आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009
फ़ोन नंबर./ PHONE No.: 079-2754 4599 फैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. V.84/15-39/OA/2017

आदेश की तारीख़ / Date of Order :06.03.2020

जारी करने की तारीख़ / Date of Issue : 09.03.2020

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR–33-35/2019-20

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,O-20, मेघाणीनगर ,न्यु मेन्टल हॉस्पीटल कम्पाउन्ड , अहमदाबाद -380016 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, O-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है ।

An appeal against this order shall lie before the Tribunal 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.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा

हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए(। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैंचार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) प्रतियाँ संलगन की जाएंगीम एक प्रमाणित प्रति होगी।(

The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषयः -कारण बताओ सूचनाः

Proceedings initiated vide following Show-Cause-Notices F.No. M/s Bosch Rexroth (India) Ltd., Sanand-Viramgam Highway, Mouje Iyava, Taluka-Sanand, Dist-Ahmedabad-382170

Sr.No	SCN No and date
1	V.84/15-63/OA/2015 dated 05.01.2016
2	V.84/15-28/OA/2016 dated 19.04.2016
3	V.84/15-39/OA/2017 dated 10.01.2018

Brief Facts of the Case-

M/s. Bosch Rexroth (India) Ltd, Sanand Viramgam Highway, Mouje Iyava, Taluka Sanand, Dist: Ahmedabad-382 170 (here-in-after referred to as "the assessee" for the sake of brevity) is engaged in the manufacture of excisable goods falling under Chapter 84 of the first schedule to the Central Excise Tariff Act, 1985 and are holding Central Excise registration Number AAACM9898FEM005. The said assessee is availing Cenvat Credit facility under the provisions of Cenvat Credit Rules, 2004.

2. During the course of audit of their Vatva Unit, the officers of Central Excise, Ahmedabad-I vide FAR No.251/12-13 dated 07.06.2013 (Rev. Para 6) **(RUD-1)** had made observation that M/s Bosch Rexroth (India) Ltd., **Vatva,** Ahmedabad had wrongly availed exemption under Notification No.6/2006-CE dated 01.03.2006 and 12/2012-CE dated 17.03.2012 in respect of goods cleared for various Mega Power Projects, as they had not fulfilled the conditions of the said Notification, during the year 2011-12 and 2012-13 and after investigation, the Commissioner, Central Excise, Ahmedabad-I had issued show cause notice F.No.V.84/15-14/Bosch/Commr/OA-I/2014 dated 30.03.2015 demanding Central Excise duty of Rs.99,23,043/- to M/s Bosch Rexroth (India) Ltd., Vatva, Ahmedabad. It appears that their Sanand Unit is also continuing the procedure adopted by their Vatva Unit for availing exemption Notification No.12/2012-CE dated 17.03.2012 for the goods cleared to various Mega Power Projects

3. Since it appeared that the assessee had cleared excisable goods by wrongly availing the benefit of exemption Notification No.12/2012-CE Dated 17.03.2012, an inquiry was caused by the Superintendent, Central Excise, Range –III, Division-III, Ahmedabad-II to investigate the details of duty amount evaded by the said assessee by wrongly availing of the benefit of the said notification.

4.1 Accordingly, a statement of Shri Bhavesh Chavada, authorized signatory of the assessee was recorded on 22.04.2015 **(RUD-2)** by the Superintendent of Central Excise, AR-III, Division-III, Ahmedabad-II Commissionerate, Ahmedabad under Section 14 of the Central Excise Act, 1944, wherein he stated that they were manufacturing Hydraulic Machineries & Accessories falling under Chapter 84 of the First Schedule of Central Excise Tariff Act, 1985 and that they had supplied their goods to many projects availing exemption notification no.12/2012-CE. Shri Bhavesh Chavada further stated that their unit started production during the month of February, 2013 in their Sanand Unit and prior to that M/s Bosch Rexroth (India) Pvt. Ltd. was situated at Vatva, which was shifted to Sanand. Shri Chavada further stated that prior to the starting of their unit at Sanand, they were clearing the goods to various Mega Power Projects under ICB procedure/Tarriff Based Bidding procedure, under Notification No.6/2006-CE as amended vide Notification No.12/2012-CE from their Vatva Unit. Shri Bhavesh Chavada stated that they had filed intimations prior to dispatch alongwith related documents i.e. Project Authority Certificates, Certificate issued by the Joint Secretary, etc. with the department. Shri Bhavesh Chavda also produced the details of clearances along-with related documents i.e. Project Authority Certificate, Certificate of Joint Secretary, Ministry of Power and Invoices, made under notification no.12/2012-CE during the period from 2013-14 to 2014-15 and the same were enclosed as Annexure –I & II to his statement. The year-wise total exempted clearance value of the goods cleared under 12/2012-CE dated 17.03.2012(Sr.No.336 having condtion No.41), **under ICB procedure,** as under:-

Year	Assessable Value Rs.	Excise Duty Rs.	Edu.Cess Rs.	S. & H E.C. Rs.
2013-14(from June-13 onwards)	4783200/-	573984/-	11480/-	5740/-
2014-15 (upto March-15)	214451668/-	21951256/-	434953/-	217476/-
TOTAL	**219234868/-**	**22525240/-**	**446433/-**	**223216/-**

4.2 Shri Chavada also produced the clearance value of the goods cleared under No.12/2012-CE dated 17.03.2012 (Sr.No.338 having condition No.43) under Tariff Based Competitive Bidding, as under :

Year	Assessable Value Rs.	Excise Duty Rs.	Edu.Cess Rs.	S. & H E.C. Rs.
2014-15	26900000/-	2690000/-	53800/-	26900/-
TOTAL	**26900000/-**	**2690000/-**	**53800/-**	**26900/-**

4.3 Shri Bhavesh Chavada further stated that as per their understanding Sr.No.507 of notification No.12/2012-Cus. is exempting material for 9801 and the list of power projects

added vide not.49/2012-Customs under table no.32A (registered projects with customs) is related to this tariff and they are sub-contractors to this power projects; that as per Customs notification, 9801 is for whole project (any material required) and there is no any tariff namely 9801 in excise tariff, so they are supplying material under this understanding that the registered projects are recipient/user, against PAC, Joint Secretary Certificate provided by them and are eligible for exemption..

5. The said assessee had filed intimations dated 28.07.2014, 28.07.2014, 23.09.2014, 29.10.2014, 26.12.2014, 30.12.2014 and 02.01.2015 (7 Nos.) intimating that they will be dispatching the excisable goods under Notification No.12/2012-CE dated 17.03.2012(under Sr.No.336 having condition No.41) without payment of excise duty, for the supply to different Mega Power Projects as per Project Authority Certificates issued by the Competent Authority, as a sub-contractor. On scrutiny of the documents submitted by the assessee, it appeared that the assessee had not filed intimations with the department in all the cases for availing exemption notification No.12/2012-CE dated 17.03.2012 as stated by Shri Bhavesh Chavada, authorized signatory of the assessee in his statement. It appeared that they had willfully misstated the facts regarding availment of exemption notification to the department.

6. It appeared that they had cleared excisable goods to Mega power projects set up under Project Authority Certificates, as a sub-contractor, by availing the benefit of exemption Notification No.12/2012-CE dated 17.03.2012 (Sr.No.336 having condition No.41 and Sr.No.338 having condition No.43) under International Competitive Bidding (ICB) procedure/Tariff based Bidding Procedure.

7.1 Serial no 336 of the Notification No. 12/2012-CE dated 17.03.2012 as amended and condition attached to it read as under:-

S.No.	Chapter or heading or subheading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No
(1)	(2)	(3)	(4)	(5)
336	Any Chapter	All goods supplied against International Competitive Bidding	NIL	41

Condition no 41

41. If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India.

7.2 For Sr. no. 338 of the Notification No. 12/2012-CE dated 17.03.2012, condition No.43 read as under :

43	If,- (a)an officer not below the rank of Joint Secretary to the Government of India in the Ministry of Power certifies the project as Mega Power Project; (b)in case the certificate regarding mega power project status issued as above is provisional, the chief executive officer of the project furnishes a security in the form of a fixed deposit receipt or Bank Guarantee from any scheduled bank for a term of thirty six months or more, in the name of the President of India for an amount equal to the duty of excise payable but for this exemption, to the Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, having jurisdiction and if the project developer fails to furnish the final mega power status certificate within a period of thirty six months from the date of clearance of excisable goods, the said security shall be appropriated towards duty of excise payable on such clearances but for this exemption; (c) an officer not below the rank of Chief Engineer in the Central Electricity Authority certifies that the said goods are required for the setting up of the said mega power project under the Government of India initiative, indicating the quantity, description and specification thereof; (d) the Chief Executive Officer of the project furnishes an undertaking to the Deputy

	Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, having jurisdiction, to the effect that- (i) the said goods will be used only in the said project and not for any other use; and (ii) in the event of non-compliance of sub-clause (i), the project developer will pay the duty which would have been leviable at the time of clearance of goods, but for this exemption.

7.3 The corresponding Customs Notification No.12/2012-Cus dated 17.03.2102 (Sr.No.507 with condition No.93) exempted the goods falling under chapter 9801 of the Customs Tariff from levy and payment from Customs duty. The entry no.507 of Noti. No. 12/2012-Customs dated 17.03.2012 as amended reads as under;

S.No	*Chapter or* *Heading or* *sub–heading* *or tariff item*	Description of goods	Standard Rate	Additional duty rate	Condition no
507	9801	Goods required for setting up of any Mega Power Project, so certified by an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power, that is to say, (a) a thermal power plant of a capacity of 700MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura; or(b) a thermal power plant of a capacity of 1000MW or more, located in States other than those specified in (a); or (c) a hydel power plant of a capacity of 350MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura; or (d) a hydel power plant of a capacity of 500MW or more, located in States other than those specified in clause (c)	NIL	NIL	93

Condition no 93

If an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power certifies that:-

(i) the power purchasing State has constituted the Regulatory Commission with full powers to fix tariffs;

(ii) the power purchasing states shall undertake to carry out distribution reforms as laid down by Ministry of Power.

(a) in case of imports for a project for which certificate regarding Mega Power Project status issued by an officer not below the rank of Joint Secretary to the Government of India in the Ministry of Power is provisional, the importer furnishes a security in the form of a Fixed deposit Receipt from any Scheduled Bank for a term of thirty six months or more in the name of the President of India for an amount equal to the duty of customs payable on such imports but for this exemption, to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, at the time of importation and if the importer fails to furnish the final mega power status certificate within a period of thirty six months from the date of importation, the said security shall be appropriated towards duty of customs payable on such imports but for this exemption.

(b) In the case of imports by a Central Public Sector Undertaking, the quantity, total value, description and specifications of the imported goods are certified by the Chairman and Managing Director of the said Central Public Sector Undertaking; and

(c) In the case of imports by a Private Sector Project, the quantity, total value, description and specifications of the imported goods are certified by the Chief Executive Officer of such project.

