



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. CE/15-57/OA/2023-24

DIN-20240164WT000002118E  
आदेश की तारीख/Date of Order: - 25.01.2024  
जारी करने की तारीख/Date of Issue :- 25.01.2024

द्वारा पारित/Passed by:-

**लोकेश डामोर / Lokesh Damor**  
अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 72-73/ADC/ LD/2023-24**

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।  
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या इ.ए.-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 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 Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

- (1) Copy of accompanied Appeal.
- (2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. CE/15-57/OA/2023-24 dated 24.11.2023, No.VIII/B.G/MISC/01/2017-18 dated 19.05.2023, issued to M/s. SKS Power Generation(Chhattisgarh) Limited, 501B, Élegant Business Park, Andheri Kurla Road, J.B. Nagar, Andheri (E), Mumbai-400059.



### Brief Facts of the Case

M/s. SKS Power Generation (Chhattisgarh) Limited, having its registered office at 501B, Elegant Business Park, Andheri Kurla Road, J.B. Nagar, Andheri (E), Mumbai-400059 and their factory located at Villages Darramuda & Birijkote, Tehsil Kharsia, District: Raigarh-496661, Chhattisgarh (hereinafter called "M/s. SKS Power or said noticee") who were awarded Mega Power Project as appearing in list 11 of Notification No. 12/2012-CE dated 17.03.2012 as inserted by Notification No.34/2012-CE, dated 10.09.2012 had procured goods required for setting up of the Mega Power Project having capacity of 4x300 MW without payment of excise duty on the basis of provisional Mega Power Project status, under bank guarantee as permitted by the notification no.12/2012-Central Excise, dated 17.03.2012, Sr.No.338 and condition no. 43 from the factory/unit of M/s. Pacific Pipe Systems Private Limited., (C.Ex. Registration No.AAEC6371QXM001) addressed at Plot No. 36P, 38, 39, 42P & 101P, Village: Naranpura, Chandrasan, Tal:Sanand, Dist:Ahmedabad and M/s Hitachi Hi-Rel Power Electronics Private Limited,(C.Ex. No.- AAACH3875MEM004) addressed at the Plot No.- SM 3&4, GIDC, Village- Bol, Sanad-382110, Ahmedabad.

2. The relevant part of said Notification i.e., Sr.No.338 of Notification No.12/2012-Central Excise, dated 17.03.2012 which reads as under:-

Sr. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
338	Any Chapter	All items of machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipments, power cables used within the power generation plant, 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 aforesaid items and their components, supplied to mega power projects, specified in list 11 from which the supply of power has been tied up through tariff based competitive bidding or a mega power project awarded to a developer on the basis of such bidding. <b>Explanation.-</b> For the removal of doubts, it is clarified that goods required for setting up of "mega power project" include the goods required for development of facilities such as ash	Nil	43

		disposal system including ash dyke, water intake including treatment and storage facilities and coal transportation facilities for such a project, notwithstanding the fact that such facilities are set up inside or outside the power plant's designated boundary.		
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Further, Condition No.43 for the above is as under:-

If:-

- a) an officer not below the rank of Joint Secretary to the Government of India in the Ministry 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 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 (1), the project developer will pay the duty which would have been leviable at the time of clearance of goods, but for this exemption.

3. The above mentioned Notification No. 12/2012-Central Excise, dated 17.03.2012 was amended vide Notification No.04/2014-Central Excise dated 17.02.2014 which is read as under:-

*"In the ANNEXURE, in condition number 43, in the second column relating to Conditions, for the words "within a period of thirty six months", the words "within the period of sixty months" shall be substituted."*

The Notification No. 12/2012-Central Excise, dated 17.03.2012 was further amended vide the Notification No. 12/2015-C.E dated 01.03.2015 which read as under:-

*"in Condition No.43, in clause (b), for the words "a term of thirty six months or more", the words " a terms of sixty six months" shall be substituted;"*

The Condition No.43 of the Notification No. 12/2012-Central Excise, dated 17.03.2012 (as amended vide above mentioned Notifications) was further amended vide Notification No. 8/2017 -Central Excise, dated 16.05.2017, accordingly clause (b) to the condition no. 43 was amended to read as under:

*"In the said notification, in the ANNEXURE, in Condition No.43, under heading "Condition" in clause (b),*

*(i) for the words "a term of sixty six months", the words "a term of one hundred and twenty-six months" shall be substituted; and*

*(ii) for the words within a period of sixty months", the words "with in a period of one hundred and twenty months shall be substituted."*

4. It appeared that the as per Notification No.12/2012-Central Excise, dated 17.03.2012 (as amended), the exemption available to the assessee was conditional and was subject to fulfilment of condition laid down under serial number 43 of Notification No. 12/2012-CE dated 17.03.2012. Accordingly, in case of provisional mega power projects this exemption was subject to furnishing of a security in the form of a Fixed Deposit Receipt or Bank Guarantee from any scheduled bank for a term of 126 months for an amount equal to the central excise duty payable but for the said exemption.

