



सत्यमेव जयते

## 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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DIN- 20240364SW0000621927

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/993/2024 -APPEAL

(3109 - 56)

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC- 77 /2023-24

दिनांक Date :14.03.2024 जारी करने की तारीख Date of Issue : 15.03.2024

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

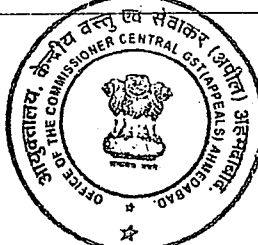
Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. PLN-SUPDT-GST-05/2023-24 dated 16.10.2023 issued by The Superintendent, CGST AR-I, Division-Palanpur, Gandhinagar Commissionerate

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

Appellant	Respondent
M/s Dilkishor Construction, Vardhaman Bungalows, Ahmedabad Highway, Palanpur, Banaskantha Gujarat-385 001	The Superintendent, CGST AR-I, Division-Palanpur, Gandhinagar Commissionerate

(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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



**ORDER-IN-APPEAL****BRIEF FACTS OF THE CASE:**

M/s. Dilkishor Construction, Vardhaman Bunglows, Ahmedabad Highway, Palanpur, Banaskantha, Gujarat-385001, (hereinafter referred to as the "appellant") has filed the appeal on 08.12.2023 against Order-in-Original No. PLN-Supdt-GST-05/2023-24, dated 16.10.2023 (date of communication of order is 01.11.2023) (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range-I, Division- Palanpur, Gandhinagar Commissionerate (hereinafter referred to as the "*adjudicating authority*") against demand for reversal of excess ITC availed under Section 74(1) of the CGST Act 2017, amounting to Rs. 6,70,938/- (CGST Rs. 3,35,469/- and SGST Rs. 3,35,469/-) in GSTR 3B but not reflected in GSTR 2A alongwith interest under Section 50 of the CGST Act 2017 and penalty under Section 74 of the CGST Act 2017.

**2(i).** Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AAHFD9139L2Z2, are engaged in the business of construction services in respect of commercial or industrial buildings and civil structure. The scrutiny of the returns of the appellant was conducted for the period from July 2017 to March 2018. During the course of verification of the GSTR 2A and GSTR 3B returns from July 2017 to March 2018 it was observed that the appellant had availed excess ITC amounting to Rs. 21,03,393/- (CGST Rs. 10,51,696/- and SGST Rs. 10,51,696/-) in their GSTR 3B return as compared to ITC auto populated in GSTR 2A return on the invoices issued by various suppliers which were not reflected in the GSTR 2A, of the appellant.

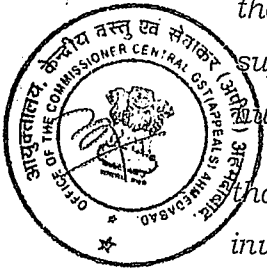
**2(ii).** In reply of ASTM-10 notice the appellant paid the amount of Rs. 4,24,124/- (CGST Rs. 2,12,062/- and SGST Rs. 2,12,062/-). Further the adjudicating authority after verification of the invoices, related ledger and other documentary evidence submitted by the appellant, drop the demand of Rs. 10,09,363/-. Further after the issue of Order in Original and against the demand of Rs. Rs. 6,70,938/- (CGST Rs. 3,35,469/- and SGST Rs. 3,35,469/-), the appellant has paid the tax amount of Rs. 21,578/- (CGST Rs. 10,789/- and SGST Rs. 10,789/-) vide DRC-03 dated 02.12.2023. Hence, the appellant is liable to pay the remaining tax amount of Rs. 6,49,356/- (CGST Rs. 3,24,678/- and SGST Rs. 3,24,678/-) against demand for reversal of excess ITC availed under Section 74(1) of the CGST Act 2017 alongwith interest of the tax amount of Rs. 6,70,398/- under Section 50 of the CGST Act 2017 and penalty of the tax amount of Rs. 6,70,398/- under Section 74 of the CGST Act 2017.

**2(iii).** The tax liability amounting to Rs. 6,49,356/- arises as one of the supplier having GSTIN 24APAPM2502G1ZJ (M/s. Mehul H. Mewada) had provided appellant, invoice number 09 dated 31.08.2023 and the same has not been

uploaded by the supplier in GSTR-1 of March 2018. The supplier has erroneously uploaded this invoice in GSTR-1 of the month of April 2018 as invoice number 09, dated 11.04.2018. After verified by the adjudicating authority it is observed that as per GSTR 2A for the month of April 2018 there is no such invoice having invoice number 09 dated 31.08.2023, reflected in the GSTR-2A, however it is found that there is an entry of invoice number 09, dated 11.04.2018.