8. The said assessee had availed full exemption from payment of duty in respect of goods cleared to various Mega Power Projects, during the years 2013-14 and 2014-15, availing the benefit of Notification No.12/2012-CE dated 17.03.2012 (Sr.No.336 having condition No.41). On going through the said notification and documents related to the Mega Power Projects furnished by the assessee, it was noticed that the said assessee had cleared the goods by availing of the benefit of the said notification wrongly as the said assessee had not fulfilled the conditions applicable for clearance of such goods without payment of duty. It appeared that in respect of clearance of goods under Sr.No.336 (Condition No.41), they have not fulfilled the condition viz. *If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India.*

9. It appeared that the said assessee clearing goods falling under chapter sub-heading no. 84 of the first schedule to CETA, 1985, was not eligible to claim benefit of the said notification inasmuch as the conditions attached to the said notification were not fulfilled. As per the condition in case of goods cleared under Notification No.12/2012-CE dated 17.03.2012 against Sr. No.336, the goods should also be exempted from levy of duties of customs under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India. The corresponding Customs notification No.12/2012-Cus dated 17.03.2012 **exempts projects falling under chapter subheading no. 9801 of the first schedule to Customs Tariff Act, 1975 from levy of customs duty.** Thus, it appeared that **the goods falling under chapter heading no. 84 cleared by the said assessee were not exempted from levy of customs duty.** Therefore, it appeared that the said assessee in violation of the conditions of the said notifications cleared the goods without payment of duty, which was required to be recovered along-with interest.

10. It further appeared that the said assessee was not registered with the proper Customs Authorities under the Project Import Regulation, 1986 when they cleared the goods falling under Ch. 84 availing the benefit of Notification No. 12/2012-CE dated 17.03.2012 though in most of the clearances effected the condition to avail benefit of the notifications was that the goods should be exempted from payment of customs duties, when imported into India. As per Regulation 4 to 7 of the Project Import Regulation, 1986, only those goods will be classifiable under heading 9801 of the Customs Tariff Act for which a contract has been registered with the proper Customs Authority as a Project Import under the said regulations before clearance of goods for home consumption. Further, even the goods which are covered under the contracts so registered are eligible for classification under heading 9801 of Customs Tariff only to the extent of the quantity specified in such contracts so registered and such goods in quantities over & above such specified quantities get out of purview of heading 9801, Further even if at the time of import and clearance, the goods were classified under heading no. 9801 but if the same are not used in the project shall not be classifiable under heading 9801 at the time of finalization of assessment under 9801 which involves reconciliation of the goods imported and utilized in the project after the project is complete. The importer has to execute a bond for assessment of goods provisionally under heading no.9801 and in event any part of the goods is not found to have been used in the project the said good shall be classified under appropriate tariff heading relevant to those goods for the purpose of levy of duty. Whereas when the Central Excise exemption under Sr. No. 336 of Notification No. 12/2012-CE dated 17.03.2012 is sought and which in turn are based on Sr. No. 507 of Customs exemption notification no. 12/2012-Cus dated 17.03.2012 then all requirement and conditions applicable for coverage under heading no. 9801 shall automatically apply to the goods cleared by the said assessee.

11.1 It appeared from the ER-1 returns filed by the assessee for the period from April-2013 to March-2015, the said assessee had cleared excisable goods by availing exemption Notification No.12/2012-CE dated 17.03.2012 (Sr.No.336 having condition No.41) and Sr.No.338 having condition No.43, as under :

(i) For Sr.No.336 having condition No.41 :

Year	Assessable Value (Rs.)	Duty involved (Rs.)			Total duty involved(Rs.)
		BED	E.Cess	SHE	
2013-14	0	0	0	0	0
2014-15	223938626/-	22899952/-	453927/-	226963/-	23580841/-
Total	**223938626/-**	**22899952/-**	**453927/-**	**226963/-**	**23580841/-**

(ii)For Sr.No.338 having condition No.43 :

Year	Assessable Value (Rs.)	Duty involved (Rs.)			Total duty involved (Rs.)
		BED	E.Cess	SHE	
2013-14	4783200/-	573984/-	11480/-	5740/-	591204/-
2014-15	17413042/-	1741304/-	34826/-	17413/-	1793543/-
Total	**22196242/-**	**2315288/-**	**46306/-**	**23153/-**	**2384747/-**

11.2 However, on verification of the documents submitted by Shri Bhavesh Chavada, authorized signatory of the assessee, it appeared that during the year 2013-14, the assessee had cleared all the goods to Mega Power Projects under Notification No.12/2012-CE dated 17.03.2012 (Sr.No.336 having condition No.41). However, in the ER-1 filed by the assessee, the assessee has shown as Sr.No.338 with condition No.43. It appears that the assessee willfully mis-declared the Sr.No.338 with condition No.43 instead of correct Sr.No.336 with condition No.41 in the ER-1 return filed by them for the year 2013-14. Further, it also appeared that in the ER-1 return for the month of November, 2014, the assessee had shown clearance of goods valued at Rs.41,88,042/- under Notification No.12/2012-CE dated 17.03.2012 with Sr.No.338 having condition No.43. However, during the verification of the documents submitted by them, it appeared that the said clearance is also under ICB procedure i.e. Sr.No.336 with condition No.41. Thus, it appeared that the said assessee had willfully misdeclared the facts related to the clearance of excisable goods by showing incorrect Serial number of the Notification No.12/2012-CE dated 17.03.2012.

12. It appeared that during the period 2013-14 and 2014-15, they had cleared excisable goods totally valued at Rs.21,92,34,868/- involving total Central Excise duty of Rs.2,31,94,889/- (BED Rs.2,25,25,240/- + ECess Rs.4,46,433/- + SHEC Rs.2,23,216/-), as per Annexure-A to the show cause notice, by wrongly availing exemption Notification No.12/2012-CE dated 17.03.2012 (Sr.No.336), which is required to be recovered along with interest.

13. In view of the above, it appeared that the said assessee had cleared the goods in contravention of Notification No. 12/2012-CE dated 17.03.2012 and thereby contravened the provisions of (i) of Central Excise Rules 2002 in as much as the said assessee did not pay the Central Excise duty which was leviable on the goods so cleared, (ii) Rule 6 of Central Excise Rules, 2002 in as much as the said assessee failed to assess the Central Excise duty payable on excisable goods (iii) Rule 8 of Central Excise Rules, 2002 in as much as and the payable Central Excise duty was not paid by the 5th of the following month and therefore it clearly appeared that they have contravened the provisions of Rule 4, 6 & 8 of Central Excise Rules 2002 by way of not paying the Central Excise duty. Further, it appeared that the assessee had misdeclared the facts, with an intention to evade duty, regarding the clearance made under Notification No.12/2012-CE dated 17.03.2012 despite knowing the fact that the clearances were being made in violation of the conditions of the said notifications. It appeared that the said assessee was aware about the fact that the goods cleared were not exempted from payment of duties of customs which was the primary and foremost condition to avail benefit of the said notifications in most of the clearances effected.

14. It further appeared that the said assessee had shown clearance of excisable goods without payment of Central Excise duty by availing notification No.12/2012-CE dated 17.03.2012, showing Sr.No.336 or 338, but they have not fulfilled the conditions pertaining to the said Sr.No.336. The assessee is an established business house and despite knowing that they have not fulfilled the conditions of the said Notification, they have misdeclared the facts in the ER-1 return filed by them during the period 2013-14 to 2014-15 and thereby wrongly availed the benefit of exemption notification.

15. It appeared that the said assessee had mis-declared the facts with an intention to evade payment of duty as elaborated above. Therefore, the duty not paid by the said assessee is required to be recovered invoking extended period of five years under the provision of erstwhile Section 11 A (5) of the Central Excise Act, 1944, now, Section 11A(4) of Central Excise Act, 1944. Interest on the duty not paid is also required to be recovered under Section 11AB /11AA of the Central Excise Act, 1944 as applicable during the relevant period.

16. It further appeared that the said assessee cleared the goods without payment of duty in contravention of various provisions of Central Excise Rules, 2002 and notifications and hence the same are liable to be confiscated under the provisions of Rule 25 of the Central Excise Rules, 2002.

17. It further appeared that since the excisable goods were cleared without payment of duty

by the said assessee in violation of the Central Excise Act, 1944 and rules framed there-under as well as in violation of the conditions of the notifications of which benefit was availed, the said assessee had rendered themselves liable for penalty in terms of Rule 25 of the Central Excise Rules 2002 read with erstwhile Section 11AC (1) (b) of Central Excise Act, 1944, now, Section 11AC 1(c) of Central Excise Act, 1944.

18. Therefore, M/s. Bosch Rexroth India Ltd., Sanand Viramgam Road, Village: Iyava, Tal: Sanand, Ahmedabad were called upon to Show Cause to the Commissioner of Central Excise, Ahmedabad-II, vide SCN no. **V.84/15-63/OA/2015** dated **05.01.2016**, as to why:-

(i) Central Excise duty amounting to Rs.2,31,94,889/- (BED Rs.2,25,25,240/- + E.Cess Rs.4,46,433/- + SHEC Rs.2,23,216/-), as per Annexure-A, on clearances made availing benefit of exemption 12/2012-CE dated 17.03.2012(Sr.No.336) for the period April-2013 to March-2015, should not be demanded and recovered under the provisions of Sections Section 11A (4) of the Central Excise Act,1944

(ii) Penalty should not be imposed under Rule 25 of the Central Excise Rules read with Section 11AC (1) (c) of the Central Excise Act,1944;

(iii) Interest should not be charged & recovered on duty mentioned herein above under Section 11AB/11AA of Central Excise Act, 1944, as applicable during relevant period.

19. Since the assessee continued to follow the same practice as discussed above, the following show cause notices were also issued to the assessee for subsequent periods.

S. No.	SCN No. & Date	Duty Demanded	Period
1.	V.84/15-28/OA/2016 dated 19.04.2016	Rs. 1,54,03,035/-	April 2015 to Dec 2015
2.	V.84/15-39/OA/2017 dated 10.01.2018	Rs.2,38,93,732/-	Jan 2016 to June 2016

DEFENCE REPLY-

20. The assessee vide letters dated 15.03.2016,23.05.2016 and 08.05.2016, has filed their defence reply to the SCN no. V.84/15-63/OA/2015 dated 05.01.2016, V.84/15-28/OA/2016 dated 19.04.2016 and SCN no. V.84/15-39/OA/2017 dated 10.01.2018, respectively, wherein they interalia submitted that-

(1) After shifting operations to Sanand from February 2013, the assessee have continued to manufacture and clear finished goods to mega power projects against International Competitive Bidding (ICB) after availing the benefit of exemption under Sl. No. 336 of Notification No.l2/2012-CE dated 17.03.2012.The assessee have also manufactured and cleared goods against Tariff Based Competitive Bidding (TBCB) after availing the benefit of exemption under Sl. No. 338 of Notification No.l2/2012-CE dated 17.03.2012 as amended.

(2) The same is reflected in the monthly ER-1 returns of the assessee.

(3) The assessee have also filed intimations with all relevant documents to the department prior to the clearance of goods to mega power projects under ICB procedure or under TBCB procedure availing the benefit of Sl. No. 336 or 338 of Notification No.12/2012-CE dated 17.03.2012 respectively.

(4) Pursuant to the above investigation at the end of Vatva unit of the assessee, a statement of Shri Bhavesh Chawada, an employee of the assessee was recorded on 22.04.2015.

(5) During the course of the statement, Shri Bhavesh Chawada *inter alia* submitted that the assessee have started manufacturing at Sanand unit since February 2013 and are clearing goods to various mega power projects under International Competitive Bidding (ICB) or under Tariff Based Competitive Bidding (TBCB) procedure and they have filed intimations prior to dispatch along with related documents with the department.

(6) Shri Bhavesh Chawada also submitted a copy of the relevant details of goods cleared under benefit of exemption Notification No. 12/2012-CE dated 17.03.2012.

