panel room with 10 years comprehensive O&M at Bhachau, Distict-Kutch. Thus, it appears that the assessee is not only involved with supply of goods but also with installation, testing and commissioning of submerged Centrifugal Pump and allied equipments and construction of sump and panel room with 10 years comprehensive O&M at the site of the project. Therefore, he was in knowledge of the nature of supply and intended use of the goods supplied by them.

10. Whereas, statement of Shri Abhinaya Jayantibhai Patel, Director of the Noticee was recorded on 06.03.2017 under Section 14 of the Central Excise Act, 1944, wherein, he inter-alia stated that he is the Director of M/s. Aqua Machineries Pvt. Ltd.; that being Director, he becomes fast aware with all the day to day business activities of his company, including matters related to Central Excise; that

Central Excise work related of his company is being looked after by Shri Basant Maurya, who is the Senior Accountant and Authorised Signatory all the matters related to Central Excise: that he is fully authorized and competent to give statement on behalf of the company, which is binding to their company; that he has been shown the statement dated 31.01.2017 of Shri Basant Maurya, and agreed with all the facts narrated therein as true and correct and fully acceptable to their company.

11. Whereas, on further investigation, a letter dated 02.02.2017 was issued to The Chief General Manager (Project), Gujarat Water Infrastructure Limited (GWIL), Gandhinagar, wherein he was requested to provide details/documents of the conditions laid in the tender pertaining to Central Excise duty exemptions; that if the bidder does not get the duty exemption benefit then what are the terms and conditions laid. It was also asked to explain as to on what grounds it was recommended to District Magistrate to issue certificate for Central Excise duty exemption for the said work project. The Chief General Manager (Project), GWIL, vide his letter dated 16.02.2017, submitted that the said goods are cleared under exemption certificate issued by District Magistrate Kuchchh-Bhuj based on Notification No.12/2012 CE dated 17.03.2012 and tender terms conditions have been clarified vide the minutes of the bid meeting that bidder shall quote his rates without excise duty. However, he failed to clarify in respect of grounds of recommendation to District Magistrate to issue certificate for Central Excise duty exemption for the said work project.

12. Whereas, on the basis of certificate issued, a letter F.No. 51-02/ AR• I/MISC/2016-17 dated 10.02.2017, was issued to the District Collector, Kutch seeking clarifications as to whether the said goods can be considered for **setting up of Water Treatment Plant**, as the certificate only certifies that the goods are meant for integral part of **water supply project**. He was further asked to clarify as to whether the said exemption certificates have been withdrawn/ revoked by them. The District Collector, Kachchh, vide his letter dated 21.02.2017, informed that the said exemption certificates dated

24.01.2015 and 13.02.2015 have been issued, in favour of M/s Aqua Machineries Pvt. Ltd., Ahmedabad, on the basis of recommendations made by the Chief General Manager (Project), GWIL, Gandhinagar, for the project of **Bhachaii Pumping Station**. He also informed that the Chief Manager (Project), GWIL, Gandhinagar vide his letter No.GWIL/806/2016 dated 22.04.2016 had submitted that as per Item No. 78 of the Agreement between M/ s. Aqua Machineries Pvt. Ltd. and GWIL, bidder had quoted the price without Central Excise duty as per the provisions of Notification No. 47 /2002, which means that in absence of Central Excise Duty exemption certificate, GWIL is required to bear the Central Excise Duty and if the Central Excise Duty exemption certificate is issued, GWIL is not required to make payment against C. Ex. Duty, thus the bidder is not concerned with bid amount quoted with Excise duty and the bidder is not affected whether Central Excise Duty exemption is given or not. He also pointed out that there was a contradiction in the said letter of the Chief Manager (Project), wherein it was also stated that 'in case the contractor does not get the excise duty exemption benefit, no payment against the excise duty will be made by GWIL. On this contradiction, the District Magistrate further asked for factual details, for which the Chief General Manager (Project) vide letter No. GWIL/Bhuj-Kutch/950/2016 dated 05.05.2016 replied that after careful consideration, as the Excise duty exemption was admissible as per Government of India's Notification, the issue was clarified in the context of Notifications referred to in letter No.GWIL/806/2016 dated 22.04.2016, during pre-bid queries also, before calling for the bids and all the participants in tender were informed to bid the price without Excise Duty and it was implemented accordingly. He further informed that the said exemption certificates **have not been withdrawn/revoked** by them, in view the clarification submitted by the Chief General Manager (Project), GWIL, Gandhinagar, vide his letter no. GWIL/806/2016 dated 22.04.2016. He also submitted copy of letter ref no. GWIL/BHACHAU PS/PAC/ 110 dated 19.01.2015 and letter ref no. GWIL/BHACHAU PS/EXCISE/275 dated 09.02.2015, whereby the CGM(P), GWIL has undertaken whole

responsibility in respect of issuance of Exemption Certificate, and recommended to issue above said certificates, with clear understanding in this respect.