3. The appellant was further issued Show Cause Notice No. CGST/AR-1/Scrutiny/2022-23/06 dated 04.10.2022. Further, the adjudicating authority passed the impugned order dated 16.10.2023 and confirmed the demand to recover the ITC of amounting to Rs. Rs. 6,70,938/- (CGST Rs. 3,35,469/- and SGST Rs. 3,35,469/-) alongwith interest under Section 50 of the CGST Act 2017 and penalty under Section 74 of the CGST Act 2017 on the following grounds:-

- that the appellant had wrongly taken/availed ITC for the period from July 2017 to March 2018;
- that the appellant had violated the provisions of Section 16, 37, 38(iv) and 155 of the CGST Act, 2017;
- that one of the supplier having GSTIN 24APAPM2502G1ZJ (M/s. Mehul H. Mewada) had provided appellant, invoice number 09 dated 31.08.2023. However, the same has not been uploaded by the supplier in GSTR-1 of March 2018. The supplier has uploaded this invoice in GSTR-1 of the month of April 2018 as invoice number 09, dated 11.04.2018;
- that as per GSTR 2A for the month of April 2018 there is no such invoice having invoice number 09 dated 31.08.2023, reflected in the GSTR 2A, however it is found that there is an entry of invoice number 09, dated 11.04.2018;
- that there is a case of suppression of facts with an intend to fraudulently avail ITC amounting to Rs. 6,70,938/- in excess in GSTR 3B to ITC available to them in GSTR-2A.



4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 08.12.2023 for the following reasons:

- The impugned order is not legal and bad in the eye of the law, therefore is required to be set aside;
- that the adjudicating authority has erred in denying input tax credit on the sole reason that the ITC of Rs.6,70,938/- is reflected in GSTR 2A in the month of April 2018 while the appellant has availed credit in March 2018. The adjudicating authority has erred in denying the input tax credit amounting to Rs.6,70,938/- on the ground that the appellant has wrongly availed in excess

to the available Input Tax Credit as per GSTR-2A in contravention to Section 16(2)(c) of the CGST Act, 2017;

- that the adjudicating authority has failed to appreciate that the provision for matching of ITC as per GSTR-2A and GSTR-3B or restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 only with effect from 9th October 2019. Before that, during the relevant time, a registered person was eligible for availing ITC subjected to fulfilment of provisions of Section 16 of the CGST Act, 2017;
- that the appellant has fulfilled all the above conditions as Section 16(2) as he is having possession of tax invoice, he has received the goods and the tax charged in respect of such supply of goods has been actual paid to the Government and has furnished return under Section 39. The appellant submits that neither in the show cause notice nor in the impugned order it has been alleged that the appellant is not in possession of tax invoice or he has not received the goods as per the invoice or he has not filed return under Section 39 or the tax has not been paid on the goods;
- The appellant submits that he has not received any invoice bearing No.9 dated 11.04.2018 from the supplier M/s Mehul H Mevada. The appellant reiterate here that he has received only invoice No.9 dated 31.03.2018 from the said supplier. On being inquired for the reason for variation in the date of invoice, the said supplier has informed that while filing GSTR-1, due to typographical error the date has changed to 11.04.2018 instead of 31.03.2018. The said supplier has also given an undertaking that he has not issued invoice No.9 dated 11.04.2018;
- Appellant submits that vide Circular No. 183/15/2022-GST dated 27.12 2022, CBIC has issued clarification to deal with the difference in Input Tax Credit (ITC) availed in FORM GSTR 3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19;
- that the adjudicating authority has decided the issue without considering the above clarification issued by the Board and hence the impugned order is bad in law and is required to be quashed and set aside;
- The adjudicating authority has conceded that the invoice No.9 is reflected in GSTR-2A in the month of April 2018. Thus, the eligibility of ITC is not disputed and the input tax credit availed by the appellant cannot be denied on this ground. The appellant, otherwise, is eligible for availing ITC in the month of April 2018. However, the appellant has not availed ITC in respect of tax paid under invoice No.09 dated 11.04.2018 in the month of April 2018 and hence there is no double benefit availed by the appellant It may also be verified from the GSTR-9 filed by the appellant for the year 2018-19 that the ITC reflected in



GSTR-2A is more than the ITC availed by the appellant as reflected in GSTR 3B during the year 2018-19. Therefore, Hon'ble appellant authority may kindly be appreciated that there is no excess availment of ITC on the part of appellant and, thus, the impugned order denying ITC, on the ground of excess availment because the invoice number is not reflected in GSTR-2A for the month of March 2018, is not sustainable;

- The appellant has already clarified the issue before the adjudicating authority who has reproduced the said submission at paragraph 10 of the impugned order. The appellant clarified that after considering the ITC of Rs.6,49,356/- in respect of invoice No.09 dated 31.03.2018, the actual difference is Rs.21,578/- which the appellant is ready to pay;
- That OIA No: - AHM-CGST-003-APP JC-36/2023-24 dated 09-10-2023 in the case of M/s. Hemeta Rolling Pvt. Ltd. wherein your honour has decided the identical issue and drop the proceedings. The ratio of said decision is also applicable being an identical case and OIO may be set aside.