(7) The year-wise details of the total value of goods cleared by the assessee under International Competitive Bidding procedure after availing benefit of Sl. No. 336 of Notification No. 12/2012-CE dated 17.03.2012 are as follows:

Year	Assessable Value	Duty Exemption Availed (including Edu. Cess & S.H.E. Cess)
June 2013 to March 2014	Rs.47,83,200/-	Rs.5,91,204/-
April 2014 to March 2015	Rs.21,44,51,668/-	Rs.2,26,03,685/-
Total	**Rs.21,92,34,868/-**	**Rs.2,31,94,889/-**

(8) The year-wise details of the total value of goods cleared by the assessee under Tariff Based Competitive Bidding (TBCB) procedure after availing benefit of Sl. No. 338 of Notification No. 12/2012-CE dated 17.03.2012 are as follows:

Year	Assessable Value	Duty Exemption Availed (including Edu. Cess & S.H.E. Cess)
April 2014 to March 2015	Rs.2,69,00,000/-	Rs.27,70,700/-

(9) The above mentioned Show Cause Notices are based on the following allegations:

(i) Sl. No. 336 of Notification No. 12/2012-CE dated 17.03.2012 grants exemption to all goods supplied against International Competitive Bidding subject to the Condition No. 41 of the said Notification. Condition No. 41 reads as follows:

> *"41. If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act. 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India. "*

Therefore, as per the Condition No. 41 to Notification dated 17.03.2012, the goods should also be exempt from levy of Customs duty under the First Schedule to the Customs Tariff Act, 1975 and the Additional duty leviable under Section 3 of the Customs Tariff Act, 1975 when imported into India for availing the benefit of Sl. No. 336 of Notification No. 12/2012-CE.

(ii) That the goods cleared by the assessee are falling under Chapters 84 of the First Schedule to the Central Excise Tariff Act, 1985 whereas, the corresponding Customs notification (Sr. No. 507 read with Condition.93 of Chapter sub-heading 9801 of the First Schedule to the Customs Tariff Act, 1975 from levy of customs duty.

(iii) That the assessee have wrongly availed full exemption from payment of duty in respect of goods cleared to various mega power projects during the years 2013-14 and 2014-15 availing the benefit of Sl. No. 336 of Notification No. 12/2012-CE dated 17.03.2012 as the assessee have not fulfilled the Condition no. 41 to Notification No. 12/2012-CE dated 17.03.2012.

(iv) That the assessee were not registered under the Project Import Regulations, 1986 at the time of clearance of the goods. As per Regulation 4 to 7 of the Project Import Regulations, 1986, only those goods will be classifiable under sub-heading 9801 of the Customs Tariff Act, 1975 for which a contract has been registered as Project Import with the authority under the Project Import Regulations, 1986. Further, the assessee have not fulfilled any of the conditions required under the Project Import Regulations, 1986 for classification of the goods under sub-heading 9801 of the Customs Tariff Act. 1975 including execution of a bond for assessment of goods provisionally by the importer.

(v) That in the ER-1 returns of the assessee, the assessee have declared certain goods as cleared under Sl. No. 338 with Condition no. 43 whereas during the verification of the documents supplied by the assessee, it appears that the said clearances are under Sl. No. 336 with Condition no. 41. Thus, the assessee have wilfully mis-declared the facts related to clearance of excisable goods by showing incorrect serial number of Notification No. 12/2012-CE dated 17.03.2012 with intent to evade payment of duty.

(vi) That the assessee were aware of the fact that the goods cleared were not exempted from payment of customs duties which was the primary and foremost condition to avail benefit of the said notification. Therefore, the duty not paid by the assessee is required to be recovered by invoking extended period of five years under the proviso to erstwhile Section 11 A(5) of the Central Excise Act, 1944 (now Section 11A(4) of the Central Excise Act, 1944) along with interest.

(vii) That the assessee cleared the goods without payment of duty in contravention of various provisions of the Central Excise Rules, 2002 and notifications and hence the same are liable to be confiscated under Rule 25 of the Central Excise Rules, 2002. Thus, the assessee have rendered themselves liable to penalty in terms of Rule 25 of the Central Excise Rules, 2002 read with erstwhile Section 11 AC(l)(c) of the Central Excise Act, 1944.

SUBMISSIONS

10. The assessee have satisfied all the conditions of Sl. No. 336 of Notification No. 12/2012- CE dated 17.3.2012 read with Sl. No. 507 of Notification No. 12/2012-Cus dated 17.03.2012

10.1 The dispute in the present case relates to the question whether the assessee are entitled to the exemption granted by Sl. No. 336 of Notification No. 12/2012-CE dated 17.03.2012 read with Sl. No. 507 of Notification No. 12/2012-Cus dated 17.03.2012.

10.2 Sl. No. 336 of Notification No. 12/2012-CE dated 17.03.2012 grants exemption to goods falling under any Chapter of the First Schedule to the Central Excise Tariff Act, 1985 provided that the goods are supplied against International Competitive Bidding.

10.3 In terms of the above Notifications, exemption was sought to be granted to the goods falling under any chapter when they are supplied against International Competitive Bidding. In the present case, there is no dispute in the fact that the supplies by the assessee have been made against International Competitive Bidding. Thus, the basic condition laid down by the notification has been satisfied.

10.4 In addition, Condition No. 41 for Notification No. 12/2012-CE dated 17.03.2012 has to be satisfied. The condition during the relevant period reads as under:-

If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India.

10.5 In terms of the above condition, the goods supplied against International Competitive Bidding are eligible for exemption only if such goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 as well as additional duty leviable under Section 3 of the Customs Tariff Act, 1975, when imported into India.

10.6 The above condition is merely an eligibility criteria. It is submitted that the above condition is qualified by words 'when imported to India'. Therefore the above condition merely means that for a manufacturer to avail the benefit of exemption, the same goods must also be entitled to exemption from duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 and the additional duty leviable under Section 3 of the said Customs Tariff Act, 1975 if imported.

10.7 Exemption from duties of Customs has been provided under Sl. No. 507 of Notification No. 12/2012-Cus dated 17.03.2012 which is extracted below:

Sl. No.	*Chapter or Heading No. or sub-heading No.*	*Description of goods*	*Standard rate*	*Additional rate*	*Condition no.*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*
507	*9801*	*Goods required forsetting up of any Mega Power Project specified in List 32A, so certified by an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power before the 19th day of July,2012, that is to say -* *(a) a thermal power plant of a capacity of 700 MW or more located in the slates of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura; or* *(b) a thermal power plant of a capacity of1000 MW or more, located in States other than those specified in (a); or* *(c) a hydel power plant of a capacity of350 MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram. Nagaland and Tripura: or* *a hydel power plant of a capacity of*	Nil	Nil	*93*

		500MW or more, located in States other than those specified in clause (c)			

10.8 The exemption under Sl. No. 507 of Notification No. 12/2012-Cus dated 17.13.2012 is subject to a Condition no. 93 which reads as under:

> *(a) "If an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power certifies that -*
>
> *(i) the power purchasing State has constituted the Regulatory Commission with full powers to fix tariffs:*
> *(ii) the power purchasing states shall undertake to carry out distribution reforms as laid down by Ministry of Power.*
>
> *(a) in case of imports for a project for which certificate regarding Mega Power Project status issued by an officer not below the rank of Joint Secretary to the Government of India in the Ministry of Power is provisional, the importer furnishes a security in the form of a Fixed Deposit Receipt or Bank Guarantee from any Scheduled Bank for a term of thirty six months or more in the name of the President of India for an amount equal to the duty of customs payable on such imports but for this exemption, to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case maybe, at the time of importation and if the importer fails to furnish the final mega power status certificate within a period of sixty months from the date of importation, the said security shall be appropriated towards duty of customs payable on such imports but for this exemption.*
> *(b) In the case of imports by a Central Public Sector Undertaking, the quantity, total value, description and specifications of the imported goods are certified by the Chairman and Managing Director of the said Central Public Sector Undertaking: and*
> *(c) In the case of imports by a Private Sector Project, the quantity, total value, description and specifications of the imported goods are certified by the Chief Executive Officer of such project*

10.9 Serial No. 507 of Notification No. 12/2012-Cus dated 17.03.2012 grants exemption to goods falling under heading 9801 provided that such goods are used for setting up of a mega which *inter alia* requires that the assessee furnish a certificate from the Joint Secretary to the Ministry of Power certifying the eligibility of the power project and a certificate from the Chairman/Managing Director/Chief Executive Officer of the public sector undertaking or private sector project, as the case may be, certifying the usage of such goods in the aforesaid eligible mega power project.

10.10 The assessee submitted that there is no dispute on the fact that the supplies have been made to a mega power project under International Competitive Bidding procedure. It is also not the case of the department in the show cause notice that the assessee have failed to furnish any of the documents required under Condition No. 93 to Notification No. 12/2012- Cus dated 17.03.2012.

10.11 Thus, the assessee have complied with Condition No. 41 pertaining to Sl. No.336 of Notification No. 12/2012-CE dated 17.03.2012 inasmuch as the goods are also eligible for exemption from Customs duty under Sl. No. 507 of Customs Notification no. 12/2012-Cus dated 17.03.2012 if imported. Further, the assessee have also fulfilled the conditions listed under Condition No. 93 of Notification No. 12/2012-Cus dated 17.03.2012 by producing the requisite certificates at the time of clearance of the finished goods.

The assessee are not required to register the contracts under Project Import Regulations, 1986 to be eligible for benefit of the impugned notifications

11.1 The show cause notice alleged that since the goods cleared by the assessee are falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985 the same would not be classifiable under Chapter 9801 of the Customs Tariff Act, 1975. Therefore, the Show cause notice alleged that since the exemption under the corresponding Customs exemption

notification is available to goods falling under Chapter 9801 of the Customs Tariff Act, 1975 the benefit of exemption under Sl. No. 336 of Notification No. 12/2012-CE dated 17.03.2012 is not available to the assessee in view of Condition No. 41 of the said Notification.

11.2. The show cause notice further alleged that the goods are not classifiable under Chapter 9801 of the Customs Tariff Act, 1975 and can be covered only if these are specified in the contract registered with the Customs authorities in terms of provisions of Project Import Regulations, 1986. Relying on these regulations, the show cause notice alleged that only those goods will be classified under Chapter 9801 of the Customs Tariff Act, 1975 for which a contract has been registered with the proper Customs Authority as a project import under the said regulation before the clearance from the factory. The show cause notice further alleged that if any goods imported though may be similar to the goods for which contact is registered but if the goods are over and above the quantities specified in the registered contract, shall not qualify to be classified under Chapter 9801 *ibid.* Show cause notice alleged that any quantity over and above the registered quantity shall be classified on importation under the respective heading of the Customs Tariff and not under Chapter Heading No. 9801. As per the show- cause notice, even if the goods are domestically procured, the exemption under the impugned Notifications would only be available to the goods cleared under a contract registered with the Customs Authority under the Project Import Regulations, 1986.

11.3 The assessee submitted that to claim the benefit of the impugned Notification, it is not necessary that the goods in question must themselves be eligible for exemption from duties of Customs leviable under the First Schedule to the Customs Tariff Act, 1975 and the additional duty leviable under Section 3 of the said Customs Tariff Act, 1975. The only condition is that similar goods, if imported into India, must be eligible for exemption. Since all the goods have been manufactured and supplied domestically, there cannot be any question of registering a contract for the same with the Customs Authorities under the Project Import Regulations, 1986. The above conditions are only applicable if the goods are imported in India for supply to a mega power project.

