

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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टेलीफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

(DIN:-20210764SW0000770980)

क फाइल संख्या : File No : GAPPL/ADC/GSTP/826,822,824,825/2021/2350 TO 2355

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-013 TO016/21-22
दिनांक Date : 20-07-2021 जारी करने की तारीख Date of Issue 20-07-2021

श्री मोहित अग्रवाल, अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mohit Agrawal, Additioanl Commissioner (Appeals)

ग Arising out of Order-in-Original No. ZU2412200205902, ZU2412200205746, ZO2412200205957 & ZS2412200205879 दिनांक: 18.12.2020 issued by Assistant Commissioner, Central GST, Division-Gandhinagar, Gandhinagar

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s . Gujarat State Police Housing Corporation, B/h. Lokayukt Bhavan, CHH Raod, Sector10-B, Gandhinagar-382010.

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



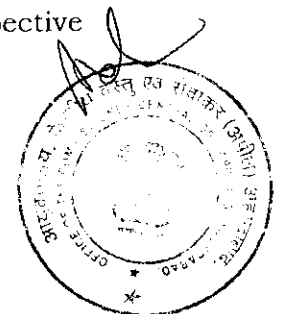
ORDER-IN-APPEAL

1. This order arises out of appeals (4 nos.), as mentioned in the table below filed by M/s. Gujarat State Police Housing Corporation, B/h. Lokayukt Bhavan, CHH Road, Sector-10B, Gandhinagar-382010 (herein referred to as the '*appellant*') against the Refund Sanction/Rejection Orders issued in the proforma "FORM-GST-RFD-06" shown against the respective Appeal in the table below (hereinafter referred to as "*impugned orders*"), passed by the Assistant Commissioner, Central GST, Division-Gandhinagar, Commissionerate-Gandhinagar (hereinafter referred to as '*the adjudicating authority*') rejecting the refund claims filed by the appellant. The refund claims were filed by the appellant on account of same issue for different periods and the adjudicating authority has rejected all the said refund claims vide the respective impugned orders on the same grounds. Accordingly, all the said appeals have been taken up for consideration under common appeal proceedings.

Sr. no.	Appeal No.	Filed against Order No. & Date	Period of Dispute	Central Tax (Rs.)	State Tax (Rs.)
1	2	3	4	5	6
1	GAPPL/ADC/GSTP /826/2021	ZU2412200205902 dated 18.12.2020	October-2018	18574655	18574655
2	GAPPL/ADC/GSTP /822/2021	ZU2412200205746 dated 18.12.2020	April-2019	16335843	16335843
3	GAPPL/ADC/GSTP /824/2021	ZO2412200205957 dated 18.12.2020	May-2019	5157236	5157236
4	GAPPL/ADC/GSTP /825/2021	ZS2412200205879 dated 18.12.2020	June-2019	29801055	29620441

2. Facts of the case, in brief are that the appellant is a 100% State Government Controlled Corporation having GSTIN-24AAACG5532C1Z7 and engaged in providing supply of works contract service to the Government of Gujarat. The said appellant had filed refund claims of the tax paid in cash (on account of tax paid under Mistake of Law) claiming the benefit of Notification No. 32/2017-Central Tax (Rate) dated 13.10.2017, for the period/month of October, 2018, April, 2019, May, 2019 and June, 2019.

2.1 The refund claims filed by the appellant for the period as mentioned in column-4 of the table under above para-1, have been rejected by the adjudicating authority vide the impugned orders issued in "FORM-GST-RFD-06" mentioned in column-3 of the said table, against the respective

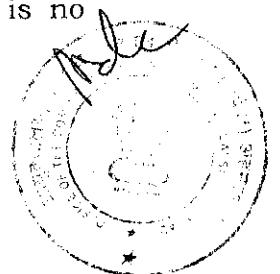


claim. While rejecting the refund claims, the adjudicating authority has noted his findings in the impugned orders, as briefly reproduced below:

- (1) *The claimant has conclusively established that they are a fully Gujarat State Government (100% owned) Company which is owned, controlled and managed by Government of Gujarat. As regards claiming benefit of Notification No. 32/2017-Central Tax (Rate) dated 13.10.2017, the appellant are fulfilling all the conditions of the said notification i.e. (i) being a government entity (ii) supplying service to State Government and (iii) consideration received by them from the State Government is in the form of grants and accordingly, they are eligible for the benefit of the said notification.*
- (2) *Before filing the refund claim, the appellant has credited the amount of GST [the amount of GST which was paid by them through cash ledger and for which the refund claim is filed] to Government of Gujarat A/c and an affidavit has also been filed by them declaring to reimburse the amount of such refund to the Government of Gujarat, as and when sanctioned & credited by the GST department.*
- (3) *The total tax for which they are claiming exemption under Notification No. 32/2017-Central Tax (Rate) dated 13.10.2017 was paid by the claimant through Cash Ledger as well as through ITC (Credit Ledger) and they have collected such tax paid in total, from the Government of Gujarat. The submission of the claimant is silent on the issue about the tax paid by them using the ITC and such amount collected by them from the Government of Gujarat. Since the claimant is entitled for exemption, they become ineligible for the ITC availed by them and the amount of GST paid by them utilising the ITC, attains the nature of short payment and the claimant becomes liable to deposit such amount alongwith interest, as they have collected the same from the Government of Gujarat. Thus, while claiming the benefit of exemption of the notification, the claimant has not fulfilled their entire tax liability as discussed above and accordingly, the refund claimed by the claimant is not eligible to them.*

3. Being aggrieved, the appellant has filed the present appeals on the grounds, as re-produced below:

- 3.1 The amount of grant received from Government of Gujarat is out of Annual Budgetary allocation of the Gujarat State and without specific bifurcation of GST and corresponding to this there is no



system of raising invoice on Govt. of Gujarat. The amount so received is for specific purpose of either construction of new civil structure for Gujarat Police or for repairs of the present civil structure. The appellant, Suo-Moto by reverse working account for GST liability in their books of account and discharges the same by either cash or through ITC, under "Mistake of Law" as the full liability accounted/discharged was actually not required to be raised in terms of the Notification No. 32/2017-Central Tax (Rate) dated 13.10.2017.

Similarly, the "works contract" allocated to various contractors through the process of tender and ITC was availed/utilized after fulfilling the conditions of Section 16 of CGST Act, 2017, under "Mistake of Law" as the same should not be availed as the output services to Govt. of Gujarat stands exempted in terms of the Notification No. 32/2017-Central Tax (Rate) dated 13.10.2017.

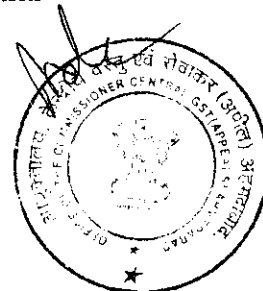
Therefore to rectify both the said errors, refund of GST paid "in cash only" is claimed. As the GST paid through the ITC availed/utilised is nothing but auto reversal of the same, which was availed under "Mistake of Law".

The appellant has given credit to the Govt. of Gujarat of the amount of the tax paid through Cash, hence the incidence of duty is now stands borne by the appellant and accordingly, claimed refund thereof.

The contractors were never exempted from levy of GST and accordingly, the appellant have paid GST to contractors in cash. The same could have been booked as expenses instead of ITC account, the same treatment was done on the closing balance of ITC. Whereas, for the amount of ITC availed/utilised during the relevant period against the GST liability (under "Mistake of Law") is nothing but auto reversal of the ITC (availed under "Mistake of Law").

3.2 The refund claim is restricted to the extent of GST paid by the appellant through Cash Mode only and they have also provided affidavit alongwith the refund claim for the amount of refund which is already credited to the account of Government of Gujarat.

The observation that entire tax amount is not paid is incorrect, as the utilisation of such ITC against output GST liability in the present case is nothing but the GST already discharged via payment by the appellant to contractors while making regular



payment to them for service provided and invoice raised from time to time.

As regards the ITC availed and utilised for payment of tax [under "Mistake of Law"], such utilisation is equivalent to auto reversal of such ITC. In respect of the balance of ITC in books of accounts as on date of filing of refund claim is fully and completely reversed, copy of which is already submitted to the adjudicating authority. The appellant also relied upon the following judgements, in support of their contention.

- (i) *Commissioner of Central Excise & Service Tax, Jammu & Kashmir Vs. Gravita Metals reported as [2020 (372) ELT 172 (Tri. Chan.)]*
- (ii) *Perfo Chem (I) Pvt. Ltd. Vs. Commissioner of Central Excise, Belapur reported as [2015 (315) ELT 237 (Tri. Mumbai)]*
- (iii) *Ajinkya Enterprises Vs. Commissioner of Central Excise, Pune-III reported as [2009 (243) ELT 566 (Tri. Mumbai)]*