13. Whereas, while going through the above said letter no. GWIL/806/2016 dated 22.04.2016 of GWIL, it is found that the Chief General Manager (Project), GWIL, Gandhinagar, had clarified to the Collector, Kuchchh, in respect of eligibility concerns that the said notifications no. 47 /2002 dated 06.09.2002 and 12/2012 dated 17.03.2012, **GWIL is providing water for the purpose of drinking water to the people, which are further being utilised by the GWSSB for filter plant and distribution by the RWSS.** On perusal of Certificate issued by the District Magistrate, it appears that it does not match the requirement of water treatment plant as explained under the explanation below Sr.No.233 of Notification No. 12/2012-CE. Further, the certificate issued by the District Magistrate, Kachchh-Bhuj certifies that Pumps and other goods (as per annexure-1 to the said certificates) are meant for intended use of the integral part of water supply projects. The goods cleared by the Noticee are Pumps and its parts [qualify to be items of machinery as mentioned in clause (1)] and therefore they are eligible for exemption only if used to set up for water treatment plant.

14. Whereas, subsequently, further inquiry was caused by the jurisdictional Central Excise Authorities and summons dated 16.03.2017 was issued to Shri Ravi Solanki, The Chief General Manager (Projects) of M/ s GWIL, to appear before the Range Superintendent along with all the relevant documents. In pursuance of the above said summons, Shri Ravi Solanki, appeared before the Range Superintendent on 27.03.2017 and gave his statement under Section 14 of the Central Excise Act, 1944. In his statement, Shri Ravi Solanki, inter-alia stated that he works as Chief General Manager of Gujarat Water Infrastructure Limited; that he is aware with the day to day activity related to design, engineering and construction of water supply projects; that

GWIL procures raw water from canal and other reservoirs and supplies it to the Gujarat Water Supply and Sewerage Board (GWSSB), who further filters water by its various treatment plants and distributes further to village level sumps, for humans and animal consumption; that **looking comprehensively on the basis of Drinking Water supply requirement assessed by Water Supply department, the execution of raw water drawal project is given to GWIL and water treatment and distribution projects is being given to GWSSB** that after treatment Water and Sanitation Management Organisation (WASMO) then takes care for its further in-village distribution of drinking water; that they ascertain the excise duty exemption to the vendors on the basis of the notification issued from time to time by CBEC, including notification no. 12/2012-CE dated 17.03.2012, sr. no. 233; that GWIL clarifies in the general conditions of the contract of the volume of the tender document mentioned in the Annexure II, where the bidder shall quote his rates without the Excise duty for the purpose of availing benefits/ concessions in accordance with Central Excise Notification No.47 /2002-CE dated 6.9.2002 and its latest revisions or any other applicable notifications, the Excise duty exemption will be applicable for all Electro• mechanical items, MS pipes and all kind of Valves, Flow meters, etc., it will be responsibility of the bidder to make assessment of benefits due to the Notifications and Certificate as above and in case the contractor does not get the excise duty exemption benefits, no payments against excise duty will be made by GWIL; **that water produced by GWIL is raw water, which is subsequently supplied to the Gujarat Water Supply and Sewerage Board (GWSSB) for the water treatment and the entire quantity is used for human and animal consumption; that looking to the context of this segment of scope of work it was not involving the treatment that the liability of work was well explained in the bid as per the scope of the work that the raw water is to be got from the line of NC-9, collect it into the sump at Bhachau and to be pumped it again (by the buster pumping station created by the bidder) in to the line from Bhachau to Varshamedi**, so the excise duty liability was

well understood by the bidder. Based on the statement discussed above, it appeared that the CGM is aware of the difference water supply project which is being handled by GWIL and water treatment plant which is being handled by GWSSB. Hence, as explained from the various statements and clarifications issued by the District Collector, it appeared that the goods for exemption under Notification No. 12/2012-CE, has been claimed is not eligible under clause (i) of Notification read with Explanation mentioned in the Notification. Therefore, it appeared goods though fall under Chapter 84, since it is not meant for water treatment, the Noticee wrongly availed the benefit. Whereas though the goods appeared to be not eligible, still Shri Ravi Solanki caused the issuance of Central Excise Duty Exemption Certificate and thereby enabled the evasion of Central Excise Duty by the said Noticee. A person of the caliber and technical know-how equal to the Chief General Manager (Projects) is supposed to be well versed with the difference between water supply projects and water treatment plants. He must be well conversant with the terminology of water treatment plant and won't confuse with water supply projects. Thus, it appeared that **Shri Ravi Solanki**, Chief General Manager (Project), GWIL, Gandhinagar has intentionally misguided the Collector Kachchh to issue the above said erroneous exemption certificates. Thus, Shri Ravi Solanki, the Chief General Manager (Projects), GWIL, Gandhinagar, has rendered himself liable for penalty under Rule 26 of Central-Excise rules, 2002.

16.1 Whereas, the certificates issued by the District Collector certify that these materials shall form an integral part of above mentioned drinking water supply project. But these certificates fail to clarify that the said project is **for setting up of water treatment plants**. On perusal of certificate issued by the District Collector, it is not forthcoming that water supply project referred to in the said certificate is a water treatment plant as explained under the explanation below Sr.No.233 of Notification No. 12/2012-CE dated 17.03.2012 according to which Water Treatment plant includes a plant for desalination, demineralisation or purification of water or for carrying out any similar process or processes intended to make the water fit for human or animal

consumption, but does not include a plant supplying water for industrial purposes.