11.4 The assessee further submit that even if for the sake of argument it is assumed that the description of Chapter Heading 9801 of the Customs Tariff Act is required to be satisfied, even then they will be entitled for the exemption. Chapter Heading 9801 reads as under:

9801	*All items of machinery including prime movers, instruments, apparatus and appliances, control gear and transmission •equipment, auxiliary equipment (including those required for research and development purposes, testing and quality control), as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components, required for the initial setting up of a unit, or the substantial expansion of an existing unit, of a specified:* *(1) Industrial plant,* *(2) Irrigation project.* *(3) Power project,* *(4) Mining project,* *(5) Project for the exploration for oil or other minerals, and* *(6) Such other projects as the Central Government may having regards to the economic development of the country notify in the Official Gazette in this behalf; and spare parts, other raw materials (including semi finished material) or consumable stores not exceeding 10% of the value of the foods specified above provided that such spare parts, raw materials or consumable stores are essentia! for the maintenance of the plant or project mentioned in (1) to (6) above*

11.5 The assessee respectfully submit that the allegation in the show cause notice is unsustainable. There is no need for the machinery supplied by the assessee to be classified under Chapter Heading 9801 of the Customs Tariff Act, 1975. In fact, there is no Chapter Heading 9801 under the Central Excise Tariff Act, 1985. For this reason itself, instead of mentioning Chapter Heading 9801, Notification No. 12/2012-CE dated 17.03.2012, mention "any chapter'. There is no need to determine the classification of goods under Chapter Heading 9801 of the Customs Tariff Act, 1975. Classification under Chapter Heading 9801 is only under the Customs Tariff and only if exemption is to be availed under the Customs Notification No. 12/2012-Cus dated 17.03.2012. The assessee have not availed exemption under Customs Notification No. 12/2012-Cus dated 17.03.2012 although the goods would be eligible for benefit of exemption from Customs duty under Sl. No. 507 of the aforesaid Customs notification.

11.6 The exemption has been availed under Central Excise Notification No. 12/2012-CE dated 17.03.2012. The exemption is not availed under Customs Notification No. 12/2012-Cus dated 17.03.2012. The Central Excise Notification refers to goods of any chapter. Condition No. 41 in the said notification is only for the purpose of determining eligibility of exemption under the Customs notification and it does not require fulfillment of the mandatory conditions of the Customs notification for claiming exemption under the Customs notification. It is submitted that the project need not be registered with the Customs authorities; if the exemption is to be availed under Notification no. 12/2012-CE dated 17.03.2012, inasmuch as there is no condition under the Central Excise notification for registration of a contract with Customs Authorities under Project Import Regulations, 1986. During the relevant period, the Condition no. 41 of Central Excise notification did not stipulate that the conditions of the Customs notification are required to be fulfilled. Therefore, it is submitted that there is no need for the project to be registered with the Project Import authorities, if the exemption is to be availed under Notification No. 12/2012-CE dated 17.3.2012.

11.7 The assessee placed reliance on the Clarifications issued by the Tax Research Unit (TRU) in Annexure-III to the post-budget TRU letter dated 29.02.2016, wherein at Para 2, the TRU has observed as follows:

> *"In this regard, it is hereby clarified that a project which is listed in List 32A of Sr. No. 507 of Notification No. 12/2012-Customs, [which exempts goods for such project from BCD and CVDJ, as a corollary, will also be exempted from excise duty under S. No. 336 of Notification No. 12/2012-CE subject to the following conditions:*
>
> *i. if said project has been awarded based on International Competitive Bidding [ICB]; and*
> *ii. the conditions mentioned in S. No. 507 of Notification No. 12/2012-Customs are fulfilled,*
>
> *even if such power project is included in List 10 [S. No. 337] or List 11 [S. No. 338] of notification No 12/2012-CE "*

12. Therefore, in the present case also, the exemption has been rightly availed by the assessee insofar as the assessee have supplied the goods under ICB procedure and have also fulfilled the condition listed in S. No. 507 of Notification No. 12/2012-Customs i.e. Condition No. 93 of Notification No. 12/2012-Customs dated 17.03.2012.

13. Suppose the entire quantity of the goods required for the power project is to be supplied/ procured domestically and not to be imported, then there is no need for such project registration. In such a case, exemption under Notification No. 12/2012-CE dated 17.03.2012 has to be granted without insisting on the requirement of a project registration. Project registration is required only and only if the goods are not procured domestically but are to be imported.

14. The assessee submit that assuming for the sake of argument that the Project Import Regulations, 1986 are applicable, there is no such requirement in the said regulations requiring the assessee to prove that the goods cleared after availing exemption under Notification No. 12/2012-CE dated 17.03.2012 are part of the contract registered under the regulations.

15. The show cause notice also alleged that any quantity over and above the registered quantity shall be classified on importation under the respective heading of the Customs Tariff and not under Chapter Heading No. 9801. Similarly if the goods are domestically procured, the exemption under the Notification would also not be available to the goods cleared over and above the quantity specified in the contract registered with the Project Import authority. The assessee submit that the machinery had been supplied by the assessee as a domestic manufacturer to other domestic units and not imported as an importer. Thus, the conditions of Project Import Regulations, 1986 are not applicable to the assessee.

16. In view of the above submissions made by the assessee, it is clear that when the goods are supplied domestically against International Competitive Bidding, there is no need for the contract to be registered under the Project Import Regulations, 1986. The same can only be asked for in case the goods are imported.

17. The assessee further submit that the Central Excise Notifications do not place a further burden on the assessee to prove that the goods procured by it have been done so under the registered contract. It is settled principle of interpretation that an exemption notification has to be strictly construed and that too on the basis of language used therein. No words can be added or subtracted. Reliance in this regard is placed upon the following judgments of the Hon'ble Supreme Court:

(i) CCE v. Rukmani Pakkweil Traders - 2004 (165) ELT 481

".....It is settled law that Exemption Notifications have to be strictly construed. They must be interpreted on their own wording. Wordings of some other Notification are of no benefit in construing a particular Notification.... "

(ii) CCE v. Sunder Steels Ltd. - 2005 (181) ELT 154

"....The Notification has to be interpreted on its wording. No words, not used in the Notification, can be added... "

18. In view of the above, it is humbly submitted that the show cause notice is liable to be dropped.

Notwithstanding the above, the issue is no longer *res intesra*. The dispute stands settled by the decisions of the Hon'ble Tribunal in favour of the assessee.

19. The assessee submit that the Hon'ble Tribunal has allowed the appeal of the assessee in similar cases where the exemption under the aforesaid Notification No. 12/2012-CE dated 17.03.2012 (and/or erstwhile Notification No. 06/2006-CE dated 01.03.2006 which is identically worded) was denied on the ground that the assessee has not fulfilled the conditions under the corresponding Customs exemption notification.

19.1 They have relied on the following judgments

(i) **Om Metals SPML JV Unit 2 v. CCE, Jaipur -2013 (298) ELT 79 (Tri. Del)**

(ii) **Sarita Steels & Industries Ltd.v/s. CCE, Vishakhapatnam - 2011 (264) ELT 313 (T)**

In both the aforesaid cases, the assessee availed benefit under Sl. No. 91 of Notification No. 06/2006-CE dated 01.03.2006 read with Condition No. 19 of the said Notification and the same was denied by the adjudicating authority on the ground that the goods are not falling under Chapter Heading No. 9801 for the purposes of Sl. No. 400 of Notification No. 21/2002-Cus dated 01.03.2002 and that the assessee has not complied with Project Import Regulations, 1986.

19.2 In both the aforesaid cases, the Hon'ble Tribunal was pleased to set aside the demand against the assessee and allow the appeal.

19.3 In the present case also, the department has sought to deny the benefit of exemption under Sl. No. 336 of Notification No. 12/2012-CE dated 17.03.2012, which is identically worded to the erstwhile Sl. No. 91 of Notification No. 06/2006-CE dated 01.03.2006, on the same grounds as discussed in the case of Om Metals cited *supra*.

14.3 Thus, the issue being no longer *res Integra* and decided by the Hon'ble Tribunal in the case of M/s Om Metals and M/s Sarita Steels & Industries Limited in favour of the assessee, the show cause notice is liable to be dropped.

Interpretation should not defeat the purpose of the notification.

20. The assessee submit that the interpretation of a notification must be done with a spirit of giving effect to such a notification and not for the purposes of defeating it. In the case of Pappu Sweets and Biscuits v. Commissioner of Trade Tax, U.P., Lucknow - 2004 (178) E.L.T. 48 (S.C.), the Hon'ble Supreme Court held as under:

"10. The notification further discloses that the object of declaring exemption from payment of sales tax was to increase industrial activity within the State by encouraging setting up of new industrial units or expansion, diversification or modernization by the existing industrial units. At the same time the State did not desire to extend that benefit to all such industries. It was therefore specifically slated in the notification that industries mentioned in Annexure II shall not be entitled to the benefit of exemption from payment of tax or reduction in rate of tax. Presumably, the State did not desire further growth of such industries by suffering loss of revenue. What is however necessary to note is that Annexure II is an exclusionary part of exemption notification. The High Court did not examine the issue from this angle and also failed to appreciate that exclusionary part of an exemption notification has to be construed rather strictly. Even though the word used in exclusionary part of an exemption notification has a wide dictionary meaning or connotation, only that meaning should be

given to it which would achieve rather than frustrate the object of' granting exemption and which does not lead to uncertainty or unintended results. "

(Emphasis supplied)

20.1 In view of the above judgment, only that meaning should be given to a word in the Notification which would achieve rather than frustrate the object of granting exemption and which does not lead to uncertainty or unintended results. The object of Sl. No. 336 of Notification No. 12/2012-CE dated 17.03.2012 is to grant exemption to the goods supplied to specified power projects under international competitive bidding.

20.2 The interpretation as proposed in the show cause notice i.e. to claim the benefit of the Sl. No. 336 of Notification No. 12/2012-CE, goods must fall under Chapter Heading 9801 of the Customs Tariff Act, 1975 and the contract must be registered under the Project Import Regulation, 1986, will frustrate the object of the Notification, as a contract with the customs authorities can be registered only in respect of imported goods and not in respect of indigenously manufactured goods. If such an interpretation is adopted, a domestic manufacturer will never be entitled for the benefit of the Central Excise exemption and the Central Excise notification would become redundant. It is therefore, submitted that exemption cannot be denied by frustrating the object of the Notification. Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of **SRF Ltd. v. CC, Chennai - 2015 (318) ELT 607 (SC).**

The entire exercise is revenue neutral

21. Assuming without admitting that the exemption under Sl. No. 336 of Notification No. 12/2012-CE dated 17.03.2012 is not available, the whole exercise would be revenue neutral inasmuch as the assessee are eligible for exemption from Terminal Excise Duty under the Foreign Trade Policy 2009-2014. Relevant part of Para 8.2 of the FTP reads as under:

"The following categories of supply of goods by the main/ sub-contractors shall be regarded as "Deemed Exports

(a) ...

(f) (i) Supply of goods to any project or purpose in respect of which the MoF. by notification No. 12/2012-Customs, dated 17-3-2011 (earlier Notification No. 21/2002-Custom, dated 1-3-2002). as amended from time to time, permits import of such goods at zero customs duty subject to conditions specified in this Notification.