Appellant requested to quash and set aside the impugned order and allow ITC credit to the appellant.

**Personal Hearing :**

5. Personal hearing in the appeal was held on 05.03.2024. Shri M.H.Raval, Consultant appeared in person on behalf of the appellant in the present appeal. During P.H. he submitted that the invoice is issued on 31.08.2018 but by mistake shown as 01.04.2018 in GSTR-2A. This mistake has been clarified by C.A. in appeal memorandum. Since amount was more than 05 lacks as per Circular No. 183/15/2022-GST dated 27/12/2022. Matching was not available before October 2019. Supplier certificate also produced. Identical case also decided in appeal in case of M/s. Hemeta Rolling Pvt. Ltd, O-I-A No. AHM-CGST-003 APP-JC-36/2023-24 dated 09.10.2023. Also given additional submission during personal hearing. In view of above requested to allow appeal.

**DISCUSSION AND FINDINGS:**

6. I have gone through the facts of the case, written submission and additional submission made by the 'appellant'. The adjudicating authority passed the impugned order and confirm the demand to recover the ITC amounting to Rs. 6,70,938/- (CGST Rs. 3,35,469/- and SGST Rs. 3,35,469/-) under Section 74(1) of the CGST Act 2017 as reflected in GSTR 3B but not reflected in GSTR 2A, alongwith interest under Section 50 of the CGST Act 2017 and penalty under Section 74 of the CGST Act 2017. Further after the issue of Order in Original and against the demand of Rs. Rs. 6,70,938/- (CGST Rs. 3,35,469/- and SGST Rs. 3,35,469/-), the appellant has paid the tax amount of Rs. 21,578/- (CGST Rs.

10,789/- and SGST Rs. 10,789/-) vide DRC-03 dated 02.12.2023. So the main issue to be decided in the instant case whether the appellant had wrongly availed Input Tax Credit in comparison to GSTR-3B with GSTR- 2A, amounting to Rs. 6,49,356/- and are liable to recovered the same alongwith interest of the tax amount of Rs. 6,70,398/- under Section 50 of the CGST Act 2017 and penalty amounting to Rs. 6,70,398/- under Section 74 of the CGST Act 2017.

7. In the instant case adjudicating authority is contending that the appellant has contravened the provisions of Section 16 and Section 38 of CGST Act 2017. In this regard, I hereby refer the relevant provisions as under:

**Section 16. Eligibility and conditions for taking input tax credit.-**

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

1[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

2[Explanation.- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

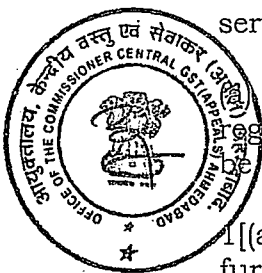
(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

3[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of 4[section 41 5[\*\*\*]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:



**Section 38. Communication of details of inward supplies and input tax credit.\***

(1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of—

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—

(i) by any registered person within such period of taking registration as may be prescribed; or

(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or

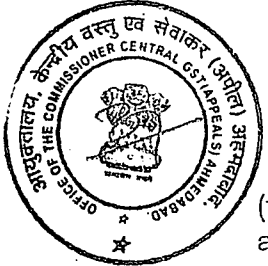
(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or

(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or

(vi) by such other class of persons as may be prescribed.]

**8(i).** In the instant case it is observed that the adjudicating authority in the impugned order has mentioned that that one of the supplier having GSTIN 24APAPM2502G1ZJ (M/s. Mehul H. Mewada) had provided appellant, invoice number 09 dated 31.08.2023. However, the same has not been uploaded by the supplier in GSTR-1 of March 2018. The supplier has uploaded this invoice in GSTR-1 of the month of April 2018 as invoice number 09, dated 11.04.2018. Further adjudicating authority in the impugned order has mentioned that as per GSTR 2A for the month of April 2018 there is no such invoice having invoice number 09 dated 31.08.2023, reflected in the GSTR-2A, however it is found that there is an entry of invoice number 09, dated 11.04.2018.

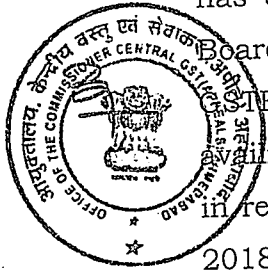


**8(ii).** The appellant in their reply has submitted that they have fulfilled all the above conditions as Section 16 of the CGST Act 2017 as he is having possession of tax invoice, he has received the goods and the tax charged in respect of such supply of goods has been actual paid to the Government and has furnished return under Section 39. The appellant submits that neither in the show cause notice nor in the impugned order it has been alleged that the appellant is not in possession of tax invoice or he has not received the goods as per the invoice or he has not filed return under Section 39 or the tax has not been paid on the goods.