16.2 The certificate issued by the District Magistrate does not certify that the project is a water treatment plant for desalination, demineralisation or purification of water or for carrying out any similar process. Therefore, the same does not appear to be eligible for the exemption available at clause (1) of Sr.No.233 of Notification 12/2012-CE.

16.3 The certificate issued by the District Magistrate instead certifies that the goods are meant for intended use as integral part of water supply project. Exemption to integral part of water supply project is covered at clause (3) of Sr.No.233 which grants exemption only to the pipes and pipe fittings of outer diameter exceeding 10 cm and not to Pumps/Submersible Pumps (as mentioned at Table-1 below Para-3 to the SCN). The description of the items appearing in the invoices, under which the goods are cleared (as mentioned at Table-1 below Para-3 to the SCN) and in the Annexure-1 to the Contract agreement/Work order (as mentioned at Para 8.1 of the SCN) do not match with the description specified at clause (3) of Sr.No.233 Notification and therefore, it appears that exemption of clause (3) of Sr.No.233 is not admissible to the Noticee.

17.1 Whereas, the Noticee has submitted that in the tender documents, at Annexure-II it is stated that the bidder shall quote his rates without excise duty; that for the purpose of availing benefits/ concessions in accordance with Central Excise Notification No. 47 /2002 dated 06.09.2002, and its latest revision or any other applicable notification, GWIL will issue the Project Eligibility Certificate duly signed by the Collector and GWIL and **it will be responsibility of the bidder to make assessment of benefits due to the Notifications and Certificate as above** and in case the contractor does not get the Excise duty exemption benefits, no payments against excise duty will be made by GWIL.

17.2 In the instant case, based on the certificates issued by the District Collector, Kuchchh-Bhuj, the Noticee supplied Pumps/Submersible pumps and its parts which appeared to be items of machinery, exemption to items of machinery is admissible as per clause (1) of Sr. No. 233 of Notification No. 12/2012-CE dated 17.03.2012 which are **required for setting up of water treatment plants** subject to condition 23. Water treatment Plant has been explained under the explanation below Sr.No.233 of Notification No. 12/2012-CE dated 17.03.2012 wherein, it is specified that Water Treatment plant includes a plant for desalination, demineralisation or purification of water or for carrying out any similar process or processes intended to make the water fit for human or animal consumption, but does not include a plant supplying water for industrial purposes. The certificate issued by the District Magistrate, Kachhch Bhuj nowhere certify that the project is a water treatment plant for desalination, demineralisation or purification of water or for carrying out any similar process as specified in the explanation to the said notification.

Therefore, the Noticee does not appear to be eligible for the exemption available at clause (1) of Sr.No. 233 of Notification 12/2012-CE.

17.3 The certificate issued by the District Magistrate certifies that the goods are meant for intended use as integral part of water supply project. Exemption to integral part of water supply project is covered at clause (3) of Sr.No.233 of Notification 12/2012-CE which grants exemption only to the pipes and pipe fittings of outer diameter exceeding 10 cms and not to Pumps/ submersible pumps. The description of the goods cleared by the said Noticee and as appearing in the invoices and at Table-1 below Para-3 to the SCN, the same does not match with the description specified at clause (3) of Sr.No.233 of the said notification, therefore, the said Noticee is not eligible to the exemption of clause (3) of the said notification and thereby they appears to have been wrongly availed the exemption.

18. Whereas, Annexure-II to the Contract agreement/work order specifies that in case exemption of Notification is not available to the contractor /bidder, in such case no payment against Central Excise duty will be made by GWIL and the Noticee shall be liable for the same. Thus, from the Annexure-II, it transpire that it was the responsibility of the Noticee to ensure that they are eligible for the exemption of Notification No. 12/2012-CE. It appears that the Noticee has failed to fulfill his responsibility. In the era of self assessment, the onus is on the tax payer to arrive at his liability. The same principal is clearly mentioned in the Annexure-II to the Contract agreement/Work order which the Noticee has failed to observe and thereby they appear to have also violated the contract agreement/work order.

19. On scrutiny of documents submitted by the Noticee, it is found that they have cleared pumps/submersible pumps, valued at Rs.6,76,95,648/-, at nil rate of duty, under exemption as discussed above on the basis of certificates, signed and recommended for approval by the Chief General Manager (Projects), GWIL, Gandhinagar and countersigned and approved by District Magistrate, Kachchh (Bhuj). As mentioned in the certificates, the same have been issued; to enable the Noticee to avail exemption under Notification no. 12/2012-CE dated 17.03.2012 (Sr. No.233). On going through these certificates, it is observed that the excisable goods as described therein are meant for intended use of the integral part of the water supply projects.

