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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH : AHMEDABAD
O-20, NEW MENTAL HOSPITAL COMPOUND, MEGHANI NAGAR, AHMEDABAD - 380016

Dated: 05/12/2016

File No. :-E/36/2010

In the matter of :-

Techno Submersible Pumps Pvt Ltd — **(Appellant)**
(Appellant as per address below)

Vs

C.C.E.-Ahmedabad-i — **(Respondent)**
(Respondent as per address below)

I am directed to transmit herewith a certified copy of Order No. : **A/11612/2016** dated : **28/11/2016** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

5/12/16
Assistant Registrar
CESTAT -AHMEDABAD

S.NO. Case Number. Name & Address of **Appellant :-**

1 E/36/2010 Techno Submersible Pumps Pvt Ltd
Plot No. C-1-b, 4620 4621, Phase-iv, Gidc, Vatva,
AHMEDABAD
GUJARAT-382445

S.NO. Case Number. Name & Address of **Respondent :-**

1 E/36/2010 C.C.E.-Ahmedabad-i
C. EX BHAVAN,NR PANJRAPOLE & POLYTECHNIC,
AMBAVADI, AHMEDABAD,
GUJARAT-380015

आयुक्त (ए. आर.) कार्यालय
सीमा शुल्क, उत्पाद शुल्क, सेवा कर,
अपीलीय न्यायाधिकरण, अहमदाबाद
09 DEC 2016
आवक क्रमांक नं. ....

Copy To :-
1. Chief Commissioner Customs & Central Excise :**Ahmedabad**
2. Commissioner Customs & Central Excise (Appeal) :**Ahmedabad-i**
3. ~~To~~ Commissioner (AR) CESTAT, Ahmedabad
4. CESTAT Bar Association, Ahmedabad
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12. The ICFAI Society
13. Advocate/(s) / Consultant/(s) / Representative:-

N K OZA ADV
310 PRTIBHA COMPLEX OPP-GANDHI
GRAM RLY. STATION ASHRAM ROAD
AHMEDABAD

5/12/16
Assistant Registrar
CESTAT - AHMEDABAD

SMC-D-15*4

In The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

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Appeal No : E/36/2010

(Arising out of OIA-278/2009-AHD-I-CE/CMC/COMMR-A-/AHD/S/50-A-I-/09 dated 12/10/2009 passed by Commissioner (Appeals) of Central Excise-AHMEDABAD-I)

M/s Techno Submersible Pumps Pvt Ltd : Appellant (s)

Vs

Commissioner of Central Excise-AHMEDABAD-I : Respondent (s)

Represented by:
For Appellant (s) : Shri N. K. Oza, Advocate
For Respondent (s):Shri N. Satwani, Authorised Representative
For approval and signature : ....

Dr. D. M. Misra, Hon'ble Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fa·r copy of the order?	Seen
4.	Whether order is to be circulated to the Departmental authorities?	Yes

CORAM :

Dr. D. M. Misra, Hon'ble Member (Judicial)

Date of Hearing / Decision : 28.11.2016
~~~~~

ORDER No. A/11612 / 2016 dated 28.11.2016

Per : Dr. D. M. Misra

Heard both sides.

2. The appeal is filed against OIA-278/2009-AHD-I-CE/CMC/COMMR-A-/AHD/S/50-A-I-/09 dated 12.10.2009 passed by Commissioner of Central Excise (Appeals) AHMEDABAD-I.

3. The facts of the case, in brief, are that the appellants are manufacturer of excisable goods falling under Chapter 84 of CETA, 1985. The appellant during the period of January 2008 to June 2008 instead of availing the benefit of exemption Notification No 10/2006 CE dt.01.3.2006 and discharging duty at concessional rate of @8% as applicable to agriculture submersible pumps, paid duty @ 16%, the tariff rate by utilizing their CENVAT account. Alleging that the excess amount of duty of Rs. 2,58,465/- paid by utilizing Cenvat Credit, the said amount required to be deposited in cash under Section 11D of Central Excise Act,1944, a demand notice was issued to them for recovery of the said amount under Section 11D of Central Excise Act 1944. On adjudication the demand was confirmed with penalty. Aggrieved by the same the Appellant filed an appeal before the Ld. Commissioner(Appeal), who in turn rejected their Appeal, hence, the present Appeal.

4. There is no dispute of the fact that the entire amount collected has been deposited with the Dept,.albeit by debiting their CENVAT Credit account and the said fact has been acknowledged in the show cause Notice as well as in the impugned order. The grievance of the department is that the excess amount paid by debiting CENVAT Credit amount, instead of availing the exemption, is recoverable from under Section 11D of

CEA,1944. As submitted by the Ld. Advocate, the issue is squarely covered by the judgment of Hon'ble Rajasthan High Court in the case of UOI Vs Shivam Metals - 2015(326) ELT 558(Raj.).

5. In the result, the impugned order is set aside being devoid of merit and the Appeal is allowed, with consequential relief, if any, as per law.

(Operative part of the order pronounced in the Court)

Sd/-

(D. M. Misra) 01/12/2016
Member (Judicial)

G.Y.