(ii)Benejits of deemed exports shall be available only if the supply is made under procedure of ICB. However, in regard to mega power projects, the requirement of 1CB would not be mandatory, if the requisite quantum of power has been tied up through tariff based competitive bidding. Supply of goods required for setting up of any mega power project as specified in Sl. No. 507 of DoR Notification No. 12/2012-Customs, dated 17-3-2012 as amended, shall be eligible for deemed export benefits as mentioned in paragraph 8.3 fa), (b) *and* (c) of *FTP, whichever is applicable, if such mega power project complies with the threshold generation capacity specified in Customs Notifications.*

(j) - "

(Emphasis supplied)

Thus, the supply of the goods by the assessee to mega power projects would be eligible for Deemed Exports benefit under the Foreign Trade Policy 2009-2014

21.1 Para 8.3 of the Foreign Trade Policy 2009-2014 specifies the benefits available to Deemed Exports and reads as under:

"Deemed exports shall be eligible for any/all of the following bene fits in respect of manufacture and supply of goods qualifying as deemed exports subject to terms and conditions as given in HBP vI:-

(aj Advance Authorisation/ Advance Authorization for Annual Requirement/DFIA]

(b) Deemed Export Drawback.
(c) Refund of terminal excise duty will be given if exemption is not available.

Exemption from TED is available to the following cateeories of supplies:

(i) Supplies against ICB;
(ii) Supplies of intermediate goods, against invalidation letter, made by an Advance Authorisation holder to another Advance Authorisation holder; and

(iii) Supplies of goods by DTA unit to EOU/EHTP/STP/BTP unit

21.2 The table at Para 8.4 of the Foreign Trade Policy 2009-2014 specifics the type of benefit available to each category of Deemed Export listed under sub-paras (a) to (j) of Para 8.2. As per the said table, for Deemed Export as detailed in sub-para (f), exemption is available to the goods cleared under ICB and refund is available if the goods are cleared without ICB.

21.3 In view of the above clear provisions of the Policy, exemption is available to the assessee for the goods supplied to a power project. Thus at any rate, the whole exercise is revenue neutral and the proposal of demand in the show cause notice or the allegation of intention to evade payment of duty is therefore not sustainable. Reliance in this regard is placed on the following judgments:

i) **Amco Batteries Ltd. v. CCE 2003 (153) ELT 7 (SC) clarified in CCE v. Mahindra & Mahindra 2005 (179) E.L.T. 21 (S.C.)**
ii) **CCE v. Narayan Polyplast 2005 (179) ELT 20 (SC)**
iii) **Punjab Tractors v. CCE 2005 (181) ELT 380 (SC)**
iv) **CCE v. Narmada Chematur Pharmaceuticals Ltd. 2005 (179) ELT 276 (SC)**

22. The assessee therefore submit that they are entitled for the benefit of Notification No. 12/2012-CE dated 17.03.2012 and that the said benefit was correctly availed by them. On this ground alone, the show cause notice is liable to be dropped.

Quantification of duty demand is incorrect

23. Without prejudice to the above submissions the assessee submit that assuming without admitting that the demand of duty is correct, then the quantification of the duty demand is incorrect. The assessee submit that in case, if any duty is payable, then the value on which duty demand is being raised is to be treated as cum-duty value and deduction is to be allowed in terms of the law laid down by the Hon'ble Supreme Court in the case of **CCE v. Maruti Udyog Limited - 2002 (141) ELT 3 (SC)** and also as per Explanation to Section 4 of the Central Excise Act, 1944. This is without prejudice to the submission that no duty is payable by the assessee.

The demand is beyond the normal period of limitation. The extended period of limitation cannot be invoked in the present case.

24.1 The demand pertaining to goods cleared during April 2013 to March 2015 is proposed to be raised vide the show cause notice dated 05.01.2016. Therefore, the demand extends to a period beyond the normal period of limitation of one year.

24.2 It is submitted that the allegation in the show cause notice that the assessee have wilfully suppressed facts to evade payment of duty is incorrect.

24.2 The assessee have filed monthly returns from time to time. Further, the factory of the assessee is being audited from time to time by the department and at no point of time the department has raised any such objections for a prior period. Admittedly, the present dispute has arisen out of information collected by the department from the assessee' own records.

24.3 In fact, an EA-2000 audit for the period November 2012 to November 2013, which includes the period from April 2013 in the present show cause notice, was conducted on 03.12.2013, 04.12.2013, 06.12.2013 and 17.12.2013 by the Central Excise department and no audit objection was raised with regard to the clearances made under exemption by the assessee under Sl. No. 336 or 338 of Notification No. 12/2012-CE dated 17.03.2012.

24.4 In view of the above and in view of the fact that the dispute has admittedly arisen out of the assessee own records, there is no question of any suppression of facts more so with intent to evade payment of duty on the part of the assessee. Moreover, the records of the assessee were always available for departmental scrutiny. Mere averment of suppression in the show cause notice without any supporting evidence is not sufficient to invoke the extended period of limitation.

24.5 The allegation in the show cause notice that the assessee have deliberately misdeclared the Sl. No. of the exemption Notification No. 12/2012-CE dated 17.03.2012 as Sl. No. 338 instead of Sl. No. 336 in their ER-1 returns with respect to some of clearances with intent to wrongly avail the benefit of exemption is not sustainable and incorrect. **The aforesaid error in the ER-1 returns was due to a bonafide mistake and the same was also voluntarily brought to the notice of the department by Shri Bhavesh Chawada vide letter dated 20.04.2015, prior to issuance of show cause notice and prior to recording of statement of Shri Bhavesh Chawada on 22.04.2015.**

24.5 Thus, the allegation that the assessee deliberately misdeclared in their ER-1 returns to wrongly avail benefit of exemption Notification is not sustainable.

25. The show cause notice has invoked extended period of limitation under Section 11 A (4) of the Central Excise Act, 1944. The said provision requires the presence of the following elements for invocation of extended period of limitation.

" Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of—

(a) Fraud; or
(b) collusion; or
(c) any willful mis-statement; or
(d) suppression of facts; or
(e) contravention of any of the provisions of this Act or of the rules made thereunder

with intent to evade payment of duty. "

26. The assessee submitted that on the basis of facts on record it cannot be alleged that the assessee had any intention to evade payment of duty nor any of the above ingredients is applicable to the present case.

27. The assessee submitted that 'Fraud' is an act of deliberate deception with a design to secure something which otherwise is not due. The assessee submit that in the present case the assessee have not defrauded the government inasmuch as the goods were supplied to mega power projects under international competitive bidding or tariff based competitive bidding and the assessee have fulfilled all the conditions of Sl. No. 336 and 338 of Notification No.I2/2012-CE dated 17.03.2012.

28. Collusion means a secret agreement for a fraudulent purpose or a secret or dishonest arrangement in fraud of the rights of another. Collusion implies existence of two or more parties who can deal with each other independently with the object of entering into an arrangement which may serve as a cloak to cover up the real state of affairs. The assessee submit that the said ingredient is not applicable in the present case as there is no other party involved and it is not the case of the department that the assessee in collusion with any party have evaded payment of duty.

29. The assessee submit that there has never been any wilful misstatement by the assessee to the department. The assessee being a reputed company and a tax complying assessee have followed all procedures prescribed under law.

30. The assessee also submitted that they have not suppressed any facts from the department. The assessee have filed monthly returns with the department wherein they have indicated the availment of benefit of exemption under Sl. No. 336 of Notification No.I2/2012-CE dated 17.03.2012.

31. Therefore, there was no fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions with an intention to evade payment of duty. Hence, demand beyond the normal period of one year is not maintainable as it is barred by period of limitation.

32. The assessee further submitted that the assessee were and are under a bonafide belief that for the goods to be eligible for exemption under Sl. No. 336 of Notification No. 12/2012- CE dated 17.03.2012, the same are not required to be classified under Chapter Heading 9801 of the Customs Tariff Act, 1975 and are not required to be registered under the Project Import Regulations, 1986.

33. The assessee rely upon the decision of the Hon'ble CESTAT in the case of NRC Ltd. v. CCE - 2007 (5) STR 308 (T), wherein the assessee was issued a show cause notice invoking extended period of limitation on the ground that the assessee was liable to pay service tax as clearing and forwarding agent.

34. The assessee further submitted that in the case of **Binlas Suplux Limited v. CCE - 2007 (7) STR 561(T)** the Hon'ble Tribunal has held that if the assessee is under bonafide belief, extended period of limitation cannot be invoked.

35. The assessee have maintained regular books of accounts and all transactions are duly recorded. The books of accounts are maintained in the regular course of business. All transactions have been undertaken transparently and in the usual course of activities. The demand in the present case is based only on the books of account and other records maintained by the assessee.

36. Moreover, there being no positive act on part of the assessee to suppress any fact from the department and there being no evidence for such allegation, the assessee submit that the proposal to invoke extended period is not correct.

37. In this context, the assessee has relied on the Hon'ble Supreme Court in the case of **Continental Foundation v. CCE - 2007 (216) ELT 177 (SC).**

38. Furthermore, the assessee submit that omission to inform the department cannot be equated with suppression of facts. In support of their contention, the assessee has relied on the judgment of the Hon'ble Supreme Court, reported at **1989 (43) ELT 195**(SC) and the judgment of the Hon'ble Supreme Court in the case of Chemphar Drugs reported at - 1989 (40) ELT 276 (SC).

39. It is also alleged in the show cause notice that although the assessee have claimed to file intimations for every clearance of the finished goods from their premises under the benefit of Sl. No. 336 or Sl. No. 338 of Notification No.l2/2012-CE dated 17.03.2012 they have not filed the same in all cases. The assessee submit that such an allegation is of no consequence as the assessee have complied with all the statutory requirements including furnishing of returns on a timely basis. It is settled law that the responsibility of the assessee does not extend beyond making the statutory declarations.

40. As there is no suppression of facts by the assessee, the extended period of limitation is not invokable. The demand beyond the normal period of limitation in the show cause notice is liable to be dropped on this ground alone.

41. Every omission to disclose certain fact is not sufficient to invoke larger period of limitation on the ground of suppression of fact. Only those omissions to disclose the fact which amounts to wilful suppression with an intention to evade payment of duty will enable the revenue to invoke larger period. Omission which is wilful in nature with an intention to evade payment of duty is alone covered by Section 11A(4) of the Central Excise Act, 1944. In the present case, the wilful nature of the omission is not established.

42. In view of the above the demand beyond the normal period of limitation in the show cause notice is liable to be dropped on the grounds of limitation alone.

No penalty or interest can be charged from the assessee

20.1 The assessee submit that the assessee have not contravened any of the provisions of the Central Excise Act, 1944 read with rules and notifications issued thereunder. The proposal to impose penalty under the show cause notice is thus bad in law.

20.2 In view of the above discussions, the assessee are not liable to pay duty on the goods supplied to mega power projects under ICB procedure against Sl. No. 336 of Notification No. 12/2012-CE dated 17.03.2012.

20.3 The assessee therefore submitted that no penalty can be imposed under Rule 25 of the Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944.

20.4 The assessee submitted that in view of the grounds stated in paras above, no duty is payable. Therefore, the question of imposing penalty does not arise. It is a well settled principle of law that where the demand of duty does not exist, penalty cannot be imposed. The assessee rely upon the decision of the Hon'ble Allahabad High Court in Coolade Beverages Limited reported at (2004) 172 ELT 451 (All.).

20.5 The assessee further submitted that penalty under Section 11AC of the Central Excise Act, 1944 is imposable only when there is an element of fraud, wilful suppression or mis-

statement of facts etc. with an intention to evade payment of duty. In the present case, as explained in Paras *supra,* there is a complete absence of mala fide intention and therefore, no penalty can be imposed.