20.1 Whereas, from the facts discussed hereinabove, it appeared that M/ s Aqua Machineries Pvt. Ltd., have cleared Pumps/Submersible pumps and its parts to M/s GWIL availing exemption from payment of Central Excise duty of Sr. No. 233 of Notification No.12/2012-CE dated 17.03.2012 read with condition 23 on the basis of certificate issued by the District Magistrate, Kutch Bhuj. The certificate issued by the District Magistrate certifies that the materials as per Annexure-I to the work order/ contract are meant for the work of supply, installation, testing and commissioning of submerged Centrifugal Pump and allied equipments and

construction of sump and panel room with 10 years comprehensive O&M at Bhachau **and are meant for intended use as integral part of water supply projects**

The items specified in Annexure-1 to the Work order/Contract are Submerged Centrifugal Pumps which appears to be items of machinery. Clause (1) of Sr. No. 233 of Notification No. 12/2012-CE dated 17.03.2012 exempts duty on all items of machinery (Ch.84 or any other Ch), including instruments, apparatus and appliances, auxiliary equipments and their components or parts **required for setting up of water treatment plants** subject to condition 23. The certificate issued by the District Magistrate, Kachchh-Bhuj does not certify exclusively that the goods are required for setting up of water treatment plant but certifies in general way that the said goods are integral part of water supply project; hence the exemption of clause (1) is not applicable as the same does not fulfill the requirements of Water Treatment Plant as explained at the explanation below Sr.No.233 of Notification No.12/2012-CE. The certificate issued by the District Magistrate, Kachchh-Bhuj certifies that the goods are meant for intended use as integral part of water supply project. Exemption to integral part of water supply project appears to be covered at clause (3) of Sr.No.233 which is applicable only to the pipes and pipe fittings of outer diameter exceeding 10 cm and not to pumps/submersible pumps and its parts. Since the goods supplied by the Noticee are Pumps/ Submersible pumps and its parts, the same does not match with the requirement of clause (3) of Notification No. 12/2012-CE and therefore exemption of clause (3) is not admissible to the Noticee. Hence, it appears that the Noticee has wrongly availed exemption of Sr.No.233 of Notification No.12/2012-CE from payment of Central Excise duty at Nil rate as the goods cleared by them were not meant for setting up of Water Treatment plant as well as not covered as integral part of water supply project therefore, they have violated the conditions laid down under Notification No. 12/2012-CE dated 17.03.2012 as well as Central Excise Rules, 2002 with an intent to evade payment of Central Excise duty despite knowing the fact that their goods did not fulfill the conditions laid under said

Notification. In the Annexure-II to the work order/ contract it is mentioned that the bidder shall quote his rates without excise duty, for the purpose of availing benefits/ concessions in accordance with Central Excise Notification. It is further stated that it will be the responsibility of the bidder to make assessment of benefits due to the notification. In case the contractor does not get the excise duty exemption, no payment against excise duty will be made by GWIL. In the era of self assessment, the onus is on the tax payer to arrive at his liability and the same appears to have been mentioned in the above referred Annexure-II to the work order/ contract. The Noticee appears to have willfully suppressed the facts and violated the conditions of the contract/work order.

**20.2** All these above said acts of omission and commission on the part of M/ s.Aqua Machineries Private Limited appeared to have committed an offence by way of wilful mis-statement, inasmuch as they have wrongly availed exemption of Sr.No. 233 of Notification No. 12/2012-CE resulting in non payment of duty. They wilfully defrauded the Govt. revenue as discussed in details in foregoing paras. Hence, they have short paid the duty by reason of fraud, collusion, or wilful mis-statement or suppression of facts or contravention of provisions of this Act or of the rules made there under with mala fide intention to evade payment of Central Excise duty. Thus, the Noticee is required to pay Central Excise duty @ 6% of the value of the goods in view of Sr.No.235 of Notification No. 12/2012-CE dated 17.03.2012, for Power Driven Pumps primarily designed for handling water (CTH-84137010). The Noticee is also required to pay Central Excise duty equivalent to 12.5% of the value of the goods as prescribed in the First Schedule to the Central Excise Tariff Act, 1985 for parts of submersible pumps (CTH-84137097). The said Noticee has knowingly evaded the Central Excise duty on the said clearances under the erroneous exemption certificates issued by the District Magistrate, Kachchh-Bhuj under Notification No. 12/2012-CE dated 17.03.2012. The same is required to be recovered from them invoking extended period under Section 11A(4) of

the Central Excise Act, 1944, along with interest under Section 11AA of the Central Excise Act, 1944, along with interest under Section 11AA of the Central Excise Act, 1944 and the goods are liable for confiscation under Rule 25 of the Central Excise Rules 2002.

21. Whereas, the said Noticee, in an era of self assessment when onus of availing legitimate exemption of Central Excise duty on the goods cleared under exemption certificate issued by the District Collector under Notification 12/2012 C.E. dated 17.03.2012 (Sr. No.233) despite knowing that the project was not meant for setting up of Water Treatment Plant, the Noticee knowingly cleared the goods at Nil rate of duty. As per the work order, **the Noticee was required not only to supply but also to install, test and commission the submerged Centrifugal Pump at site.** The Noticee was very well able to establish that the said project is not water treatment plant. Thus, it appears that the said Noticee knew and was well aware that the project executed by them did not involve water treatment plant. Despite knowing that **their goods do not fulfill the conditions laid under the said Notification,** they cleared the goods under erroneous exemption certificates and they were required to pay Central Excise duty on the said clearances. Thus, it appears that the said Noticee has contravened the provisions laid under Central Excise Rules and Notification 12/2012 C.E. dated 17.03.2012 (Col No.3, Sr. No.233) with intent to evade payment of duty, amounting to Rs. **1,43,47,178/-**, on the clearances made as discussed in **Annexure-1** attached herewith. The above act of omission on part of the Noticee renders them liable for invoking extended period under sub section (4) of Section 11A of Central Excise Act, 1944 and penalty under Section 11AC of Central Excise Act, 1944, read with Rule 25 of Central Excise Rules, 2002.