**8(iii).** The appellant further submitted that he has not received any invoice bearing No.09 dated 11.04.2018 from the supplier M/s Mehul H Mevada. The appellant reiterate that he has received only invoice No.9 dated 31.03.2018 from the said supplier. On being inquired for the reason for variation in the date of invoice, the said supplier has informed that while filing GSTR-1, due to typographical error the date has changed to 11.04.2018 instead of 31.03.2018. The said supplier has also given an undertaking that he has not issued invoice No.9 dated 11.04.2018.

**9.** The appellant further submitted that vide Circular No. 183/15/2022-GST dated 27.12 2022, CBIC has issued clarification to deal with the difference in Input Tax Credit (ITC) availed in FORM GSTR 3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19, however the adjudicating authority has decided the issue without considering the above clarification issued by the Board. The adjudicating authority has conceded that the invoice No.9 is reflected in GSTR-2A in the month of April 2018. The appellant, otherwise, is eligible for availing ITC in the month of April 2018. However, the appellant has not availed ITC in respect of tax paid under invoice No.09 dated 11.04.2018 in the month of April 2018 and hence there is no double benefit availed by the appellant. Further the appellant clarified that after considering the ITC of Rs.6,49,356/- in respect of invoice No.9 dated 31.03.2018, the actual difference is Rs.21,578/- which the appellant had paid vide DRC-03 dated 02.12.2023.

**10.** In view of the above, it is observed that difference of ITC of Rs.6,49,356/- accrued due to their supplier (M/s Mehul H Mevada), had inadvertently, committed mistake in filing their GSTR-1. The supplier has duly discharged GST and the only inadvertent omission on his part was that he had uploaded this invoice in GSTR-1 of the month of April 2018 as invoice number 09, dated 11.04.2018 in place of invoice number 09, dated 31.08.2023. Further it is observed that the supplier has informed the appellant that while filing GSTR-1, due to typographical error the date has changed to 11.04.2018 instead of 31.03.2018. The said supplier has also given an undertaking that he has not issued invoice No.09 dated 11.04.2018. As the appellant has submitted all the documentary evidence to support that the invoice is not reflected in GSTR 2A owing to an inadvertent error of the supplier, the benefit of ITC cannot be denied to the



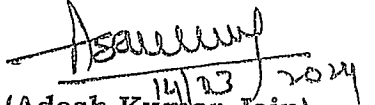


appellant on account of such a mistake on the part of the supplier. Further, the appellant submitted that as regard excess availment of ITC they have complied with all the conditions prescribed by the law for availment of ITC and have submitted all the documents before the adjudicating authority.

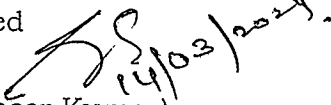
11. Further the appellant while filing APL-01 and during the course of personal hearing, requested the benefit of Circular No. 183/15/2022-GST issued on 27/12/2022 by The Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India which deals with matter of difference of input tax credit availed in form GSTR-3B as compared to that detailed in Form GSTR-2A for financial year 2017-18 and 2018-19. In the instant case, a Chartered Accountant also certified that appellant have received invoice No.9 dated 31.03.2018 and the same has been accounted for in their books of account in the month of March 2018 and availed ITC in the month of March 2018. They further certified that the appellant had not received invoice no. 09 dated 11.04.2018 from their supplier (M/s. Mehul H Mevada) and they have not availed any ITC in respect of invoice no. 09 dated 11.04.2018.

12. In view of above discussions, I allow the appeal of the "Appellant" and set aside impugned order passed by the adjudicating authority to the above extent.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed of in above terms.

  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)  
Date: 14.03.2024

Attested

  
(Sandheer Kumar)  
Superintendent (Appeals)

By R.P.A.D.

To  
M/s. Dilkishor Construction,  
Vardhaman Bungalows,  
Ahmedabad Highway, Palanpur,  
Banaskantha, Gujarat-385001.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Commissioner, Central GST & C.Ex, Gandhinagar Commissionerate.
4. The Dy. / Assistant Commissioner (RRA), CGST & C.Ex, Gandhinagar Commissionerate
5. The Dy. / Assistant Commissioner, CGST & C.Ex, Division- Palanpur, Gandhinagar Commissionerate.
6. The Superintendent, CGST & C.Ex, Range-I, Division- Palanpur, Gandhinagar Commissionerate.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad.
8. Guard File/P.A. File.



