



सत्यमेव जयते

## आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

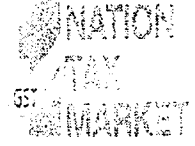
Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20240464SW0000555C57

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1176/2024 -APPEAL /1159 - 66

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC- 03 /2024-25

दिनांक Date : 15.04.2024 जारी करने की तारीख Date of Issue : 16.04.2024

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. 03/RMT/SUPDT/CGST/2023-24 dated 06.09.2023 issued by The Superintendent, CGST AR-V, Division- Kalol, Gandhinagar Commissionerate.

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

Appellant	Respondent
M/s Sagardeep Alloys Limited, Plot No 2070, Rajnagar Patiya, Santej Khatraj Road, Santej, Gandhinagar, Gujarat 382721	The Superintendent, CGST AR-V, Division- Kalol, 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) Full amount of Tax, Interest, Fine, Fee and Penalty 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> .

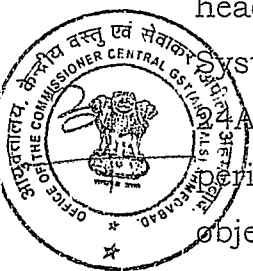


ORDER-IN-APPEALBRIEF FACTS OF THE CASE:

M/s Sagardeep Alloys Limited, Plot No. 2070, Rajnagar Patiya, Santej Khatraj Road, Santej, Gandhinagar, Gujarat-382721 (hereinafter referred to as the "appellant") has filed the appeal on 02.01.2024 against Order-in-Original No. 03/RMT/Supdt./CGST/2023-24 dated 06.09.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range-V, Division- Kalol, Gandhinagar Commissionerate (hereinafter referred to as the "adjudicating authority") for (i) Non-payment of interest on non-reversal of input tax credit in the case of late-payment of dues to supplier after 180 days amounting to Rs. 10,73,502/- and (ii) Non-reversal of input tax credit in the case of non-payment of consideration: in case of non-payment of consideration of inward supply of goods / services within 180 days amounting to Rs. 3,82,344/-.

2. Brief facts of the case in the present appeal is that the appellant are engaged in manufacturing COPPER PLATES, SHEETS AND STRIP, OF A THICKNESS EXCEEDING 0.15 MM - OF REFINED COPPER OTHER, COPPER TUBES AND PIPES - OF REFINED COPPER, COPPER BARS, RODS AND PROFILES - OF REFINED COPPER: OTHER COPPER RODS classifiable under Chapter sub-heading 74091900, 74111000, 74031300, 72042190 & 74071020 of Harmonized System of Nomenclature. The appellant is registered under GST regime with GSTIN-AAKCS6034M1Z1. During the audit of records of the appellant conducted for the period from July 2017 to March 2019 the audit party raised the following objections:

- (i) Interest on non-reversal of input tax credit in the case of non-payment of consideration: in case of late payment of consideration of inward supply of goods / services within 180 days amounting to Rs. 10,73,502/- [(Rs. 7,07,552/- Integrated Tax ("IGST"), Rs 1,82,975/- (CGST) and Rs 1,82,975/- (SGST)], under the provisions of Sections 50(1) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017.
- (ii) Non-reversal of input tax credit in the case of non-payment of consideration: in case of non-payment of consideration of inward supply of goods / services within 180 days amounting to Rs. 3,82,344/- (Rs 1,91,172/- (CGST) + Rs 1,91,172/- under the provisions of Sections 74(1) of the Act. Alongwith interest on the delayed reversal of ITC, under the provisions of Sections 50(1) of the Act and penalty under the provisions of Sections 74(1) of the Act read with the provisions of Sections 122(2)(b) of the Act.