22. In view of the above, M/ s Aqua Machineries Pvt. Ltd. appeared to have contravened the provisions of Section 3 of the Central Excise Act, 1944 inasmuch as they

cleared the excisable goods without payment of appropriate Central Excise duty; Rule 4 of the Central Excise Rules, 2002 inasmuch as they had failed to discharge duty on the removal of their final product in the manner provided under law; Rule 6 of the Central Excise Rules, 2002 inasmuch as they failed to assess duty on their final products properly; Rule 8 of the Central Excise Rules, 2002 inasmuch as they failed to pay proper Central Excise duty on their final product by stipulated time; Provisions of Notification No. 12/2012-CE dated 17.03.2012 read with condition No. 23 to the said Notification.

23. Whereas, it appeared from the facts discussed herein above that the goods cleared by the Noticee are not meant for setting up of water treatment plant but it is for just supply of raw water from its source. Therefore, the same are not eligible for exemption under Notification no. 12/2012 CE dated 17.03.2012 (Sr. No.233). Shri Basant Maurya, Senior Accountant and Authorized Signatory of the Noticee has confessed vide his statement on 31.01.2017, under Section 14 of the Central Excise Act, 1944, that he works as Senior Accountant and Authorized Signatory of M/ s. Aqua Machineries Pvt. Ltd.; that he is aware with the day to day activity related to Central Excise matters of the firm; that he has been mainly attending the general office work including Central Excise matters and he is well conversant with the law, procedure and practice of Central Excise Act 1944 and the rules made there under. Thus, he has played an important role in duty evasion by the Noticee. Shri Basant Maurya acquired possession of, or is in any way concerned in manufacturing, transporting, removing, depositing, keeping, or in any other manner deals with any excisable goods which he had known or has reasons to believe are liable for confiscation under the Act or these Rules. All these acts or omission and commission on the party of Shri Basant Maurya has rendered himself liable for penalty under Rule 26 of Central Excise Rules, 2002.

24. Whereas, it appeared from the facts discussed herein above that the goods cleared by the Noticee are not meant

for setting up of water treatment plant but it is for just supply, of raw water from its source. Therefore, the same are not eligible for exemption under Notification no. 12/2012 C.E. dated 17.03.2012 (Sr. No.233). Shri **Abhinaya Jayantibhai Patel, Director** of the assessee, has confessed vide his statement on 06.03.2017, under Section 14 of the Central Excise Act, 1944, that he is the Director of M/s. Aqua. Machineries Pvt. Ltd.; that being director, he becomes fast aware with all the day to day business activities of his company, including matters related to Central Excise. He has played an important role in duty evasion by the Noticee. Thus **Shri Abhinaya Jayantibhai Patel, Director** of M/ s. Aqua Machineries Private Limited, acquired possession of, or is in any way concerned in manufacturing, transporting, removing, depositing, keeping, or in any other manner deals with any excisable goods which he had known or has reasons to believe are liable for confiscation under the Act or these rules. All these acts or omission and commission on the party of Shri Abhinaya Jayantilal Patel, Director has rendered himself liable for penalty under Rule 26 of Central Excise Rules, 2002.

25. Whereas it appeared from the facts discussed herein above that the Excise duty exemption certificate has been signed and recommended for approval by **Shri Ravi Solanki**, the Chief General Manager (Projects), GWIL, Gandhinagar, for erroneous exemption under Notification 12/2012 CE dated 17.03.2012 (Sr.No.233), contrary to the facts that **the said project did not involve water treatment plant**. Thus, it appears that Shri Ravi Solanki, Chief General Manager (Projects), GWIL, Gandhinagar has **intentionally** connived with the Noticee to evade the payment of duty. A person of the caliber and technical know-how equal to the Chief General Manager (Projects) is supposed to be well versed with the difference between water supply projects and water treatment plants. He must be well conversant with the terminology of water treatment plant and won't confuse with water supply projects. Thus it appeared that **Shri Ravi Solanki**, Chief General Manager (Project), GWIL, Gandhinagar has intentionally misguided the Collector

Kachchh to issue the above said erroneous exemption certificates. Thus, Shri Ravi Solanki, the Chief General Manager(Projects), GWIL, Gandhinagar, has rendered himself liable for penalty under Rule 26 of Central Excise rules, 2002.

26. **M/s. Aqua Machineries Private Limited**, Plot No. 3821, Phase-IV, GIDC, Vatva, Ahmedabad-382445 was served with a Show Cause Notice F. No. V.84/4-48/Aqua/OA-I/18-19 dated 04.01.2019, asking them to Show Cause to the Joint Commissioner, Central Excise & GST, Ahmedabad- South, having his office at 7th Floor, Central GST Bhawan, Rajaswa Marg, Ambawadi, Ahmedabad-380015, as to why:

- (i) The amount of duty amounting to **Rs. 1,43,47,178/-** [One Crore, Forty Three Lakhs, Forty Seven Thousands, One Hundred and Seventy Eight only], as detailed in **Annexure - 1** annexed to this show cause notice, for the period from December, 2013 to June, 2017, which was not paid by them, should not be demanded and recovered from them under Section 11A(4) the Central Excise Act, 1944;
- (ii) Goods cleared should not be held liable for confiscation under Rule 25 of the Central Excise Rules, 2002;
- (iii) Penalty should not be imposed upon them under the provisions of Section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002, for the above said contraventions; and
- (iv) Interest at the prescribed rate should not be charged and recovered from them as applicable from time to time on the above said amount, from them under the provisions of Section 11AA of the Central Excise Act, 1944.