5. However, it is observed that M/s. SKS Power has procured goods required for Setting up of the Mega Power Project of Central Excise Duty amounting to Rs.1,80,00,000/-, from M/s. Pacific Pipe Systems Private Limited., (C.Ex. Registration No.AAEC6371QXM001) addressed at Plot No. 36P, 38,39,42P & 101P, Village: Naranpura, Chandrasan, Tal:Sanand, Dist:Ahmedabad and VFD Panels(3 units) of Central Excise Duty amounting to Rs. 1,83,750/- from M/s Hitachi Hi-Rel Power Electronics Private Limited,(C.Ex. No.- AAACH3875MEM004) addressed at the Plot No.- SM 3&4, GIDC, Village- Bol, Sanad-382110, Ahmedabad without payment of excise duty on the basis of provisional Mega Power Project status and submitted Bank Guarantees, as permitted by Sl.No.338 and condition no. 43 of the notification no.12/2012-Central Excise, dated 17.03.2012 (as amended). Details are as under:-

SI. No	BG No./ date of issue	Valid up to date	Claim period up to	Amount (Rs.)	Goods procured from
i	0853612BG0000245 /20.12.2012	16.05.22	16.05.23	60,00,000/-	Pacific Pipe Systems Private Limited
ii	0853612BG0000148 / 30.08.2012	28.05.22	28.05.23	60,00,000/-	Pacific Pipe Systems Private Limited
iii	0853212BG0000151 /06.09.2012	02.05.22	02.05.23	60,00,000/-	Pacific Pipe Systems Private

					Limited
iv	0853616BG0000399 /28.11.2016	21.05.22	21.05.22	1,83,750/-	M/s Hitachi Hi-Rel Power Electronics Private Limited

6. Further it was noticed that M/s. SKS Power had unable to submit renewals of the above the Bank Guarantees in stipulated time. In this regard, Jurisdictional office had requested to said noticee to renew the said BGs vide various letters dated 20.05.2022, 14.06.2022, 12.07.2022, 03.08.2022, 13.01.2023 12.05.2023 and 19.05.2023.
7. Furthermore, M/s. SKS Power had neither submitted the final mega power status certificate till date nor has furnished the renewed bank guarantee. Thus, it appeared the goods procured by the said noticee had not used in the mega power project and the Central Excise Duty exemption availed on procuring of goods by the assessee under Notification No. 12/2012-CE dated 17.03.2012(as amended) is in contravention of the said notification.
8. In view of the above, it appeared that M/s. SKS Power had failed to comply with the conditions laid down in the said notification and thereby they have not complied with the Central Excise Act, 1944/ Central Excise Rules.
9. It also appears that the person who wishes to avail the benefit of notification issued under Section 5A of Central Excise Act, 1944 is required to comply the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 (the said Rules) for availing the benefit of notification no. 12/2012-CE dated 17.03.2012. Further, it appears that as per Rule 6 of the said Rules *"if goods are not used by the manufacturer for the intended purpose, the manufacturer shall be liable to pay the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory of the manufacturer of the subject goods, along with interest and the provisions of section 11A and section 11AB of the Central Excise Act, 1944 (1 of 1944) shall apply mutatis mutandis for effecting such recoveries"*. Thus, it appeared that if goods are not used for intended purpose by the manufacturer (recipient of goods without payment of central excise duty by the supplier under notification no. 12/2012-CE dated 17.03.2012), the manufacturer shall be liable to pay central excise duty foregone while receiving the said goods.
10. Thus, it appeared that the M/s. SKS Power had contravened the provision of Notification No. 12/2012- CE dated 17.03.2012 in as much as they have not fulfilled the condition no. 43 of the said notification as discussed hereinabove. Therefore, it appeared that the assessee i.e., M/s. SKS Power was liable to pay Central Excised duty of Rs. 1,80,00,000/- and Rs. 1,83,750/-, not paid by the supplier while supplying the said goods to the assessee under Notification No. 12/2012-CE dated 17.03.2012. Therefore, the Central Excise Duty is required to be recovered from the assessee i.e., M/s. SKS Power under Section 11A(1) of Central Excise Act, 1944. Thus, the assessee was also liable to pay interest under Section 11AA of Central Excise Act, 1944. For these

reasons, the assessee appears liable to penal action under Section 11AC(1)(a) Central Excise Act, 1944.

11. The provisions of the repealed Central Excise Act, 1944 and amendment of the Finance Act 1994 have been saved under Section 174 (2) of the Central Goods and Services Tax Act, 2017.

12. Hence, following Show Cause Notices were issued to M/s. SKS Power Generation (Chhattisgarh) Limited:-

I. **Show Cause Notice No.- CE/15-57/OA/2023-24 dated 24.11.2023 was issued to M/s. SKS Power Generation (Chhattisgarh) Limited, vide which they were called upon to show cause as to why:**

a) Central Excise Duty of Rs. 1,80,00,000/- (Rupees One Crore Eighty Lakh only) should not be recovered from them under Section 11A(1) of Central Excise Act, 1944 read with Notification NO. 12/2012-CE dated 17.03.2012 (Sr. No. 338 Condition No.43) and Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001.

b) Central Excise Duty of Rs. 1,20,00,000/- (Rupees One Crore Twenty Lakh recovered w.r.t B.G No. 0853612BG0000245/20.12.2012&0853612BG0000148/30.08.2012 through SBI, Commercial Branch, Raipur should not be appropriated against the Central Excise Duty of Rs. 1,80,00,000/- (Rupees One Crore Eighty Lakh only) under Section 11A(1) of Central Excise Act, 1944 read with Notification No. 12/2012- CE dated 17.03.2012 (Sr. No. 338 Condition No.43) and Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001.

c) Interest as applicable should not be recovered from them under Section 11AA of Central Excise Act, 1944.

d) Penalty as applicable should not be recovered from them under Section 11AC(1)(a) of Central Excise Act, 1944.