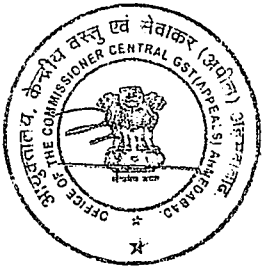
3. The appellant stated that they were not agreed with the above observations. The appellant was further issued show Cause Notice on 01.03.2022. Further, the adjudicating authority passed the impugned order on 06.09.2023 and order for recovery of Interest on non-reversal of input tax credit in the case of non-payment of consideration: in case of late payment of consideration of inward supply of goods /services within 180 days amounting to Rs. 10,73,502/- [(Rs. 7,07,552/- Integrated Tax ('IGST'), Rs 1,82,975/- (CGST) and Rs 1,82,975/- (SGST)], under the provisions of Sections 50(1) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 and recovery of Non-reversal of input tax credit in the case of non-payment of consideration: in case of non-payment of consideration of inward supply of goods / services within 180 days amounting to Rs. 3,82,344/- (Rs 1,91,172/- (CGST) + Rs 1,91,172/- under the provisions of Sections 74(1) of the Act. Alongwith interest on the delayed reversal of ITC, under the provisions of Sections 50(1) of the Act and penalty under the provisions of Sections 74(1) of the Act for the following reasons:

(i) **Interest on non-reversal of input tax credit in the case of non-payment of consideration: in case of late payment of consideration of inward supply of goods / services within 180 days:**

- that the tax payer has violated the conditions as stipulated in 2nd proviso to Section 16(2) and Rule 37 of the CGST Rules, 2017 and Gujarat SGST Rules, 2017 of the CGST Act, 2017;
- that from the above provisions of the law, it is ample clear that any registered person who has availed the ITC credit and has not paid the value of supply along with tax payable thereon to the supplier within the prescribed time limit of 180 days, is required to furnish details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in the prescribed return for the month immediately following the period of 180 days from the date of invoice. He is also required to add the amount of such input tax credit to the output tax liability for the month in which the details are furnished, and has to pay interest under Section 50(1) of the Act, from the date of availing credit on such supplies till the date when the amount added to the output tax liability;
- The payments have been made beyond 180 days time frame prescribed in the law and therefore, they come within the ambit of the 2nd proviso to Section 16(2) of the CGST Act;
- that interest under Section 50(1) has rightly been invoked and thus the tax payer's contention that as they were having sufficient balance in their credit ledger from the date of availment of ITC to till the date of reversal and interest under Section 50(3), is out of place.

**(ii) Non-reversal of input tax credit in the case of non-payment of consideration: in case of non-payment of consideration of inward supply of goods / services within 180 days:**

- that in the SCN issued, it is already mentioned that the tax payer have not provided the copies of the commercial credit note to the Audit Team and these are not available in the concerned ledger too. The tax payer has also failed to produce the copy of commercial credit note in respect of M/s. Vivek Steelco Pvt. Ltd. for verification even during the adjudication process. Further, ledgers provided by the taxpayer at the time of audit also do not mention the commercial credit note in respect of M/s. Vivek Steelco Pvt. Ltd. Further, the taxpayer in his defence reply has also contended that the ITC reversal pertaining to M/s. Sun Infra, M/s. Devanshi Power Ltd. and M/s. Mercure Metals and Alloys Pvt. Ltd. is related to kasar vataw and the same is accepted by them and copy of DRC03 for payment of CGST of Rs.10,385/- and SGST of Rs.10,385/- have been attached. However, I find no such DRC-03 has been furnished by the taxpayer;
- The Tax payer has not made any amounts towards the supplies made by the above suppliers, within the prescribed 180 days and thus the tax payer is liable to pay an amount equal to the ITC availed by them amounting to Rs. 3,82,344/- (CGST-Rs.1,91,172/-and SGST-Rs.1,91,172/-) alongwith interest and penalty;
- That they were also required to add the amount of such input tax credit to the output tax liability for the month in which the details are furnished, and has to pay interest from the date of availing credit on such supplies till the date when the amount added to the output tax liability and thus as the amount of such input tax credit has to be added to the output tax liability;
- that interest under sub section V) of section 50 of the Act has rightly been invoked and thus the tax payer's contention that as they were having sufficient balance in their credit ledger from the date of availment of ITC to till the date of reversal and interest under Section 50(3) has to be invoked is out of place;
- the tax payer was aware of this fact and thus this is a case of suppression of facts with intent to wrongly avail ITC and thus they are liable for penalty action under the provisions of Section 74(1) of the CGST Act, 2017 read with relevant Section of Gujarat GST Act, 2017. Thus, as I have already held that the taxpayer is liable for penalty under Section 74(1) of CGST Act.