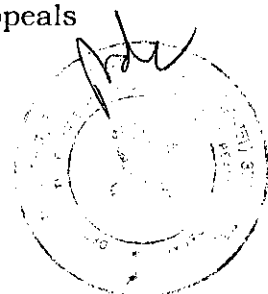
3.3 The appellant has also relied upon the judgment in case of Commissioner of Central Excise, Belapur Vs. PRP Wire Ropes as reported in 2017 (350) ELT 439 (Tri. Mumbai) wherein it is held that:

"Recovery of Government dues - Amount collected as Excise duty for non-excisable activity and deposited in Government account - HELD : Amount under Section 11D of Central Excise Act, 1944 to be recovered only in case where assessee collected any amount in excess of duty assessed or determined and paid on any excisable goods from buyer of such goods, in any manner, as regards duty of Excise - Section 11D inapplicable where any Excise duty collected from buyers paid to Government's account and no amount remained to be paid - Findings of impugned order, absolutely in accordance with Section 11D ibid - No substance in Revenue's appeal - Impugned order upheld - Section 11D of Central Excise Act, 1944. [paras 4, 4.1]

4.1 Learned Commissioner (Appeals) has given the detailed finding on the similar line, which is reproduced below:-

"Similarly it was not even alleged that, they collected a amount as 'duty' but not paid it to the exchequer. None of situation specified in Section 11D is applicable in the present case. In fact, in such a situation, there should not have any grievance to the parties since the appellants had paid the amount whatever they collected and paid it completely. The relevant show cause notice did not point out that any amount collected by the appellants as duty was not paid to the Government account."

4. Personal Hearing in the matter was granted to the appellant and held on 08.06.2021 through virtual mode. Shri Pravin Dhandharia, Chartered Accountant, appeared on behalf of the appellant (for total 09 nos. appeals



which also includes the 04 nos. of appeals, as mentioned in para-1 above) and re-iterated the written submissions made in the appeal memorandum of the said appeals. He further submitted as regards the issue of unjust enrichment that in one of their own case, the Commissioner (Appeals), Central Tax, Ahmedabad vide OIA No. AHM-EXCUS-003-APP-0176-17-18 dated 29.12.2017 considered the book entry to be valid to prove that burden of duty is borne by us.

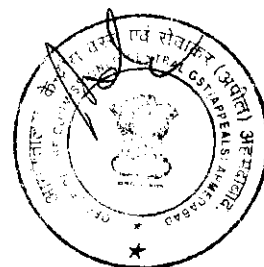
5. I have carefully gone through the facts of the case and submissions made by the appellant in the present appeals and oral submissions made at the time of Personal Hearing on 08.06.2021. After going through the facts of the case, it is seen that the issue raised in the appeal pertains to refund claim filed by the appellant in respect of the tax paid [under "Mistake of Law"] claiming the benefit of Notification No. 32/2017-Central Tax (Rate) dated 13.10.2017.

6. In the present cases, as regards the entitlement of exemption claimed by the appellant under Notification No. 32/2017-Central Tax (Rate) dated 13.10.2017, the adjudicating authority as per para-5 of the impugned order held that the appellant are fulfilling all the conditions of the said notification i.e. (i) being a government entity (ii) supplying service to State Government and (iii) consideration received by them from the State Government is in the form of grants and accordingly, they are eligible for the benefit of the said notification. Hence, the issue of entitlement of exemption under said notification by the appellant needs no further discussion or intervention during this appeal proceeding.

7. Further, in the present case, the adjudicating authority raised contention in para-6 of the impugned order that *"Since the claimant is entitled for exemption, they become ineligible for the ITC availed by them and the amount paid by them utilizing the ITC, attains the nature of short payment and the claimant becomes liable to deposit such amount alongwith interest."*

7.1 As regards the said contention of the adjudicating authority, I have gone through the judgments relied upon by the appellant and the decisions by the respective Hon'ble Tribunal are reproduced herebelow:

- (1) Commissioner of Central Excise & Service Tax, Jammu & Kashmir Vs. Gravita Metals reported as [2020 (372) ELT 172 (Tri. Chan.)]



"22.As regards the issue (d) whether the Ld. Adjudicating Authority is right to drop the demand on account of Cenvat credit utilised for payment of duty or not. We find that M/s. GM has utilised Cenvat credit of inputs for payment of duty on their final product. The case of the Revenue is that as the goods manufactured by M/s. GM are exempted from payment of duty therefore, they are not entitled for Cenvat credit. We find that a similar issue came up before the Hon'ble High Court of Bombay in the case of Ajinkya Enterprises (supra) wherein the Hon'ble High Court has held that in case of activity does not amount to manufacture, the payment of duty shall amount of reversal of Cenvat credit. Therefore, the Ld. Commissioner has rightly allowed the claim of Cenvat credit to M/s. GM. Accordingly, the appeal filed by the Revenue is dismissed."