II. **Show Cause Notice No.- VIII/B.G/Misc/01/2017-18 dated 19.05.2023 was issued to M/s. SKS Power Generation (Chhattisgarh) Limited, vide which they were called upon to show cause as to why:**

a) Central Excise Duty of Rs. 1,83,750/- (Rupees One Lakh Eighty Three Thousand Seven Hundred and Fifty only) should not be recovered from them under Section 11A(1) of Central Excise Act, 1944 read with Notification NO. 12/2012-CE dated 17.03.2012 (Sr. No. 338 Condition No.43) and Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001.

b) Interest as applicable should not be recovered from them under Section 11AA of Central Excise Act, 1944.

- c) Penalty as applicable should not be recovered from them under Section 11AC(1)(a) of Central Excise Act, 1944.

**DEFENCE REPLY**

13. M/s. SKS Power Generation (Chhattisgarh) Limited vide their letter dated 20.06.2023, 26.12.2023 and 24.01.2024(submitted during personal hearing on 24.01.2024) submitted their reply to the SCN wherein they stated that:-

- I. They have completed construction of two units of 300MW each and same are under operation since October 2017(Unit-II) and April 2018(Unit-I). They have also implemented certain balance of Plant for 4X300 MW offset facilities like Power evacuation Line, Water Pipeline, Railway sliding for 4X300 MW.
- II. They had received extension of Provisional Mega Power Status in the form of Office Memorandum from Government of India, Ministry of Power stating that the time period for furnishing final Mega Power certificate has been extended to 156 months instead of 120 months. A copy of the Ministry of Power Office Memorandum dated 07.04.2022 has been enclosed as Attachment A.
- III. Further on 29 April 2022, the Hon'ble National Company Law Tribunal, Mumbai ("NCLT") passed an order in CP (IB) No. 893/ MB /2021 ("Admission Order"), directing initiation of corporate insolvency resolution process ("CIRP") of SKS in accordance with Section 7 of the Insolvency & Bankruptcy Code, 2016 ("IBC"). In terms of the Admission Order, the Hon'ble NCLT has appointed Mr. Ashish Arjunkumar Rathi, as the interim Resolution Professional ("IRP") (subsequently confirmed by the Committee of Creditors as the Resolution Professional ("RP") of SKS) to carry out the duties/functions as mentioned in IBC.
- IV. While passing the Admission Order, the Hon'ble NCLT *inter alia* imposed moratorium under Section 14 of the IBC thereby prohibiting institution and continuation of suits or proceedings including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority against SKS. The relevant excerpts are as follows:

"This Application being CP (IB) No.893/MB/2021 filed under Section 7 of I&B Code, 2016, presented by Bank of Baroda, Financial Creditor/ Applicant against SKS Power Generation (Chhattisgarh) Limited, Corporate Debtor for initiating corporate insolvency resolution process is admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;



c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to:

a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

b) a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

VII. That this Bench appoints Mr. Ashish Arjunkumar Rathi, a registered insolvency resolution professional having Registration Number [IBBI/PA-001/IP-P00568/2017-2018/11010] as an Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard."

- V. A copy of the Admission Order has been enclosed as Attachment B.
- VI. Pursuant to the initiation of CIRP, in accordance with the provisions of the IBC, on 02 May 2023 a public announcement was made in a national newspaper and in Mumbai (i.e., place of registered office) and Raigarh (Chhattisgarh) (i.e., factory site) in English and regional languages, inviting the claims from all creditors of SKS. A copy of public notice dated 02 May 2023 has been enclosed as Attachment C. As per the statutory scheme of the IBC, post the imposition of moratorium, all the creditors (including the government authorities such as Excise Authority) are required to file their respective claims with the RP in accordance with Regulation 7 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"). Further, as per Section 18(b) read with Regulation 13 and Regulation 14 of CIRP Regulations, the RP is mandated to collate and verify the claims submitted by various creditors of SKS.
- VII. Thereafter, any payment with respect to the claims filed by the creditors is to be made in accordance with resolution plan submitted by a Resolution Applicant. In case no resolution plan comes forth, the claims filed by the creditors of a Corporate Debtor are settled pursuant to liquidation of the Corporate Debtor as per the order of priority set out in Section 53 of the IBC.

- VIII. Given the above, claims of the Excise Department for non-payment of Excise Duty/ levy of Interest or any other claim against SKS, if any, were required to be submitted with the RP for verification and admission within the stipulated timelines.
- IX. In light of prevailing moratorium imposed under Section 14, any payment towards recovery of dues of any creditor (including the government authorities such as Excise Authority) is not permissible as per the provisions of IBC. In view of the above, any and all dues pertaining to the period prior to 29.04.2022, have to be mandatorily dealt in accordance with the statutory scheme of the IBC as set out in the preceding paragraphs.
- X. Further, they stated that Resolution Professional has filed an application IA 5626/2023 at NCLT against AC, Central GST and Central Excise, Division-IV, Ahmedabad North where an order was passed seeking payment of duty from Corporate Debtor. The Resolution Professional has prayed that recovery order be quashed in view of the provision of IBC. As the fact case is identical in this case as well, it is submitted that the matter at hand is also sub-judice before the NCLT, Mumbai.
- XI. Further, they stated that department has encashed the BG No. 0853612BG0000245/20.12.2012 & 0853612BG0000148/30.08.2012 of Rs. 60,00,000/- (Rupees Sixty Lakh) each aggregating to Rs. 1,20,00,000/- (Rupees One Crore and Twenty Lakh). The claims received by the RP for all the stakeholders/ creditors (including claims from government authorities) up till submission of the resolution plan for voting by the Committee of Creditors have been verified and admitted/ rejected by the RP in the CIRP process.
- XII. As regards to alleged non-renewal of the Bank Guarantee No. 0853612BG0000151 ("BG") by SKS, they submitted that SKS has been requesting State Bank of India ("SBI") to renew the multiple bank guarantees issued to Excise Authority, including the BG. In this context, request letter dated 01 April 2022 (issued by the company) and 04<sup>th</sup> April, 2023 (issued by the RP) and replies received from SBI have been enclosed herewith as Attachment D. SBI has expressed its inability to grant the request to extend the BGs. Further, the bank guarantees provided by SBI are secured with 100% margin placed by SKS with SBI. The said margin is still lying with SBI and has not been released to SKS. Considering the above, it is apparent that SKS has taken the necessary actions in a timely manner to ensure the renewal of the BG.
- XIII. In light of the ongoing CIRP and as per extant provisions of IBC, RP has a duty to preserve and protect the assets of the Corporate Debtor, including the continued business operations of the Corporate Debtor. Invocation of bank guarantees is detrimental to the operations of the Corporate Debtor and should be returned immediately. Accordingly, they