20.6 The penal provisions are a tool to safeguard the contravention of rules and provisions in the statute. In this regard, the assessee submit that the penal provisions are invokable for serious offences, where duty has not been paid by reasons of fraud, collusion or any wilful suppression or misstatement of facts with intention of evading payment of duty. However, there is no such situation in the assessee' case for the reasons submitted in Paras *supra.*

No penalty is imposable under Rule 25 of the Central Excise Rules, 2002

21.1 The show cause notice proposes to impose penalty on the assessee under Rule 25 of the Central Excise Rules, 2002.

21.2 The relevant provisions of Rules 25 of the Central Excise Rules. 2002 are reproduced hereunder:

> ***Rule** 25. **Confiscation and penalty** - (I) Subject to the provisions of Section 11 AC of the Act, if any producer, manufacturer, registered person of a warehouse or a registered dealer,-*
>
> *(a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or*
> *(b) does not account for any excisable goods produced or manufactured or stored by him; or*
> *(c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or*
> *(d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty.*
>
> *Then all such goods shall be liable for confiscation and the producer or manufacturer or registered person of the warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or [two thousand rupees] whichever is greater.*

21.3 As submitted in the preceding paras, the assessee have no intention to. nor have the assessee cleared, dutiable goods without payment of appropriate duty. There is no evasion of duty by the assessee. Further, the department has not brought anything on record to prove any intention by the assessee to clear the goods with short payment of duty especially when the assessee have intimated to the Department about clearance of goods under the benefit of exemption under Sl. No. 336 of Notification No. 12/2012-CE dated 17.03.2012.

21.4 It is submitted that Rule 25(1)(a) is not applicable in the present case since the assessee have cleared the goods at the appropriate rate of duty.

21.5 Rule 25(1)(b) is not applicable to the present case since there is no allegation of any non accounting of finished goods manufactured by the assessee.

21.6 Rule 25(1)(c) is also not applicable since the assessee are duly registered with the Central Excise department.

21.7 Rule 25(1)(d) is also not applicable to the present case since there is no contravention of any of the provisions of the Central Excise Act, 1944 or rules made thereunder by the assessee. let alone with any intention to evade payment of duty.

21.8 In view of the above, there is no question of imposing any penalty under Rule 25 of the Central Excise Rules, 2002 on the ground that the goods were liable for confiscation.

21.9 It is further submitted that penalty under Rule 25 of the Central Excise Rules, 2002 is subject to imposition of penalty under Section 11 AC of the Central Excise Act. 1944. They have relied on the judgment of Hon'ble High Court of Gujarat in the case of **CCE** v. **Saurashtra Cement Ltd.** - **2010 (260) ELT 71 (Guj.)**

21.10 In the present case, none of the ingredients for imposing penalty under Section 11 AC exist. Since the penalty under Section 11 AC of the Act is not imposable, there is no question of imposing any penalty under Rule 25 of the Central Excise Rules, 2002.

No penalty is imposable as the assessee are under a bona fide belief

22.1 The assessee submit that the assessee have always acted in good faith and in *bona fide* belief that the exemption availed by them is correct and there was never an intention to short-pay duty.

22.2 It is submitted that in cases of *bona fide* belief, no penalty is imposable. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Hindustan Steel Ltd. v.State of Orissa - AIR 1970 (SC) 253.**

22.3 The decision of the Hon'ble Supreme Court was followed by the Hon'ble Tribunal in the case of **Kellner Pharmaceuticals Ltd. v. CCE - 1985 (20) ELT 80** wherein it was held that proceedings under Rule 173Q are quasi criminal in nature and as there was no intention on the part of the assesse to evade payment of duty, the imposition of penalty cannot be justified. This decision of the Hon'ble Tribunal was further relied upon in the case of **Stellar Chemical Laboratories Pvt. Ltd.** v. **CCE, Vadodara - 2001 (134) ELT 504 (Tri. Mum).**

22.4 Following the judgment of the Hon'ble Supreme Court in the case of **Hindustan Steel Ltd.** cited *supra*, in the case of **Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax - 1980 (6) ELT 295 (SC),** Hon'ble Supreme Court held that penalty cannot be imposed when an assesse raises a contention of *bona fide* belief. It is submitted that the conduct of the noticees in the present case is *bona fide* in nature and therefore imposition of penalty is not sustainable.

No penalty is imposable as the issue involves interpretation of the provisions of law:

22.5 The assessee submit that the issue in dispute in the present case involves interpretation of provisions of law. Penalty is not imposable for this reason as well. Reference may be made to the following judgments wherein it has consistently been held that penalty is not imposable when the issue in question involves interpretation of the provisions of law:

(i) **CCE v. Swaroop Chemicals (P) Ltd.**- 2006 (204) ELT 492 (T)
(ii) **Haldia Petrochemicals Ltd. v. CCE** - 2006 (197) ELT 97 (T)
(iii) **CCE v. TELCO LTD.**- 2006 (196) ELT 308 (T)
(iv) **Siyaram Silk Mills Ltd. v. C.C.E.**- 2006(195) ELT 284 (T)
(v) **CCE v. Sikar Ex-Serviceman Welfare Coop. Society Ltd.**- 2006 (4) STR 213 (T)
(vi) **Hindustan Steel Ltd. v. State of Orissa**- 1978 (2) ELT (J 159) (SC)
(vii) **Fibre Foils Ltd. v. CCE**- 2005 (190) ELT 352 (T)
(viii) **ITEL Industries Pvt. Ltd. v. CCE**- 2004(163) ELT 219 (T)
(ix) **Birla Corporation Ltd. v. CCE**- 2002 (148) ELT 1249 (T)

22.6 In view of the above submissions, it is submitted that the proposal to impose penalty on the Noticecs under Rule 25 of Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944 is liable to be dropped.

Interest is not recoverable.

23.1 It is a settled principle of law that in cases where the original demand is not sustainable, interest cannot be levied. In view of the aforesaid submissions, it is clear that the demand itself is not sustainable and hence, the question of recovering interest does not arise.

23.2 The assessee submit that interest is charged when any liability to pay duty of excise arises. As already submitted, the demand in the present case is not sustainable. Therefore, when the demand itself is not sustainable, as a necessary consequence, the interest is also not payable. This has been held in the case of **Caprihans India Ltd. v. CCE, Thane - 1 – 2011** (267) **E.L.T.** 238 **(Tri.),** wherein the Hon'ble Tribunal stated as under:

"When duty cannot be demanded under Section IIA, the question of demanding interest under Section IIAA also does not arise."

23.3 Similarly, in the case of **CCE, Chandigarh v. Groz Beckert Asia Pvt. Ltd. - 2009 (240) E.L.T. 222 (Tri.)** the Hon'ble Tribunal held that the demand of interest under Section 11AB of the Act cannot be sustained without determination of demand of duty.

23.4 In view of the above, no interest is payable in the present case.

Personal Hearing

21. The Personal Hearing in this case was held on 11.12.2019 wherein Shri Anand Nainwati, Advocate and Sh. Hardik Lathiya, Asst Manager, duly authorised by M/s.Bosch Rexroth India Pvt Ltd, appeared and made the submissions and re-iterated the submissions made in their replies for all three SCNs.They relied on the decisions of CESTAT in the cases of M/s. Paramount Communication (I) P. Ltd. reported in 2016 (344) ELT 1091, M/s. Industrial Perforation (I) Pvt. Ltd. reported in 2019 (12) TMI 111, Sandvik Asia Ltd, reported in 2019 (5) TMI 869 and the judgment of Supreme Court in the case of M/s. Nizam Sugar Factory reported 197 ELT 465 (S.C.).

DISCUSSION AND FINDINGS:

22. I have gone through the records of the case, the submissions made by the assessee in their written submissions and the oral submissions made by the assessee at the time of the personal hearing

23. The issue to be decided is whether the exemption under the aforesaid Notification No. 12/2012-CE dated 17.03.2012 is admissible to the assessee when the assessee has not fulfilled the conditions under the corresponding Customs exemption notification.

23.1 Serial no 336 of the Notification No. 12/2012-CE dated 17.03.2012 as amended and condition attached to it read as under:-

S.No.	Chapter or heading or subheading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No
(1)	(2)	(3)	(4)	(5)
336	Any Chapter	All goods supplied against International Competitive Bidding	NIL	41

Condition no 41

41. If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India.

23.2 The corresponding Customs Notification No.12/2012-Cus dated 17.03.2102 (Sr.No.507 with condition No.93) exempted the goods falling under chapter 9801 of the Customs Tariff from levy and payment from Customs duty. The entry no.507 of Noti. No. 12/2012-Customs dated 17.03.2012 as amended reads as under;

S.No	*Chapter or Heading or sub-heading or tariff item*	Description of goods	Standard Rate	Additional duty rate	Condition no
507	9801	Goods required for setting up of any Mega Power Project, so certified by an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power, that is to say, (a) a thermal power plant of a capacity of 700MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura; or(b)	NIL	NIL	93

		a thermal power plant of a capacity of 1000MW or more, located in States other than those specified in (a); or (c) a hydel power plant of a capacity of 350MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura; or (d) a hydel power plant of a capacity of 500MW or more, located in States other than those specified in clause (c)			

Condition no 93

If an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power certifies that:-

(i) the power purchasing State has constituted the Regulatory Commission with full powers to fix tariffs;

(ii) the power purchasing states shall undertake to carry out distribution reforms as laid down by Ministry of Power.

(a) in case of imports for a project for which certificate regarding Mega Power Project status issued by an officer not below the rank of Joint Secretary to the Government of India in the Ministry of Power is provisional, the importer furnishes a security in the form of a Fixed deposit Receipt from any Scheduled Bank for a term of thirty six months or more in the name of the President of India for an amount equal to the duty of customs payable on such imports but for this exemption, to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, at the time of importation and if the importer fails to furnish the final mega power status certificate within a period of thirty six months from the date of importation, the said security shall be appropriated towards duty of customs payable on such imports but for this exemption.

(b) In the case of imports by a Central Public Sector Undertaking, the quantity, total value, description and specifications of the imported goods are certified by the Chairman and Managing Director of the said Central Public Sector Undertaking; and

(c) In the case of imports by a Private Sector Project, the quantity, total value, description and specifications of the imported goods are certified by the Chief Executive Officer of such project.

23.3. Sl. No. 336 of Notification No. 12/2012-CE dated 17.03.2012 grants exemption to all goods supplied against International Competitive Bidding subject to the Condition No. 41 of the said Notification. Condition No. 41 reads as follows:

> *"41. If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act. 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India. "*

23.4 Therefore, as per the Condition No. 41 to Notification dated 17.03.2012, the goods should also be exempt from levy of Customs duty under the First Schedule to the Customs Tariff Act, 1975 and the Additional duty leviable under Section 3 of the Customs Tariff Act, 1975 when imported into India for availing the benefit of Sl. No. 336 of Notification No. 12/2012-CE. I find that the goods cleared by the assessee are falling under Chapters 84 of the First Schedule to the Central Excise Tariff Act, 1985 whereas, the corresponding Customs notification (Sr. No. 507 read with Condition 93 of Chapter sub-heading 9801 of the First Schedule to the Customs Tariff Act, 1975 exempts the goods from levy of customs duty.