27 S/**Shri Abhinaya Jayantibhai Patel, Director** of M/ s. Aqua Machineries Private Limited, **Basant Maurya, Senior Accountant and Authorized Signatory** of M/ s. Aqua Machineries Private Limited, and **Ravi Solanki**, Chief General Manager (Project), M/s Gujarat Water Infrastructure Limited, Dr. Jivraj Mehta Bhavan, Block No. 1, ,First floor, Sector - 10, Gandhinagar - 382 010 were also called upon to Show Cause to the Joint Commissioner, Central Excise & GST, Ahmedabad- South, as to why Penalty should not be imposed upon them in terms of **Rule 26** of Central Excise Rules 2002.

28. The Show Cause Notice was adjudicated by the Joint Commissioner, CGST Ahmedabad South, under his Order-in-Original No. 14/CGST/Ahmd-South/JC/RKT/2020-21 dated 09.10.2020, confirming the demand of duty amounting to Rs 1,32,98,687/- and imposing mandatory penalty under Section 11AC and personal penalty on each of the three individual noticees concerned.

29. All of the above Noticees preferred appeal and the Commissioner (Appeals), CGST Appeal Commissionerate, Ahmedabad, vide his Order-in-Appeal No. AHD-EXCUS-001-APP-14 to 17/2020-21 dated 27.08.2021 remanded the case for re-computation of duty to be confirmed.

30. The appellate authority ordered grant of cum-duty price benefit and to consider the Cenvat credit debited for exemption clearance towards the duty liability. It was also ordered to re-examine the eligibility to exemption for five clearances specified in the Order. Rest of the duty confirmed in the earlier Order-in-Original was held as proper.

31. In the written submissions filed, the Noticee contended that they had availed the benefit of exemption under Notification No. 12/2012-CE dated 17.03.2012 and it being conditional, all the relevant documents were submitted to the jurisdictional Assistant Commissioner at the material time. It was further mentioned that they were also subjected to CAG audit and departmental audit wherein objections with regard to non-reversal of Cenvat credit under Rule 6(3) of Cenvat Credit Rules, 2004 in connection with the aforesaid exemption availed was taken.

32. A personal hearing was held on 19 th December, 2022 wherein S/Shri Vijay N Thakkar, Authorised Representative of the Noticee, Abhinaya J Patel, the director in the Noticee firm and Shri Basant Maurya, Senior Accountant, appeared and filed written submissions along with brief of invoice wise details.

**Discussion and findings:-** I have carefully considered the facts of this case and the submissions made by Noticee.

33. The Noticee, a manufacturer of submersible pumps and parts thereof, classifiable under CTH 8413, had cleared during the period from December, 2013 to April, 2017, their final products at nil rate of duty under Notification No. 12/2012-CE dated 17.03.2012 (at serial no. 233), claiming that the machinery was required for setting up of water treatment plants for which Certificates from the concerned District Collector certifying the use were produced. As the intended use was found to be different on investigation, the Show Cause Notice was issued proposing to deny the benefits and it was adjudicated by the Joint Commissioner, CGST Ahmedabad South, under his Order-in-Original No. 14/CGST/Ahmd-South/JC/RKT/2020-21 dated 09.10.2020. The Order upheld the liability to confiscation of excisable goods valued at Rs 22,11,71,116/-, demanded Central Excise duty of Rs 1,32,98,687/-, under Section 11A(4) of Central Excise Act, 1944, and imposed penalty on the manufacturer and three co-noticees who were concerned with the subject clearances. The Noticees filed an appeal and the learned Commissioner(Appeals), Central GST Appeal Commissionerate, Ahmedabad, vide Orders-in-Appeal No. AHM-EXCUS-001-APP-14 to 17/2021-22 dated 27.08.2021, remitted the matter to re-examine the eligibility of respective notification in respect of certain specific clearances and also to consider the request for grant of cum-duty benefit and to allow adjustment of the amount of Cenvat credit reversed by them under Rule 6(3) of Cenvat Credit Rules, 2004 against the duty confirmed. The quantum of penalty is to be decided afresh, once the duty liability is re-determined. Therefore, my findings have to be limited only to the above directions of the learned appellate authority.

34. In terms of the appellate Order, clearances shown at serial number 3, 5, 7, 8 and 10 of the table 2 at para 30.8.2 of the Order-in-Original dated 09.10.2020 are to be re-examined by me afresh for eligibility. In their submissions dated 19.12.2022, the Noticee contended that they had availed the benefit of exemption under Notification No. 12/2012-CE dated 17.03.2012 and it being conditional, all the relevant documents were submitted to the jurisdictional Assistant Commissioner at the material time. It was further mentioned that they were also subjected to CAG audit and departmental audit wherein objections with regard to non-reversal of Cenvat credit under Rule 6(3) of Cenvat Credit Rules, 2004 in connection with the aforesaid exemption availed was taken.