request to return the amount of Rs. 1,20,00,000/- (Rupees One Crore and Twenty Lakh) so recovered/encashed. It is reiterated that any claims of the Excise Department for non-payment of Excise Duty, levy of interest, or any other claim against SKS, if any, were required to be submitted with the RP for verification and admission within the stipulated timelines and procedures prescribed under IBC.

### **PERSONNEL HEARING**

14. In the instant case, Personal Hearing was granted to M/s. SKS Power Generation (Chhattisgarh) Limited on 24.01.2024. Shri Harsh Joshi, Company Secretary and Shri Prem Shinde, Accounts Executive and authorised persons appeared on behalf of M/s. SKS Power. They reiterated their written submissions dated 26.12.2023 and 24.01.2024 and requested to decide the matter on merits.

### **DISCUSSION AND FINDINGS**

15. The proceedings under the provisions of the Central Excise Act, 1944 framed there under are saved by Section 174 of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further. I find that Show Cause Notice No.- VIII/B.G/Misc/01/2017-18 dated 19.05.2023 is transferred by jurisdictional Assistant Commissioner, CGST. Div-III, Ahmedabad North on the basis of Para 11.5 of Circular 1053/02/2017-CX dated 10.03.2017 issued by CBIC New Delhi which is reproduced below:-

*"In case different show cause notices have been issued on the same issue to same noticee(s) answerable to different adjudicating authorities, Show Cause Notices involving the same issue shall be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of duty."*

16. In this regard, I find that as a Show Cause Notice No.-CE/15-57/OA/2023-24 dated 24.11.2023 amounting to Rs. 1,80,00,000/- has been issued to said noticee i.e. M/s. SKS Power Generation (Chhattisgarh) Limited on similar issue. Therefore, I proceed to decide both SCNs on the basis of para 11.5 of Circular 1053/02/2017-CX dated 10.03.2017, details of both SCNs are as under:-

(i) Show Cause Notice No.- CE/15-57/OA/2023-24 dated 24.11.2023.

(ii) Show Cause Notice No.- VIII/B.G/Misc/01/2017-18 dated 19.05.2023.

17. In the instant case, I have carefully gone through the both Show Cause Notices, reply to SCNs, facts of the case on record and other submissions made by the noticee and find that the issue to be decided is whether the exemption under the Notification No. 12/2012-CE dated 17.03.2012(as amended) is admissible to the M/s. SKS Power when the said noticee has not fulfilled the condition given under the said notification.

18. I find that M/s. SKS Power Generation (Chhattisgarh) Limited was awarded mega power project as appearing in list 11 of Notification No.

12/2012-CE dated 17.03.2012 as inserted by Notification No.34/2012-CE, dated 10.09.2012. Relevant part of said notification is reproduced below:-

**Notification No. 34 / 2012 - Central Excise**

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 12/2012-Central Excise, dated the 17 th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 163(E), dated the 17 th March, 2012, namely:

In the said notification, -

(A) in the Table

(i) against Sl. No. 337, in the entries under column (3), for the words "required for setting up of an ultra-mega power project", the words and figures "required for setting up of an ultra-mega power project specified in List 10," shall be substituted;

(ii) against S. No. 338, in the entries under column (3), for the words "supplied to mega power projects", the words and figures "supplied to mega power projects specified in List 11," shall be substituted;

(iii) against S. No. 339, in the entries under column (3), for the words "expansion of an existing mega power project so certified", the words, figures and symbols "expansion of mega power projects, namely, Vindhychal STPP Stage-V (Expansion Unit) - 500 MW (NTPC) and UNOSUGEN CCPP, Gujarat (An expansion unit of Sugan CCPP of 1147.5 MW)- 382.5(1) MW(M/s. Torrent Power Ltd.) so certified before the 19 th day of July, 2012" shall be substituted;

(B) in the ANNEXURE,

(i) in the Condition No. 42, in clause (a), after the words "mega power project", the words "before the 19 th day of July, 2012" shall be inserted;

(ii) in the Condition No. 43, in clause (a), after the words "Mega Power Project", the words "before the 19 th day of July, 2012" shall be inserted;

(iii) after List 9 and the entries relating thereto, the following Lists and entries shall be inserted, namely:

"List 10 (See S. No. 337 of the Table)

1.....

.....

7.

List 11 (See S. No. 338 of the Table)

1. Parbati-II, Himachal Pradesh - 4x200=800 MW (NHPC)

.....

.....