24. As per the condition when goods are cleared under Notification No.12/2012-CE dated 17.03.2012 against Sr. No.336, the goods should also be exempted from levy of duties of customs under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India. The corresponding Customs notification No.12/2012-Cus dated 17.03.2012 **exempts projects falling under chapter subheading no. 9801 of the first schedule to Customs Tariff Act, 1975 from levy of customs duty**. Thus, it appeared that **the goods falling under chapter heading no. 84 cleared by the said assessee were not exempted from levy of customs duty**. Thus it was alleged that the said assessee, clearing goods falling under chapter sub-heading no. 84 of the first schedule to CETA, 1985, was not eligible to claim benefit of the said notification inasmuch as the conditions attached to the said notification were not fulfilled.

25. The said assessee had availed full exemption from payment of duty in respect of goods cleared to various Mega Power Projects, during the relevant period under consideration availing the benefit of Notification No.12/2012-CE dated 17.03.2012 (Sr.No.336 having condition No.41). The said assessee had cleared the goods by wrongly availing the benefit of the said notification

as the said assessee had not fulfilled the prescribed conditions applicable for clearance of such goods without payment of duty. It appeared that in respect of clearance of goods under Sr.No.336 (Condition No.41), they have not fulfilled the condition viz. *If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India.*

26. In view of the above, the main allegation against the assessee is that in respect of clearance of goods under Sr.No.336 (Condition No.41), they have not fulfilled the condition viz. *If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India.*

27. I find that the said assessee was not registered with the proper Customs Authorities under the Project Import Regulation, 1986 when they cleared the goods falling under Ch. 84 availing the benefit of Notification No. 12/2012-CE dated 17.03.2012, and in most of the clearances effected, the condition to avail benefit of the notifications was that the goods should be exempted from payment of customs duties, when imported into India. As per Regulation 4 to 7 of the Project Import Regulation, 1986, only those goods will be classifiable under heading 9801 of the Customs Tariff Act for which a contract has been registered with the proper Customs Authority as a Project Import under the said regulations before clearance of goods for home consumption. Further, even the goods which are covered under the contracts so registered are eligible for classification under heading 9801 of Customs Tariff only to the extent of the quantity specified in such contracts so registered and such goods in quantities over & above such specified quantities get out of purview of heading 9801. This implies that even if at the time of import and clearance, the goods were classified under heading no. 9801 but if the same are not used in the project, the same shall not be classifiable under heading 9801 at the time of finalization of assessment under 9801 which involves reconciliation of the goods imported and utilized in the project after the project is complete. The importer has to execute a bond for assessment of goods provisionally under heading no.9801 and in the event any part of the goods is not found to have been used in the project the said good shall be classified under appropriate tariff heading relevant to those goods for the purpose of levy of duty. Whereas when the Central Excise exemption under Sr. No. 336 of Notification No. 12/2012-CE dated 17.03.2012 is sought and which in turn are based on Sr. No. 507 of Customs exemption notification no. 12/2012-Cus dated 17.03.2012 then all requirement and conditions applicable for coverage under heading no. 9801 shall automatically apply to the goods cleared by the said assessee.

28. In terms of the condition No. 41, the goods supplied against International Competitive Bidding are eligible for exemption only if such goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 as well as additional duty leviable under Section 3 of the Customs Tariff Act, 1975, when imported into India. The contention of the assessee is that the condition is merely an eligibility criteria and that it merely means that for a manufacturer to avail the benefit of exemption, the same goods must also be entitled to exemption from duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 and the additional duty leviable under Section 3 of the said Customs Tariff Act, 1975, **if imported.** The contention of the assessee does not hold good, because, the goods manufactured and cleared by the assessee are not exempted from Custom duty, even when imported.

29. It is a well settled principle of law that a notification is to be interpreted in light of the language employed in the said notification and no addition or deletion from the same is to be made. Such a view has been expressed by the Apex Court in a plethora of cases of which a few are listed below:

(1) *Commissioner of C.Ex., Jaipur* v. *Mewar Bartan Nirman Udyog* - 2008 (231) E.L.T. 27 (S.C.)
(2) *Commissioner of C.Ex. & Cus., Indore* v. *Parenteral Drugs (I) Ltd.* - 2009 (236) E.L.T. 625 (S.C.)
(3) *Hotel Leela Venture Ltd.* v. *Commissioner of Customs (Gen.), Mumbai* - 2009 (234) E.L.T. 389 (S.C.)
(4) *Mihir Textiles Ltd.* v. *Collector of Customs, Bombay* - 1997 (92) E.L.T. 9 (S.C.)
(5) *Orient Traders* v. *Commercial Tax Officer, Triupati* - 2009 (237) E.L.T. 447 (S.C.)

30. The Hon'ble Supreme Court of India, in its judgment in the case of M/s. Mewar Bartan Nirman Udyog, reported in 2008 (231) E.L.T. 27 (S.C.), has held as under:

5. We may also point out at this stage that it is well settled position in law that exemption Notification has to be read strictly. A notification of exemption has to be interpreted in terms of its language. Where the language is plain and

clear, effect must be given to it. While interpreting the exemption notification, one cannot go by rules of interpretation applicable to cases of classification under the Tariff. Tariff items in certain cases are required to be interpreted in cases of classification disputes in terms of HSN, which is the basis of the Tariff...."

31. The Hon'ble Supreme Court of India, in its judgment in the case of M/s.Parenteral Drugs (I) Ltd., reported in 2009 (236) E.L.T. 625 (S.C.), has held as under:

8. We may add that exemption notifications have to be read strictly. We may also add that the burden is on the assessee to prove that the item falls within the four corners of the exemption notification.

32. The Hon'ble Supreme Court of India, in its judgment in the case of M/s. Mihir Textiles Ltd., reported in 1997(92) ELT 9 (S.C.), has held as under:

"...- HELD : Benefit of Project Import not available since the conditions prescribed in the proviso to Tariff Heading 84.66 of the erstwhile Customs Tariff for getting the Contract registered prior to the import not fulfilled - Such conditions to be complied with even if they are only directory.

Exemption/Benefit dependent upon satisfaction of certain conditions cannot be granted unless such conditions are complied with, even if such conditions are only directory - Heading 84.66 of the erstwhile Customs Tariff and Heading 98.01 of the Customs Tariff - Section 25 of the Customs Act, 1962 corresponding to Section 5A of the Central Excise Act, 1944 .

[para 11]

11. Learned counsel for the appellant raised an alternative contention that the deficiency in the contract for obtaining the concessions should not have been taken so seriously and the Customs Authorities should have granted the reliefs as the appellants had performed their part in complying with the conditions. Non-compliance of the conditions, according to the counsel, was only due to the lapses on the part of the authorities concerned. This contention was expatiated to the extent that the conditions prescribed in the proviso to entry No. 84.66 are merely directory and not mandatory. According to the counsel, the conditions prescribed, if interpreted strictly, would result in the denial of concessional reliefs which statute has conferred on the citizen.

12. In support of that contention, counsel invited our attention to the decision of a Constitution Bench of this Court in State of U.P. v. Manbodhan Lal Srivastava, 1958 SCR 533, wherein their Lordships were considering the implication of non-compliance with the conditions provided in Article 320(3) of the Constitution on an order imposing punishment to a Government servant without reference to the Public Service Commission. While considering that question learned Judges made a reference to the Privy Council decision in Montreal Street Railway Company v. Normandin - AIR 1917 PC 142 and the Federal Court decision in Biswanath Khemka v. Emperor - AIR 1945 FC 67. The Constitution Bench held that the provisions of Article 320(3) are not mandatory and non-compliance of those provisions does not afford any cause of action in a court of law. Privy Council in the above quoted decision has observed that the question whether provisions in a statute are directory or imperative depends upon the object of the statute and no general rule can be laid down. "When the provisions of the statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory." This is not a case where a certain provision is mandatory or directory. Here the question is whether concessional relief of duty which is made dependent on the satisfaction of certain conditions can be granted without compliance of such conditions. No matter even if the conditions are only directory.

33. The CESTAT, Principal Bench, New Delhi, in its decision in the case of M/s. International Lease Finance Corporation, reported in 2017 (358) E.L.T. 1049 (Tri. - Del.), has held as under:

Aircraft engine - Exemption under Notification No. 12/2012-Cus. - Denial of - Admittedly, subject engine was imported for purpose of fitting into aircraft which was leased by appellant to King Fisher Airlines (importer), to make aircraft airworthy for taking back, out of India, on cancellation of lease - Lease of aircraft was cancelled by appellant even prior to import of subject engine - Aircraft, to which imported engine was intended to be fitted, could, in no way, be considered as used in operating scheduled air transport service - Hence, no infirmity in impugned order denying exemption under Notification ibid. - Demand sustainable - Section 28 of Customs Act, 1962. - The purpose of exemption is specific and categorical. The aircraft engine should have been for servicing, repair or maintenance of aircraft which is used for operating scheduled air transport service. In the present case the aircraft to which the engine was intended to be fitted is not to be used for operating scheduled air transport service. The lease for aircraft has already been terminated. All the parties to the dispute categorically admitted that the import of engine is only for the purpose of making aircraft air worthy and to take it back, out of India. This certainly does not meet the requirement of exemption in terms of Notification. [paras 11, 12, 21]

12.Similarly, we note the appellants,claim for exemption under Notification 12/2012-C.E., dated 17-3-2012 was also disallowed by the Original Authority. In terms of Sl. No. 448 of Notification 12/2012-Cus., condition No. 73 has

been imposed for availment of exemption. This condition will also be applicable for availing exemption under Sl. No. 305 of Notification No. 12/2012-C.E. We note that the exemption under this notification has been denied on valid grounds by the Original Authority. KFA is not an MRO unit. This is not in dispute. As already noted, the eligibility for exemption under Customs Notification 12/2012-Cus. is relevant and applicable to claim exemption under the Central Excise notification. The aircraft to which the imported engine is intended to be fitted is not to be used in scheduled air transport service and the purpose of fitting the engine is, admittedly, to fly the aircraft out of India. Such operation is not covered by the scope of exemption as discussed, at length by the Original Authority and examined by us in terms of above discussion. As such, we are in agreement with the Original Authority regarding denial of exemption to the imported aircraft engine.

34. I also find that the burden of proof lies on the claimant claiming the benefit of exemption as held by the Apex Court in the case of M/s *Novopan India Ltd.* v. *CCE, Hyderabad* - 1994 (73) E.L.T. 769 (S.C.) Hon'ble. The relevant text of the same is reproduced as under:

"A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision - In case of doubt or ambiguity, benefit of it must go to the State.

The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."