35. I find the exemption was conditional but the documents submitted show that the exemption was wrongly claimed. Copies of the following documents have been submitted:

- i) A copy of Certificate from Collector and District Magistrate, Subarnapur, Orissa, regarding clearances made on 21.05.2016, showing that pumps are required for setting up water supply plants.
- ii) There is another certificate from the District Collector of Banswara, for supply of pumps for a water supply project for villages in Tehsil Bagidora and Banswara.
- iii) There is a Certificate from the Collector and District Magistrate of Rajkot, for the supply of pumps which is again for water supply project.
- iv) There is a Certificate from the Collector and District Magistrate of Bhavnagar for supply of submerged Centrifugal Pumpsets for Palitana water supply scheme.

36. I find none of the above documents show clearance for setting up of Water treatment plants. Therefore, prima facie, the exemption claimed is not admissible for the five clearances that have been ordered for re-examination. Further, audit of records by CAG Officers or reversal of credit cannot take the place of evidence to justify the exemption claimed. In view of the above, I find the demand relating to the five clearances is required to be upheld.

37. On the issue of cum-duty benefit to be extended, the same is quantified in the table below and the duty payable is also worked out on extending the benefit.

T A B L E A

Amount in Rupees.

Sr No.	Month and year	Value as per SCN	Demand	Value on giving cum duty benefit	Amount of duty payable after cum duty benefit
1	December, 2013	2,25,000	13,500	212264	12736
2	March, 2014 (Clearance of parts)	1,16,370	14,546	101824	12728
3	July, 2014	22,09,998	1,32,600	2084904	125094
4	September, 2014	52,65,090	3,15,905	4967066	298024
5	October, 2014	4,03,78,230	24,22,694	38092670	2285560
6	November, 2014	1,75,00,000	10,50,000	16509434	990566
7	December, 2014	5,45,49,957	32,72,997	51462224	3087733
8	January, 2015	4,47,209	26,833	421895	25314
9	February, 2015	4,32,78,732	25,96,724	40828992	2449740

10	March, 2015	2,44,16,916	14,65,015	23034826	1382090
11	April, 2015	71,39,957	4,28,398	6735808	404149
12	June, 2015	38,00,000	2,28,000	3584906	215094
13	July, 2015	73,98,686	4,43,921	6979892	418794
14	August, 2015	18,56,656	1,11,399	1751562	105094
15	December, 2015	27,58,823	1,65,529	2602663	156160
16	February, 2016	13,06,328	78,379	1232385	73943
17	March, 2016	5,09,257	30,555	480431	28826
18	March, 2016 (Clearance of parts)	73,900	9,238	69717	8715
19	May, 2016	6,70,000	40,200	632075	37925
20	May, 2016 (Clearance of parts)	46,700	5,838	44057	5507
21	September, 2016	6,08,960	36,538	574491	34469
22	November, 2016	10,38,825	62,330	980024	58801
23	December, 2016	54,19,827	3,25,190	5113044	306783
24	March, 2017 (Submersible parts)	37,128	4,641	35026	4378
25	April, 2017	2,50,635	15,038	236448	14187
26	April, 2017 (Submersible parts)	21,420	2,678	20208	2526
		22,13,24,604	1,32,98,685	208788837	12527330

38. The amount of credit reversed against individual clearances where the exemption claimed has been disallowed, is to be adjusted against the duty payable worked out for those clearances. In light of the above, the net duty amount payable after adjusting the reversal of credit is worked out in the table below:

T A B L E B

Amount in Rupees.

Sr No.	Month and year	Value on giving cum duty benefit	Amount of duty payable after cum duty benefit	Amount of reversal made(as per ER -1 return)	Differential amount payable
1	December, 2013	212264	12736	14424	0
2	March, 2014 (Clearance of parts)	101824	12728	0	12728
3	July, 2014	2084904	125094	0	125094
4	September, 2014	4967066	298024	273837	24187
5	October, 2014	38092670	2285560	4002608	2361252
6	November, 2014	16509434	990566		
7	December, 2014	51462224	3087733		
8	January, 2015	421895	25314	0	25314
9	February, 2015	40828992	2449740	0	2449740
10	March, 2015	23034826	1382090	0	1382090

11	April, 2015	6735808	404149	0	404149
12	June, 2015	3584906	215094	0	215094
13	July, 2015	6979892	418794	474497	0
14	August, 2015	1751562	105094	86704	18390
15	December, 2015	2602663	156160	165529	0
16	February, 2016	1232385	73943	0	73943
17	March, 2016	480431	28826	34989	0
18	March, 2016 (Clearance of parts)	69717	8715	0	8715
19	May, 2016	632075	37925	43632	0
20	May, 2016 (Clearance of parts)	44057	5507	0	5507
21	September, 2016	574491	34469	0	34469
22	November, 2016	980024	58801	0	58801
23	December, 2016	5113044	306783	325189	0
24	March, 2017 (Submersible parts)	35026	4378	0	4378
25	April, 2017	236448	14187	325189	0
26	April, 2017 (Submersible parts)	20208	2526	0	2526
		<b>208788837</b>	<b>12527330</b>	<b>5746598</b>	<b>7206376</b>

The quantification above has been worked out based on the ER 1 Returns submitted as proof of reversal made.