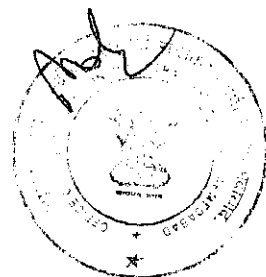
- (2) Perfo Chem (I) Pvt. Ltd. Vs. Commissioner of Central Excise, Belapur reported as [2015 (315) ELT 237 (Tri. Mumbai)]

"5. It is not in dispute that the appellant discharged duty liability on the activity undertaken by him by treating it as "manufacture" and the payment of duty so made was more than the amount of credit taken on the various inputs. In view of the undisputed facts mentioned above and in view of the decision of the Hon'ble Apex Court in the case of Narmada Chematur Pharmaceuticals Ltd. (cited supra) we hold that since the amount of duty paid is more than the credit taken, the same would tantamount to reversal of credit. Therefore, the appellant is not required to make any payments towards credit taken. Consequently, the impugned orders are not sustainable in law. Accordingly we set aside the same and allow the appeals."

- (3) Ajinkya Enterprises Vs. Commissioner of Central Excise, Pune-III reported as [2009 (243) ELT 566 (Tri. Mumbai)]

"7. As regards the second issue that if the pickling and oiling carried on HR Steel Sheets and Strips does not amount to manufacture as held by the lower authorities, whether the Cenvat credit availed by the applicants for payment of Excise duty is liable to be disallowed or not, we find that the legal position is that, if Excise Department has collected duty on the final products, it cannot say that the Cenvat credit is not available as the process does not amount to manufacture. If the Department accepts duty, though not payable, it cannot refuse the Cenvat credit on the inputs, since Department cannot approbate and reprobate. It is not disputed that the credit taken during the relevant period had been utilized for the payment of the duty only, wherever required. The applicants had not retained or misused any credit for their own benefit. The amount paid as duty was credited to the Govt. account and such payment of the duty amounted to the reversal of the credit."

7.2 In the present case, it is not disputed that the credit taken by the appellant during the relevant period had been utilised for the payment of duty only and the payment of duty so made was more than the amount of credit taken. Further, it is observed that this is not the case wherein the demand for ITC wrongly availed is raised and confirmed. Hence, in terms of the judicial pronouncements of the Hon'ble Tribunal in the similar cases as well as considering the facts of the present case, I find that the contention raised by the adjudicating authority as discussed above, for rejection of the refund claim is not sustainable in the eyes of law.

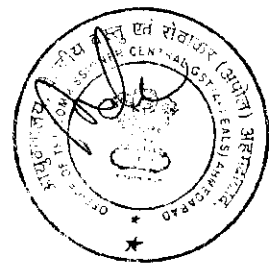


8. Further, in the present case, the adjudicating authority also raised contention in para-6 of the impugned order that *"While claiming the benefit of exemption of the notification, the claimant has not fulfilled their entire tax liability. Therefore I hold that the refund claimed by the claimant is not eligible to them."*

8.1 As regards the said contention of the adjudicating authority, it is observed that the appellant at the relevant time, has paid the leviable amount of Tax in full in term of the provisions of the CGST Act, 2017 and rules made thereunder, by mistake without availing the benefit of the Notification No. 32/2017-Central Tax (Rate) dated 13.10.2017. Further, I find that it is nowhere disputed by the adjudicating authority that any demand alleging such short payment of tax has been raised against the appellant. Accordingly, I do not find any merit in the said contention of the adjudicating authority and hence, the rejection of the refund claimed by the appellant on the basis of the said contention is neither justifiable nor legally correct.

9. Further, in the present case, the adjudicating authority also raised contention in para-6 of the impugned order that *"The submission of claimant is silent on the issue about the tax paid by them using the ITC and such amount collected by them from the Government of Gujarat."*

9.1 As regards the said contention of the adjudicating authority, it is observed that as per the contention of the appellant, the amount of grant received from the Government of Gujarat is out of Annual Budgetary allocation of the Gujarat State and without specific bifurcation of GST and corresponding to this there is no system or raising invoice on Govt. of Gujarat. Further, there is no dispute that the appellant at the relevant time, has paid the leviable amount of Tax in full (through Cash as well as through ITC) as per GST law, without availing (under "Mistake of Law") the benefit of the Notification No. 32/2017-Central Tax (Rate) dated 13.10.2017. Further, in respect of the balance of ITC in books of accounts as on date of filing of refund claim, the same is fully and completely reversed by the appellant as per the details submitted to the adjudicating authority. I also find that the adjudicating authority could not be able to produce any details that any amount collected by the appellants as duty was not paid to the Government account.