35. The CESTAT, Bangalore, in its decision in the case of M/s. Coastal Energy P. Ltd., has held as under:

Valuation (Customs) - Benefit of exemption notification claimed - HELD : Can be granted only after classification of goods - In the assessment procedure, the first step is the classification of goods and then determination of applicability of notification - Doing vice-versa is not correct - If the notification contains the tariff heading and description of the goods and both tally with the relevant tariff heading in the Tariff, the applicability of exemption has to be decided on that basis - On facts, the steam coal as well as tariff heading were in the notification, and once classification was done as bituminous coal, the heading in the notification for the item to be exempted does not get covered at all because either tariff heading or description or both do not tally with the classification of goods - Once classification is completed, interpretation of the notification has to be on that basis and a notification cannot be interpreted independently unless specific situation exists - Chapter 27 of Customs Tariff Act, 1975. *[para 51]*

51. *Another aspect to be noted is that in the assessment procedure, the first step is to determine the classification of the goods. Once classification is determined, we would proceed to examine the applicability of notification. Doing vice-versa is not correct. If the notification contains the tariff heading and description of the goods and both tally with relevant tariff heading in the Tariff, the applicability of exemption has to be decided on the basis. In this case, the steam coal as well as tariff heading are in the Notification. Once classification is determined as bituminous coal, the heading in the notification for the item to be exempted does not get covered at all because either tariff heading or description or both do not tally with the classification of the goods. Once the exercise of classification is completed, interpretation of the notification has to be on that basis and a notification cannot be interpreted independently unless there are specific situations exist which we have found in this case not to be in existence.*

36. I find that the benefit of Exemption Notification is dependent upon satisfaction of certain conditions and the same cannot be granted unless such conditions are complied with, It is a well settled principle of law that a notification is to be interpreted in light of the language employed in the said notification and no addition or deletion from the same is to be made. The **benefit of exemption notification claimed can be granted only after classification of goods - In the assessment procedure, the first step is the classification of goods and then determination of applicability of notification. Doing vice-versa is not correct.If the notification contains the tariff heading and description of the goods and both tally with the relevant tariff heading in the Tariff, the applicability of exemption has to be decided on that basis.The benefit of exemption under the said Notification can be granted only if the Tariff heading contained in the Notification matches with the Tariff heading of the goods.** It is well settled position in law that exemption Notification has to be read strictly. A notification of exemption has to be interpreted in terms of its language. Where the language is plain and clear, effect must be given to it. While interpreting the exemption notification, one cannot go by rules of interpretation applicable to cases of classification under the Tariff and also cannot interpret the same to our advantage as per our whims. Also if the Government intended to give the benefit of exemption to the goods under any Notification unconditionally, in the first place,it would not have placed any condition in the Notification at all. The Notification No. 12/2012-C.E.,under Serial No. 336, Condition no. 41 read with the corresponding Customs Notification No.12/2012-Cus dated 17.03.2102 (Sr.No.507 with condition No.93) exempts the

goods from the payment of Central Excise Duty if the goods are exempted from the duties of customs leviable, and the goods being supplied by the domestic manufacturers should be classified under Chapter Heading 9801 and the domestic manufacturers would have to be registered with Project Import Regulations, 1986.

37. I find that the said assessee had cleared the goods by availing the benefit of the said notification without fulfilling the prescribed conditions applicable for clearance of such goods without payment of duty. There is no dispute on the fact that the supplies have been made to a mega power project under International Competitive Bidding procedure. It is also not the case of the department that the assessee have failed to furnish any of the requisite prescribed documents.The said assessee clearing goods falling under chapter sub-heading no. 84 of the first schedule to CETA, 1985, whereas the corresponding Customs notification No.12/2012-Cus dated 17.03.2012 exempts projects falling under chapter subheading no. 9801 of the first schedule to Customs Tariff Act, 1975 from levy of customs duty. Therefore, relying on the above judgments passed by the Apex Court and various decisions of Tribunals, I conclude that when the Central Excise exemption under Sr. No. 336 of Notification No. 12/2012-CE dated 17.03.2012 is sought and which in turn is based on Sr. No. 507 of Customs exemption notification no. 12/2012-Cus dated 17.03.2012 then all requirement and conditions applicable for coverage under heading no. 9801 shall automatically apply to the goods cleared by the said assessee.I thereby hold that the assessee has wrongly availed the benefit of Notification No.12/2012-CE Dated 17.03.2012, as in respect of clearance of goods under Sr.No.336 (Condition No.41), they have not fulfilled the prescribed condition.The assessee had failed to make the correct assessment of the value of goods cleared to related person and not clarified any doubt that they may have had with the department. I hereby rely on the above judgments passed by the Hon'ble Supreme Court and the various decisions of the Tribunal and hold that the assessee is not eligible to avail the benefit of Notification No. 12/2012-CE dated 17.03.2012 and is liable to pay Central Excise duty amounting to **Rs.6,24,91,656/-,** as demanded vide Show Cause Notices dated 5.1.2016, 19.4.2016 & 10.1.2018, under the provision of erstwhile Section 11 A (5) of the Central Excise Act, 1944, now, Section 11A(4) of Central Excise Act,

38. In the backdrop of the above discussion, I find that the assessee has deliberately evaded payment of Central Excise by misinterpreting the condition prescribed under the relevant Notifications as discussed above. The assessee has never at any point of time taken up the issue with the department in case of ambiguity of interpretation. The wordings of the Notification are clear and explicit and there is no room for having a different interpretation other than what has been clearly mentioned in the Notifications.Thus the act of evasion of payment of duty is to be considered as suppression of facts and willful misstatement with an intend to evade payment of duty there on. Therefore, in light of this fact, extended period has been appropriately invoked in this case and I hold that the demand is sustainable on the ground of limitation also.

39. In view of the above, I hold that the said assessee had cleared the goods in contravention of Notification No. 12/2012-CE dated 17.03.2012 and thereby contravened the provisions of (i) Rule 4 of Central Excise Rules 2002 inasmuch as the said assessee did not pay the Central Excise duty which was leviable on the goods so cleared, (ii) Rule 6 of Central Excise Rules, 2002 in as much as the said assessee failed to assess the Central Excise duty payable on excisable goods (iii) Rule 8 of Central Excise Rules, 2002 inasmuch as and the payable Central Excise duty was not paid by the 5th of the following month and thereby they have contravened the provisions of Rule 4, 6 & 8 of Central Excise Rules 2002 by way of not paying the Central Excise duty. The said the assessee had misdeclared the facts, with an intention to evade duty, regarding the clearance made under Notification No.12/2012-CE dated 17.03.2012 despite knowing the fact that the clearances were being made in violation of the conditions of the said notifications. The said assessee was aware about the fact that the goods cleared were not exempted from payment of duties of customs which was the primary and foremost condition to avail benefit of exemption under Notification No. 12/2002-CE,dated 17.3.2012 on the clearances of goods.

40. The said assessee had cleared the goods without payment of duty in contravention of various provisions of Central Excise Rules, 2002 and notifications and hence the same are liable to be confiscated under the provisions of Rule 25 of the Central Excise Rules, 2002. Coming to the question of confiscationof the goods already cleared under Rule 25 of the Central Excise Rules, 2002, I find that in the case of *M/s Shiv Kripa Ispat Pvt. Ltd. – 2009 (235) elt.623 (Tri-LB)* hon'ble Tribunal relied upon paras 12 & 13 of the decision of Hon'ble High Court of Punjab & Haryana in the case *Raja Impex – 2008 (229) ELT.185 (P &H)* held that for confiscation the condition precedent is that the goods should have been seized and released provisionally on execution of bond. In the present case the goods were neither seized nor are available for seizure. Hon'ble Bombay High Court in the case of *Finesse Creation Inc – 2009 (248) ELT.122 (Bom)* and *Sudarshan Cargo Pvt. Ltd-2010 (258) ELT.197 (Bom)* has upheld the

decisions of Tribunal to the effect that fine in lieu of confiscation was not imposable when goods were not available. Hon'ble Tribunal in the case of *CCE, Surat v/s Blue Sky Synthetics 2014(300)ELT95 (Tri. Ahmd)* held that confiscation and imposition of redemption fine not imposable when goods not available for confiscation. I find that the excisable goods in question are liable for confiscation, however, since the goods are not available for confiscation I refrain from imposition of redemption fine.

41. I find that since the excisable goods were cleared without payment of duty by the said assessee in violation of the Central Excise Act, 1944 and rules framed there-under as well as in violation of the conditions of the notifications of which benefit was availed, the said assessee had rendered themselves liable for penalty in terms of Rule 25 of the Central Excise Rules 2002 read with erstwhile Section 11AC(1) (b) of Central Excise Act, 1944, now, Section 11AC 1(c) of Central Excise Act, 1944.

42. As regard to their contentions regarding non imposing penalty Section 11AC of the Act read with rule 25 of CER, 2002, I have already held that the demand for recovery of Central Excise duty proposed under the notice is recoverable by invoking extended period of time under Section 11 A of the Act, mandates levy of interest on recovery of Central Excise duty not levied or not paid or short-levied or short-paid, therefore, the demand is recoverable along with interest under the said Section. I further find that where any Central Excise duty not levied or not paid or short-levied or short-paid by the reason of suppression of facts or fraud or collusion or wilful mis-statement or contravention of any of the Act or the Rules made there under with intent to evade payment Central Excise duty under section 11AC of the CEA, 1944. It is settled law that penalty is imposable on the basis of law operating on the date on which the wrongful act is committed, and it is levied on the totality of facts and circumstances of each case under the relevant provisions. In view of the findings given in foregoing paragraphs, the extended period of time for demand under provision to Section 11A(4) of the Act is invokable in the present case and also find that interest and penalty are statutory liability following every short-payment or non-payment of duty. Therefore I hold that penalty is liable to be imposed on the assessee and interest is required to be recovered from the assessee as envisaged under the statute.

43. In view of the above discussions, I pass the following order.

ORDER

i) I confirm the demand of Central Excise duty amounting to **Rs 2,31,94,889/- (Rupees Two Crores, Thirty one lakhs, Ninety four Thousand Eight hundred and Eighty nine only)** on clearances made by wrongly availing the benefit of exemption under Notification 12/2012-C.E.,dated 17.3.2012, during the period from April 2013 to March 2015, and order that the same should be recovered from them under Section 11 (4) of the Central Excise Act, 1944,

ii) I confirm the demand of Central Excise duty amounting to **Rs 1,54,03,035/- (Rupees One Crore, Fifity Four lakhs, Three Thousand thirty five only)** on clearances made by wrongly availing the benefit of exemption under Notification 12/2012-C.E.,dated 17.3.2012, during the period from April 2015 to December 2015, and order that the same should be recovered from them under Section 11 (4) of the Central Excise Act, 1944,

iii) I confirm the demand of Central Excise duty amounting to **Rs 2,38,93,732/- (Rupees Two Crores, Thirty Eight Lakhs, Ninety three Thousand Seven hundred and Thirty two only)** on clearances made by wrongly availing the benefit of exemption under Notification 12/2012-C.E.,dated 17.3.2012, during the period from January 2016 to June 2016, and order that the same should be recovered from them under Section 11 (4) of the Central Excise Act, 1944,

iv) I impose Penalty amounting to Rs. 6,24,91,656/- (Rupees Six Crores, Twenty Four Lakhs, Ninety one Thousand Six Hundred and Fifty Six only) under Rule 25 of the Central Excise Rules, 2002 read with Section 11 AC (1) (c) of the Central Excise Act, 1944. However in view of the proviso (b) of this Section where duty as determined in (i), (ii) and (iii) above, is paid with interest under section 11AA within thirty days of the date of communication of this order, the amount of penalty liable to be paid by such person shall be twenty-five per cent of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified;

v) I order the recovery of interest at the applicable rate on the amount mentioned in (i), (ii) and (iii) above, under Section 11 AB/11AA of the Central Excise Act, 1944, as applicable.

vi) The following Show Cause Notices are hereby disposed off in the above terms.

S. No.	SCN No. & Date
1	V.84/15-63/OA/2015 dated 05.01.2016
2	V.84/15-28/OA/2016 dated 19.04.2016
3	V.84/15-39/OA/2017 dated 10.01.2018

(Dr. Balbir Singh)
Commissioner
C.G.S.T &Central Excise,
Ahmedabad North

F. No.:V.84/15-63/OA/2015

Date:06.03.2020

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2. The Assistant Commissioner, Central Excise, Div-III, CGST, Ahmedabad North.
3. The Superintendent, Central Excise, AR-III, Div-III, Ahmedabad North
4. Guard File.