**100. SKS Power Generation (Chhattisgarh) Ltd. Binj Kote TPP Raigarh, Chhattisgarh- 4x300 MW.**

19. M/s. SKS Power Generation (Chhattisgarh) Limited had procured goods required for setting up of the Mega Power Project having capacity of 4x300 MW, without payment of excise duty on the basis of provisional Mega Power Project status, under bank guarantee as permitted by the notification no.12/2012-Central Excise, dated 17.03.2012, Sr.No.338 and condition no. 43 from the factory/unit of M/s. Pacific Pipe Systems Private Limited., (C.Ex. Registration No.AAEC6371QXM001) addressed at Plot No. 36P, 38, 39, 42P & 101P, Village: Naranpura, Chandrasan, Tal:Sanand, Dist:Ahmedabad and M/s Hitachi Hi-Rel Power Electronics Private Limited,(C.Ex. No.- AAACH3875MEM004) addressed at the Plot No.- SM 3&4, GIDC, Village- Bol,

'Sanad-382110, Ahmedabad. The relevant part of notification i.e., Sr.No.338 of Notification no.12/2012-Central Excise, dated 17.03.2012 which reads as under:-

Sr.No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
338	Any Chapter	<p>All items of machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipments, power cables used within the power generation plant, 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 aforesaid items and their components, supplied to mega power projects, specified in list 11 from which the supply of power has been tied up through tariff based competitive bidding or a mega power project awarded to a developer on the basis of such bidding.</p> <p><b>Explanation.-</b> For the removal of doubts, it is clarified that goods required for setting up of "mega power project" include the goods required for development of facilities such as ash disposal system including ash dyke, water intake including treatment and storage facilities and coal transportation facilities for such a project, notwithstanding the fact that such facilities are set up inside or outside the power plant's designated boundary.</p>	Nil	43

Further, Condition No.43 for the above is as under:-

If:-

- a) an officer not below the rank of Joint Secretary to the Government of India in the Ministry 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 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-**

**(iii) the said goods will be used only in the said project and not for any other use; and**

**(iv) in the event of non-compliance of sub-clause (1), the project developer will pay the duty which would have been leviable at the time of clearance of goods, but for this exemption.**

20. I find that in view of the Condition No. 43 of Notification No. 12/2012- Central Excise, dated 17.03.2012(as amended), M/s. SKS Power had procured goods required for Setting up of the Mega Power Project of Central Excise Duty amounting to Rs.1,80,00,000/-, from M/s. Pacific Pipe Systems Private Limited., (C.Ex. Registration No.AAEC6371QXM001) addressed at Plot No. 36P, 38,39,42P & 101P, Village: Naranpura, Chandrasan, Tal:Sanand, Dist:Ahmedabad and VFD Panels(3 units) of Central Excise Duty amounting to Rs. 1,83,750/- from M/s Hitachi Hi-Rel Power Electronics Private Limited,(C.Ex. No.- AAACH3875MEM004) addressed at the Plot No.- SM 3&4, GIDC, Village- Bol, Sanad-382110, Ahmedabad without payment of excise duty on the basis of provisional Mega Power Project status and submitted Bank Guarantees. Details of BGs are as under:-

Sl. No	BG No./ date of issue	Valid up to date	Claim period up to	Amount (Rs.)	Goods procured from
i	0853612BG0000245 /20.12.2012	16.05.22	16.05.23	60,00,000/-	Pacific Pipe Systems Private Limited
ii	0853612BG0000148 / 30.08.2012	28.05.22	28.05.23	60,00,000/-	Pacific Pipe Systems Private Limited
iii	0853212BG0000151 /06.09.2012	02.05.22	02.05.23	60,00,000/-	Pacific Pipe Systems Private Limited
iv	0853616BG0000399 /28.11.2016	21.05.22	21.05.22	1,83,750/-	M/s Hitachi Hi-Rel Power Electronics Private Limited

21. Further, I find that Notification No. 12/2012-Central Excise, dated 17.03.2012 was amended vide Notification No.04/2014-Central Excise dated 17.02.2014 which is read as under:-

*"In the ANNEXURE, in condition number 43, in the second column relating to Conditions, for the words "within a period of thirty six months", the words "within the period of sixty months" shall be substituted."*

The Notification No. 12/2012-Central Excise, dated 17.03.2012 was further amended vide the Notification No. 12/2015-C.E dated 01.03.2015 which read as under:-

*"in Condition No.43, in clause (b), for the words "a term of thirty six months or more", the words " a terms of sixty six months" shall be substituted;"*

The Condition No.43 of the Notification No. 12/2012-Central Excise, dated 17.03.2012 (as amended vide above mentioned Notifications) was further amended vide Notification No. 8/2017 -Central Excise, dated 16.05.2017, accordingly clause (b) to the condition no. 43 was amended to read as under:

*"In the said notification, in the ANNEXURE, in Condition No.43, under heading "Condition" in clause (b),*

*(i) for the words "a term of sixty six months", the words "a term of one hundred and twenty-six months" shall be substituted; and*

*(ii) for the words within a period of sixty months", the words "with in a period of one hundred and twenty months shall be substituted."*

22. Further, it is very settled position that the benefit of exemption notification is dependent upon satisfaction of certain conditions and the same cannot be granted unless such condition are complied with. In present case the exemption available under Notification No.12/2012-Central Excise, dated 17.03.2012 (as amended) is conditional and was subject to fulfilment of condition laid down under serial number 43 of Notification No. 12/2012-CE dated 17.03.2012. This exemption is subject to furnishing of a security in the form of a Fixed Deposit Receipt or Bank Guarantee from any scheduled bank for a term of 126 months for an amount equal to the central excise duty payable. Accordingly, M/s SKS Power has submitted 4 Bank Guarantees (details mentioned in above table). However, Jurisdictional Officer has noticed that M/s SKS Power has unable to submit renewal of the above Bank Guarantees in stipulated time. Therefore, Jurisdictional office has requested to said noticee to renew the said BGs vide various letters dated 20.05.2022, 14.06.2022, 12.07.2022, 03.08.2022, 13.01.2023 12.05.2023 and 19.05.2023. But, M/s SKS Power has neither submitted the final mega power status certificate nor has furnished the renewed bank guarantees.