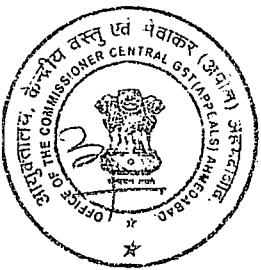


4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 06.09.2023 for the following reasons:

- that in para 15 of the SCN issued, department is referring to the Rule 37 of CGST Rules, 2017 wherein it was prescribed to add the value of ITC in output liability through Form GSTR-2 however it is very well known that that mechanism could not work or could not be implemented by the Government hence demanding interest u/s 50(1) of CGST Act, 2017 solely on this ground is unjustifiable. In Rule 37(3), earlier Government specifically mentioned to pay interest u/s 50(1) of CGST Act, 2017 however said Rule has been amended by Government vide Notification No.19/2022-CT dated 28.09.2022;
- that as per the amended Rule, the Government prescribed that amount equals to the ITC availed on such transactions can be paid or reversed and interest shall be paid as per Section 50 of CGST Act, 2017. Hence, now w.e.f. 01.10.2022, neither such ITC is compulsorily required to be added in output tax liability nor interest to be paid u/s 50(1) considering it as output tax liability. The Government prescribed that interest be paid u/s 50 of CGST Act, 2017 hence while referring to said Section, it can be seen that for ITC, specific sub-section is prescribed in case of ITC wrongly claimed and utilized w.e.f. 01.07.2017 vide Notification No. 9/2022-C.T, dated 05-07-2022. Relevant extract of said sub-section is reproduced as under: "(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four percent;
- that Section 50(3) of CGST Act, 2017 was made effective w.e.f. 01.07.2017 demanding interest on ITC which is wrongly availed and utilized hence if ITC is wrongly availed and not utilized then interest is not required to be paid. Appellant would like to submit that demand made based on Section 50(1) is unacceptable and for the instant case Section 50(3) applies. Hence, ITC which is wrongly claimed and utilized if any then interest can be demanded by department;
- that the ITC reversal pertaining to Sun Infra, Devanshi power ltd & Mercure Metals & Alloys Pvt ltd is related to Kasar Vataw hence same is accepted by Appellant and payment of the same is made by the Appellant via DRC 03. In case of M/s Vivek Steelco Pvt. Ltd, commercial credit note was received by appellant from supplier;
- The appellant would like to refer to "Tamilnadu Appellate Authority for Advance Ruling (AAAR) in case of MRF limited" ruling stated that considering the facts and circumstances of the appeal, the appellant M/s



- MRF Ltd can avail the Input Tax Credit of the full GST charged on the undiscounted supply invoice of goods/ services by their suppliers;*
- *the advance ruling advanced by the Hon'ble Authority of Advance Ruling, Karnataka in the case of NHs Kwality Mobikers Pvt Ltd [No. KAR ADRG 76/2018 dated 24.09.2019 that: The volume discount received on purchase in the form of credit note without any adjustment of GST is not liable for GST;*
  - *Furthermore, Authority for Advance Ruling, Madhya Pradesh on the application filed by Rajesh Kumar Gupta proprietor of M/s Mahaveer Prasad Mohanlal, Gandhi Ganj, Jabalpur (M.P.) [Case No. 07/2021 order dated 06.01 .2022] has held that: The applicant can avail the Input Tax Credit of the full GST charged on the invoice of the supply and no proportionate reversal of ITC is required in respect of commercial credit note issued by the supplier for cash discount for early payment of supply invoice (bills) and Incentive/scheme provided without adjustment of GST, if the said discount is not covered under Section 15(3)(b) of CGST Act, 2017 and the said discount is not in terms of prior agreement;*



In the view of foregoing, the appellant prayed to set aside the 'order' appealed against for demand of input tax credit along with interest and penalty total amounting to Rs. 18,38,190 /- and allow the appeal in full.