9.2 Further, in the present case, there is no dispute as regards the fact that the appellant has claimed refund only in respect of the amount of GST paid through Cash and while claiming refund, such amount of GST has already credited to the Govt. of Gujarat Account as per the book entry submitted to the adjudicating authority alongwith the refund claim. Accordingly, there is no dispute as regards the fact that the incidence of tax paid [for which refund has been filed subsequently] has been borne by the appellant and the adjudicating authority has also not raised any dispute thereon.

9.3 Further, I find that CBEC vide Circular No. 1063/2/2018-CX dated 16.02.2018 has also circulated the decision of Hon'ble High Court of Madras for issuing clarification on the aspect of unjust enrichment in case of State Government Undertaking. The relevant contents are re-produced below:-

"Field formations send SLP & CA proposals to the Board. Many of them after examination are not approved and such decisions of High Courts & Tribunals thus attain finality. It has been decided to disseminate such information to the field formations. Attention is invited to sixty three orders of different High Courts summarized in this Circular which have been accepted by the Department. In fourteen of these orders, Hon'ble High Courts have decided various questions of law. In the rest forty nine cases the Hon'ble High Courts have delivered judgments on the basis of some settled case law or have decided points of facts or have dismissed the appeal on monetary grounds. The said orders have been compiled in this Circular so that cases pending in the field can be expeditiously decided, if the questions of law or facts involved are identical.

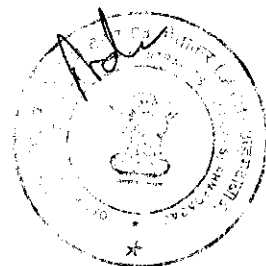
2. The Circular has two parts, namely Part I and Part II, where Part I comprises of the orders of various High Courts in which points of law have been decided and Part II comprises orders which have been decided on facts or have been dismissed on monetary limits. All the orders have been accepted by the Department and against them no SLP etc. has been preferred in the Hon'ble Supreme Court.

3. This exercise has been undertaken as an endeavour to reduce litigations so that cases on similar questions of law or identical case on facts pending in your jurisdictions can be decided.

PART I

9. Decision of the Hon'ble High Court of Madras dated 20-3-2015 in CMA 828 of 2008 in respect of M/s. SESCOT Sheet Metal Works Ltd. [2015 (321) E.L.T. 545 (Mad.)]

9.1 Department has accepted the aforementioned order of the Hon'ble High Court of Madras. The issue examined by the Hon'ble Court was whether **unjust-enrichment** would apply to State Government undertaking which applied for refund under Notification No. 111/88-C.E., dated 1-3-88. Hon'ble Supreme Court in Mafatlal Industries case referred as [2002-TIOL-54-SC-CX-CB] held that the doctrine of **unjust enrichment** will not apply to the State, as the State represents the people of the country. Relying on the same Hon'ble High Court observed that department itself accepted that party is a State funded, State controlled and State monitored organisation supplying goods to Civil Supplies Corporation, which is another organ of the State. Such goods are used in relation to Public Distribution System. Hon'ble High Court therefore allowed the party's appeal."



10. Accordingly, on careful consideration of facts of the case alongwith relevant legal provisions, judicial pronouncements and submission made by the appellant, I find that the impugned orders (total 04 nos. as shown in the table under Para-1 above) passed by the adjudicating authority rejecting the respective refund claims filed by the appellant, fail to survive on merits before law and hence deserve to be set aside.

11. Accordingly, I set aside the said impugned orders passed by the adjudicating authority rejecting the respective refund claims filed by the appellant and allow the appeals filed by the appellant with consequential relief.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed off in above terms.

(Mohit Agrawal)

Additional Commissioner (Appeals)

Date: .07.2021.

Attested

Sisodiya

(M.P Sisodiya)
Superintendent (Appeals)
CGST, Ahmedabad.



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M/s. Gujarat State Police Housing Corporation,
B/h. Lokayukt Bhavan,
CHH Road, Sector-10B,
Gandhinagar-382010

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2. The Principal Commissioner, CGST, Commissionerate-Gandhinagar.
3. The Commissioner, CGST Appeals, Ahmedabad.
4. The Dy./Asst. Commissioner, Central GST, Division-Gandhinagar, Commissionerate-Gandhinagar.
5. The Dy./Asstt. Commissioner, CGST, HQ (Systems), Commissionerate-Gandhinagar. (for uploading OIA)
- ✓ 6. Guard File.
7. P.A. File.