23. On subject matter/issue, M/s SKS Power in his written submission has stated that they have received extension of Provisional Mega Power Status in the form of Office Memorandum from Government of India, Ministry of Power stating that the time period for furnishing final Mega Power certificate has been extended to 156 months instead of 120 months. They also produced Ministry of Power Office Memorandum dated 07.04.2022. Further, on issue of renewal of Bank Guarantee, they stated that they have requested to State Bank

of India to renew the multiple bank guarantees issued to Excise Authority, however, SBI has expressed its inability to grant the request to extend the BGs.

24. I have gone through contention of said noticee and find that Ministry of Power, Government of India vide Office Memorandum dated 07.04.2022 has extended date for furnishing the Final Mega certificates to the Tax authorities from 120 months to 156 months subject to condition of keeping FDR or Bank Guarantee alive. Relevant para of said memorandum is reproduced below for reference:-

***"I. The time period for ten(10) provisional Mega projects which are commissioned/partly commissioner( list of 10 projects at Annexure-II), for furnishing the final Mega certificate to the Tax authorities be extended to 156 months instead of 120 months from the date of import. Developer would be required to keep their Fixed Deposit Receipt(FDR) or Bank Guarantee (in lieu of the duty exemption claimed) alive.***

25. As per above Office Memorandum dated 07.04.2022, it is crystal clear that developer i.e. in present case M/s SKS Power is required to keep their Bank Guarantee alive till date of furnishing the final Mega certificate(within 156 months) to the department. Said condition is similar to the condition laid down under serial number 43 of Notification No. 12/2012-CE dated 17.03.2012 (as amended). However, I find that M/s SKS Power has failed to furnish the renewed bank guarantee till date. Department has also requested to renew the said BGs vide various letters dated 20.05.2022, 14.06.2022, 12.07.2022, 03.08.2022, 13.01.2023 12.05.2023 and 19.05.2023, however, said noticee failed to do so.

26. In view of the above, I find that M/s SKS Power has failed to comply with the conditions laid down in the Notification No. 12/2012-CE dated 17.03.2012(as amended) and condition given in Office Memorandum dated 07.04.2022 issued by Ministry of Power, Government of India and also they have not complied with the Central Excise Act, 1944 and accordingly Central Excise Duty exemption availed on procuring of goods is not available to them.

27. Further, I find that that the person who wishes to avail the benefit of notification issued under Section 5A of Central Excise Act, 1944 is required to comply the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 (the said Rules) for availing the benefit of notification no. 12/2012-CE dated 17.03.2012. Further, as per Rule 6 of the said Rules *"if goods are not used by the manufacturer for the intended purpose, the manufacturer shall be liable to pay the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory of the manufacturer of the subject goods, along with interest and the provisions of section 11A and section 11AB of the Central Excise Act, 1944 (1 of 1944) shall apply mutatis mutandis for effecting such recoveries"*. Thus, I find that if goods are not used for intended purpose by the manufacturer (recipient of goods without payment of central excise duty by the supplier under notification no. 12/2012-CE dated 17.03.2012), the manufacturer shall be liable to pay central excise duty foregone while receiving the said goods



**28.** In the backdrop of the above discussion, I find that M/s SKS Power has violated the Central Excise Act and rules framed there under as well as contravened the provision of Notification No. 12/2012- CE dated 17.03.2012(as amended) in as much as they have not fulfilled the condition no. 43 of the said Notification and accordingly M/s. SKS Power is liable to pay Central Excised duty of Rs. 1,80,00,000/- and Rs. 1,83,750/- not paid by the them by claiming exemption under Notification No. 12/2012-CE dated 17.03.2012 (as amended). The said amount of Central Excise Duty is required to be recovered from M/s. SKS Power under Section 11A(1) of Central Excise Act, 1944 alongwith interest under Section 11AA of Central Excise Act, 1944. Further, this act of said noticee rendered him liable for penalty under Section 11AC(1)(a) Central Excise Act, 1944.

**29.** Further, I find that department has encashed Bank Guarantees No. 0853612BG0000245/20.12.2012 & 0853612BG0000148/30.08.2012 of Rs. 60,00,000/- (Rupees Sixty Lakh) each aggregating to Rs. 1,20,00,000/- (Rupees One Crore and Twenty Lakh) against Central Excise duty demand of Rs. 1,80,00,000/-. Therefore, I find that said amount is needs to appropriate against demand as discussed above.

**30.** Further, I find that M/s. SKS Power in their defence reply has stated that on 29 April 2022, the Hon'ble National Company Law Tribunal, Mumbai ("NCLT") passed an order in CP (IB) No. 893/ MB /2021 ("Admission Order"), directing initiation of corporate insolvency resolution process ("CIRP") of SKS in accordance with Section 7 of the Insolvency & Bankruptcy Code, 2016 ("IBC") and NCLT imposed moratorium under Section 14 of the IBC thereby prohibiting institution and continuation of suits or proceedings including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority against SKS. Further, they stated that any claim of non payment of excise duty/interest is required to be submitted with Interim Resolution Professional within the stipulated time lines.