#### **Virtual Hearing :**

5. Virtual hearing in the present appeal was fixed/held on 07.03.2024, 21.03.2024 and 09.04.2024. Mr. Viral Rajesh Kumar Sanghvi, C.A., Authorized Representative appeared in person on behalf of the appellant in the present appeal. During Virtual hearing he has submitted that sufficient balance is available in ITC ledger and the ITC availed on delayed payment beyond 180 days has not been utilized, therefore no interest is payable under Section 50(3). Since the availer has not reduced his liability and the credit note is only commercial credit note therefore no GST is payable. He further reiterated the written submissions and requested to allow appeal.

#### **DISCUSSION AND FINDINGS:**

6. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issues to be decided in the instant case are whether the appellant is liable to pay interest on ITC availed in case of late payment of consideration made to suppliers within 180 days and whether the appellant is liable for reversal of ITC in the case of non-payment of consideration of inward supply of goods within 180 days from the date of invoice alongwith interest and penalty.

7(i). In the instant case, as regard the first issue, it is observed that during the audit of records of the appellant conducted for the period from July 2017 to March 2019 the audit party raised objection that the appellant has not paid interest on non-reversal of input tax credit in the case of late-payment of dues to supplier after 180 days amounting to Rs. 10,73,502/- [(Rs. 7,07,552/- Integrated Tax ('IGST'), Rs 1,82,975/- (CGST) and Rs 1,82,975/- (SGST)], under the provisions of Sections 50(1) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017.

7(ii). In the said issue, appellant has availed input tax credit on inward supply of goods and services or both, but fails to pay to the supplier thereof, the value of such supply with the tax payable thereon within 180 days from the date of invoice. Accordingly, demand for recovery of interest of Rs. 10,73,502/- [(Rs. 7,07,552/- Integrated Tax ('IGST'), Rs 1,82,975/- (CGST) and Rs 1,82,975/- (SGST)], has been raised. In this regard, I hereby refer the relevant provisions as under:

**2nd proviso to Section 16 (2) of the CGST Act, 2017:**

The eligibility and condition for availment of input tax credit is governed by the provisions of Section 16 of the Act. Second proviso to sub section 2 of Section 16 of the Act provides that "where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed"

The corresponding provisions of Rule 37 of the CGST Rules, 2017 and Gujarat SGST Rules, 2017 stood at the relevant time stipulates as under:

**Rule 37. Reversal of input tax credit in the case of non-payment of consideration.-**

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under sub section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

7(iii). From the above provisions of law, it is observed that the appellant has availed the input tax credit ITC credit and has not paid the value of supply along with tax payable thereon to the supplier within the prescribed time limit of 180

days, is required to furnish details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in the prescribed return for the month immediately following the period of 180 days from the date of invoice. The appellant is also required to add the amount of such input tax credit to the output tax liability for the month in which the details are furnished, and has to pay interest from the date of availing credit on such supplies till the date when the amount added to the output tax liability. However, in the instant case the appellant had not made the payment to their suppliers within 180 days from the date of issue of invoice and also not furnished the details of supplies in their returns, as envisaged under the provisions of Rule 37(1) of the CGST Rules, 2017. Hence, appellant has violated the 2nd proviso to Section 16 (2) of the CGST Act, 2017 and Rule 37(1) of CGST Rules, 2017. Therefore the appellant is liable for interest under sub rule (3) of Rule 37 at the rate specified under section 50(1) of the CGST Act, 2017.