39. The appellate authority has already upheld that all Noticees are liable to penalty for the various omissions and commissions on their part, elaborately discussed therein. In view of the revised duty liability worked out, penalty to be imposed is also decided afresh, which is being imposed in the Order portion of this Order.

40. I further find that the saving clause in Section 174 (2) of the CGST Act, 2017 gives the legal sanctity to the proceedings initiated under the Show Cause Notice and this Order.

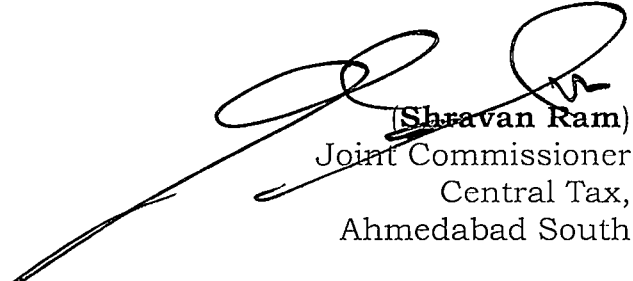
41. In consideration of my above findings, I hereby pass the following Order.

**ORDER**

- a) I hereby hold the excisable goods valued at Rs 20,87,88,837/- cleared under ineligible exemption as liable to confiscation under Rule 25 of Central Excise Rules, 2002. As the goods are not physically availed, I refrain from ordering redemption fine in lieu of confiscation.
- b) I hereby uphold the demand of duty amounting to **Rs 1,25,27,330/-** payable on the clearances made claiming benefit of exemption Notification No. 12/2012-CE dated 17.03.2022, under Section 11A (10) of the Central Excise Act, 1944.
- c) I hereby vacate the demand of Rs 7,71,355/- made on the Noticee.
- d) I hereby order to adjust the reversal of Cenvat Credit of Rs **57,46,598/-** made for the clearances against the demand made and accordingly, the Noticee is required to pay the balance amount of Rs 72,06,376/- from account current.
- e) The Noticee is liable to pay interest under Section 11AA (2) of the Central Excise Act, 1962 on the balance amount of duty payable as shown at serial no. c) above.
- f) I hereby impose a penalty of **Rs 1,25,27,330/-** on M/s Aqua Machinerics Pvt Ltd, Plot No. 3821, Phase IV, GIDC Vatva, Ahmedabad 382445 under Section 11AC (1) (c) of the Central Excise Act, 1944. In case the duty determined under sub-section (10) of Section 11A above and the interest payable thereon under Section 11AA is paid within thirty days of receipt of this Order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty determined, subject to the condition that such reduced penalty is also paid within the period of thirty days.
- g) I hereby impose a penalty of Rs **1,25,27,330/-** on Shri Abhinaya Jayantibhai Patel, Director, M/s Aqua Machinerics Pvt Ltd, under Rule 26 of Central Excise Rules, 2002.
- h) I hereby impose a penalty of Rs 41,75,776/- on Shri Basant Maurya, Senior Accountant and Authorised Signatory, M/s Aqua Machinerics Pvt Ltd, under Rule 26 of Central Excise Rules, 2002.
- i) I hereby impose a penalty of Rs 20,00,000/- on Shri Ravi Solanki, Chief General Manager (Project), M/s Gujarat Water Infrastructure

Limited, Dr Jivraj Mehta Bhavan, Block No. 1, First Floor, Sector 10,  
Gandhinagar 382 010, under Rule 26 of Central Excise Rules, 2002.

The Show Cause Notice F. No. V.84/4-48/Aqua/OA-1/18-19 dated  
04.01.2019 is accordingly disposed of.

  
(Shravan Ram)  
Joint Commissioner  
Central Tax,  
Ahmedabad South

F. No. V.84/4-48/Aqua/OA-1/18-19.

Date: 30.12.2022

**BY R.P.A.D/**

To

M/s Aqua Machineries Pvt Ltd,  
Plot No. 3821, Phase IV,  
GIDC Vatva,  
Ahmedabad 382445

Shri Abhinaya Jayantibhai Patel, Director,  
M/s Aqua Machineries Pvt Ltd,  
Plot No. 3821, Phase IV,  
GIDC Vatva,  
Ahmedabad 382445

Shri Basant Maurya,  
Senior Accountant and Authorised Signatory,  
M/s Aqua Machineries Pvt Ltd,  
Plot No. 3821, Phase IV,  
GIDC Vatva,  
Ahmedabad 382445

Shri Ravi Solanki,  
Chief General Manager (Projects)  
M/s Gujarat Water Infrastructure Limited,  
Dr Jivraj Mehta Bhavan, Block No. 1,  
First Floor, Sector 10,  
Gandhinagar 382 010.

Copy to:

1. The Principal Commissioner, Central Tax, Ahmedabad South.
2. The Assistant Commissioner, Central Tax, Division-III, Ahmedabad South.
3. The Deputy/Asstt. Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South.
4. The Superintendent, Central Tax AR-I, Div.-III, Ahmedabad South
5. The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website
6. Guard file.