**31.** In this regard, I find that application for initiating Corporate Insolvency Resolution Process was admitted by National Company Law Tribunal (NCLT) under The Insolvency and Bankruptcy Code against the said noticee vide NCLT Order dated 29.04.2022. However, till date no resolution plan is passed by NCLT. Further contention of said noticee is that any claim of non payment of excise duty/interest etc. is required to be submitted with Interim Resolution Professional within the stipulated time lines which is 90 days as per Regulation 12(2) of the CIRP regulation. However, I find that in the recent orders/judgements, the Hon'ble Tribunals have condoned the delay even after the time period of elapse of ninety days, citing that the amended Regulation 12 (2) is directory. In the matter of *Twenty-First Century Wire Roads Ltd.*, an application was filed by one AMA Agencies Pvt. Ltd. before the Hon'ble Principal Bench of the NCLT, New Delhi for condonation of delay in filing their claim. When the application was being heard, the CoC was still in the process of considering the resolution plans submitted. Therefore, the Hon'ble NCLT was pleased to condone the delay and direct the RP to consider the claim. The Principal Bench of the NCLT, New Delhi in the matter of *Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Adel Landmarks Ltd.* and held "*the rejection of claim on the ground of delay is not sustainable because the provisions has been held to be directory....We wish to make it clear that all the Resolution Professionals shall make a*

*note of these repeated orders passed by NCLT clarifying that claim of an applicant, like the present one, could not be rejected on the ground of delay as the provision has been held to be directory." In State Bank of India v. ARGL Ltd. the Principal Bench of the Hon'ble NCLT, New Delhi, while considering an application of similar nature filed by Central Board of Goods and Service Tax Department indicated that it was irrelevant whether the claim is considered or not, since the government dues would always be reflected in the books of accounts of the corporate debtor and the RP/IRP would be required to take cognizance of the dues as per the books of accounts. Therefore, the application was allowed. Therefore, I find no merit in claim of said noticee that recovery of dues of department is not permissible as per provision of IBC.*

**32.** Further, I find that M/s. SKS Power in their defence reply has stated that RP has a duty to preserve and protect the assets of the Corporate Debtor, including the continued business operations of the Corporate Debtor and invocation of bank guarantees No. 0853612BG0000245/20.12.2012 & 0853612BG0000148/30.08.2012 of Rs. 60,00,000/- (Rupees Sixty Lakh) each aggregating to Rs. 1,20,00,000/- (Rupees One Crore and Twenty Lakh) is detrimental to the operations of the Corporate Debtor and should be returned immediately. In this regard, I do not find any merit in the contention of said noticee as it is very settled position that as per the amended provision under section 14 of the Insolvency and Bankruptcy Code (IBC), such a "Bank Guarantee can be invoked even during the moratorium period issued under section 14 of the IBC. In this regard, I relied upon the judgment of NCLT, Hyderabad Bench in case of M/s. Lanco Amarkantak Power Limited v/s The Principal Commissioner of Customs (I.A. No. 412 of 2023 in CP (IB) No.420/07/HDB/2018) wherein NCLT, Hyderabad Bench held that Bank Guarantee can be invoked even during moratorium period issued under Section 14 of IBC. Relevant portion of said order is reproduced below:-

*"18. We first address ourselves to the prayer for quashing/setting aside of the letters dated 09.02.2023 and 10.02.2023 issued by Respondent No.1. These letters sought to invoke the Bank Guarantees provided by the CD. These Bank Guarantees were furnished by the CD with the aim of claiming exemptions from customs duty for the imports made for their Power Plant, which held a 'Provisional Mega Power' (PMP) status. It was specified that these Bank Guarantees were to remain in force until the CD entered into a Power Purchase Agreement (PPA) within the stipulated time, upon the execution of which it would be certified as a 'Final Mega Power Project', which the CD as to attain by October 2021.*

*19. However, this could not be achieved due to stalling of the project by its Engineering, Procurement, and Construction (EPC) Contractor, who was admitted into Corporate Insolvency Resolution Process (CIRP) on 7th August 2017. Subsequently, on 5th September 2019, CIRP was initiated against the CD as well.*

*20. The period within which the CD was expected to achieve 'Final Mega Power Project' status lapsed during CIRP. The RP had formally requested the Ministry of Power to extend the deadline until 21 October 2024, considering the prevailing circumstances. However, no response has been received to date.*

21. The CD while availing of exemption from payment of customs duty on the import of goods for the erection of its power plants, had furnished these Bank Guarantees

*"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, as and when the goods arrive .... And if the importer fails to furnish the final Mega Power status within thirty six months<sup>11</sup> from the date of importation, the said security shall be appropriated towards duty of customs payable on such imports but for this exemption..."<sup>12</sup>*

22. Given the existing situation, where the CD was unable to reach the benchmark i.e. attaining the Final Mega Power Project status, set for obtaining exemption from custom duty, the decision of Respondent No.1 to invoke the aforementioned Bank Guarantees by withdrawing the exemption granted cannot be faulted. The argument that these Bank Guarantees cannot be invoked during CIRP is also flawed in view of Clause (b) of Section 14(3) of IBC which clearly exclude such Guarantees from the rigors of moratorium under that section 14(3) The provisions of subsection (1) shall not apply to - (a)... (b) a surety in a contract of guarantee to a corporate debtor