**8(i).** In the case of second issue regarding non-reversal of ITC by the appellant in the case of non-payment of consideration of inward supply of goods within 180 days. In the instant case, it is observed that the appellant has received supplies from their supplier i.e. M/s. Vivek Steelco P.Ltd, M/s. Sun Infra, M/s. Devanshi Power Ltd and M/s. Mercure Metals and Alloys Pvt. Ltd., however the appellant has not paid consideration to the supplier within 180 days. In the Show Cause Notice also it is mentioned that the appellant have not provided the copies of the commercial credit note to the Audit Team and these are not available in the concerned ledger too. The appellant has also failed to produce the copy of commercial credit note in respect of M/s. Vivek Steelco Pvt. Ltd. for verification even during the adjudication process. Further, ledgers provided by the appellant at the time of audit also do not mention the commercial credit note in respect of M/s. Vivek Steelco Pvt. Ltd. Further, the appellant contended that the ITC reversal pertaining to M/s. Sun Infra, M/s. Devanshi Power Ltd. and M/s. Mercure Metals and Alloys Pvt. Ltd. is related to kasar vatav and the same is accepted by them and copy of DRC-03 for payment of CGST of Rs.10,385/- and SGST of Rs.10,385/- have been attached. However, it is observed that no such DRC-03 has been furnished by the appellant.

**8(ii).** In the instant case, the appellant has availed the ITC credit and has not paid the value of supply along with tax payable thereon to the supplier. As they failed to paid consideration to their supplier within 180days, they were also required to add the amount of such input tax credit to the output tax liability for the month in which the details are furnished, and has to pay interest from the date of availing credit on such supplies till the date when the amount added to the output tax liability and thus as the amount of such input tax credit has to be added to the output tax liability. Further find that in terms of sub rule (3) of Rule 37 of the

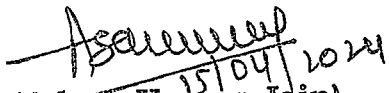


CGST Rules, 2017, the registered person shall be liable to pay interest at the rate notified under subsection (1) of section 50 of the Act. I therefore, find that interest under sub section (1) of section 50 of the Act has rightly been invoked and thus the tax payer's contention that as they were having sufficient balance in their credit ledger from the date of availment of ITC to till the date of reversal and interest under Section 50(3) has to be invoked is out of place. Further they are also liable to pay penalty under the provisions of Section 74(1) of the CGST Act, 2017, as this issues would have gone unnoticed had the audit of the appellant has not been conducted.

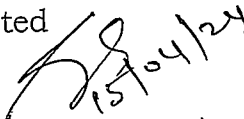
9. In the instant case the appellant stated that they have received commercial credit note from their supplier (M/s. Vivek Steelco Pvt Ltd). However the appellant failed to produce the said commercial credit note for verification during the adjudication process and even during filing appeal in this office, hence the appellant has failed to satisfy all the mandatory conditions to make him eligible for ITC on the said supply of goods.

10. In view of the above discussions, I do not find any merit in the contention of the appellant so as to intervene in the impugned order passed by the adjudicating authority. Accordingly, I uphold the impugned order passed by the adjudicating authority being legal and proper and reject the present appeal filed by the appellant.

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: 15.04.2024

Attested

  
(Sandheer Kumar)  
Superintendent (Appeals)

By R.P.A.D.

To

M/s Sagardeep Alloys Limited,  
Plot No. 2070, Rajnagar Patiya,  
Santej Khatraj Road, Santej,  
Gandhinagar, Gujarat-382721.

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./Asstt. Commissioner(RRA), CGST & C.Ex, Gandhinagar.

5. The Dy./Asstt. Commissioner, CGST & C.Ex, Division-Kalol, Gandhinagar

6. The Superintendent, CGST & C.Ex, Range-V, Division- Kalol, Gandhinagar Commissionerate.

7. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.

8. Guard File/ P.A. File.



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