23. The Guarantees, although issued on behalf of the CD, were provided by the Banks to the Customs Department. These Bank Guarantees, given by the Banks on behalf of the CD, were irrevocable and unconditional, payable on demand without hesitation. The terms specified that the Bank would be "liable to pay the guaranteed amount or any part thereof" if the holder of the Bank Guarantee were to submit "a written claim or demand" before the expiry date of the Guarantee. As per the amended provision under section 14 (3)(b) of the Insolvency and Bankruptcy Code (IBC), such a "Bank Guarantee can be invoked even during the moratorium period issued under section 14 of the IBC," as decided by the Hon'ble NCLAT in the case of *Bharat Aluminium Co. Ltd. v. J.P. Engineers Pvt. Ltd.*

24. It is also useful to keep in view an earlier Judgment of the Hon'ble Supreme Court in the case of *U.P. Cooperative Federation Ltd. v. Singh Consultants and Engineers Pvt. Ltd.*<sup>14</sup> reported in [(1988) 1 SCC 174] in which it was held, that "When irrevocable and unconditional Bank Guarantee payable on demand without demur then, whenever such Bank Guarantee is sought to be encashed by the beneficiary, Bank is bound to honour the Bank Guarantee irrespective of any dispute raised by the customer (at whose instance the Guarantee was issued) against the beneficiary".

25. In this regard, we are also supported by an Order of this Bench in the case of *Vijay Kumar Garg (RP of Lanco Vidarbha Power Ltd vs Office Supt. Range-II, Customs Division-I, Nagpur)*<sup>15</sup>, where on the similar facts it was held that "Bank Guarantee can be invoked even during moratorium period issued under Section 14 of IBC". This decision of the Hyderabad Bench has been upheld by Hon'ble NCLAT."

33. In view of the above, I find that departmental has correctly encashed bank guarantees No. 0853612BG0000245 dated 20.12.2012 & 0853612BG0000148 dated 30.08.2012 of Rs. 60,00,000/- (Rupees Sixty

Lakh) each aggregating to Rs. 1,20,00,000/- (Rupees One Crore and Twenty Lakh).

34. Accordingly, I pass the following Orders:-

**ORDERS**

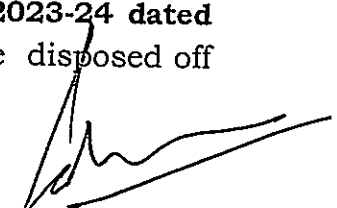
**(A) order of Show Cause Notice No.- CE/15-57/OA/2023-24 dated 24.11.2023.**

- I. I confirm Central Excise Duty of Rs. 1,80,00,000/- (Rupees One Crore Eighty Lakh only) and order to recover from M/s. SKS Power under Section 11A(1) of Central Excise Act, 1944 read with Notification NO. 12/2012-CE dated 17.03.2012 (Sr. No. 338 Condition No.43) and Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001.
- II. I order to appropriate Central Excise Duty of Rs. 1,20,00,000/- (Rupees One Crore Twenty Lakh recovered w.r.t B.G No. 0853612BG0000245/20.12.2012 & 0853612BG0000148/30.08.2012 against demand confirmed at Sr. No. (I) above.
- III. I confirm Interest at the prescribed rate on amount confirm at Sr. No. (I) above from M/s. SKS Power under Section 11 AA of Central Excise Act, 1944.
- IV. I impose Penalty of Rs. 18,00,000/- (Rupees Eighteen Lakh Only) under Section 11 AC(1)(a) of Central Excise Act, 1944 on M/s. SKS Power Generation (Chhattisgarh) Limited.

**(B) Order of Show Cause Notice No.- VIII/B.G/Misc/01/2017-18 dated 19.05.2023.**

- I. I confirm Central Excise Duty of Rs. 1,83,750/- (Rupees One Lakh Eighty Three Thousand Seven Hundred Fifty only) and order to recover from M/s. SKS Power under Section 11A(1) of Central Excise Act, 1944 read with Notification NO. 12/2012-CE dated 17.03.2012 (Sr. No. 338 Condition No.43) and Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001.
- II. I confirm Interest at the prescribed rate on amount confirm at Sr. No. (I) above from M/s. SKS Power under Section 11 AA of Central Excise Act, 1944.
- III. I impose Penalty of Rs. 18,375/- (Rupees Eighteen Thousand Three Hundred Seventy Five Only) under Section 11 AC(1)(a) of Central Excise Act, 1944 on M/s. SKS Power Generation (Chhattisgarh) Limited.

35. Accordingly, the Show Cause Notice No. **CE/15-57/OA/2023-24 dated 24.11.2023** and **VIII/B.G/Misc/01/2017-18 dated 19.05.2023** are disposed off in above terms.

  
(Lokesh Damor)

Additional Commissioner,  
Central GST & CE,  
Ahmedabad North

Date 25.01.2024

F.NO. CE/15-57/OA/2023-24

By RPAD/MAIL

M/s. SKS Power Generation (Chhattisgarh) Limited,  
501B, Elegant Business Park, Andheri Kurla Road,  
J.B. Nagar, Andheri (E), Mumbai-400 059.

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Div- III, Ahmedabad North.
3. The Superintendent, Range-V, Division-III, Central GST & Central Excise, Ahmedabad North with direction to file the claim with Resolution Professional(RP) in accordance with Regulation 7 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- ✓ 4. The Supdt.(System), CGST & C.E. Ahmedabad North for uploading the order on website.
5. Guard File.

