

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील-1) का कार्यालय केन्द्रीय उत्पाद शुल्क :  
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,  
आंबावाडी, अहमदाबाद- 380015.

क फाइल संख्या : File No : V2(RIP)11/STC-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-132-16-17

दिनांक Date 21.10.2016 जारी करने की तारीख Date of Issue

श्री उमाशंकर, आयुक्त (अपील-1) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित

Passed by Shri Uma Shankar Commissioner (Appeals-I) Central Excise  
Ahmedabad

ग \_\_\_\_\_ आयुक्त केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश सं  
\_\_\_\_\_ दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original No AHM-STX-003-JC-13-14-155 dated :16.03.2015  
Issued by: Additional Commissioner, Central Excise, Din: Mehsana, A'bad-III.

घ अपीलकर्ता / प्रतिवादी का नाम एवं पता Name & Address of The Appellants/Respondents

M/s. Patan Municipality

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

Appeal to Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-

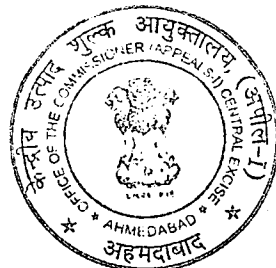
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9(1)के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.



(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धारा (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क/ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ ( उसमें से प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड/ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।

(iii) The appeal under sub section and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 & (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Central Board of Excise & Customs / Commissioner or Dy. Commissioner of Central Excise to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjuration authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1988 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

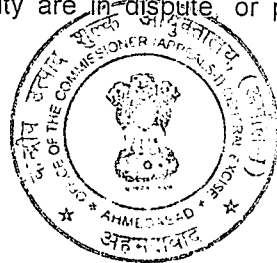
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(4)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(4)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

M/s. Patan Municipality, Municipal Office, Bhadra, Patan (NG) (for short- “*appellant*”) has filed this appeal against OIO No. AHM-STX-003/JC-13-14-15 dated 16/03/2015, passed by the Joint Commissioner, Central Excise, Ahmedabad-III Commissionerate [for short –“*adjudicating authority*”].

2. Briefly stated, the facts are that M/s. Patan Municipality, submitted details of lease rent and other charges collected from different Municipal shopping centre and Municipal party plots in Patan City. However, they had neither registered themselves with the department in respect of “Renting of Immovable Property service” nor had they discharged the service tax on the amount collected as rent and other charges for the period from 2008-2009 to 2012-2013. A notice dated 14.10.2013 was therefore, issued to M/s. Patan Municipality, listing out their contraventions & proposing demand of service tax of Rs. 14,49,875/- along with interest. The notice further proposed penalty under sections 76, 77 and 78 of the Finance Act, 1994 [FA '94 – for the sake of brevity].

3. The aforementioned notice was adjudicated by the Joint Commissioner, Central Excise, Ahmedabad-III vide his order dated 16.3.2015, wherein he confirmed the recovery of service tax of Rs. 14,49,875/- along with interest. The adjudicating authority further imposed penalties under sections 76, 77(1)(a), 77(1)(b), 77(1)(c), 78, ibid along with a late fee under rule 7C of the Service Tax Rules, 1994 on the appellant.

4. Being aggrieved with the impugned original order, the appellant has filed the present appeal on the grounds that:

- they are eligible for deduction of property taxes from the gross amount charged for renting of immovable proper as per Not. No. 24/2007-ST dated 22.5.2007;
- since no service tax has been collected by them they are eligible for cum-duty benefit;
- that the transfer charges are amount collected when a trader or shopkeeper transfers the occupancy of the premises to another person; that these amount was not taxable upto 30.6.2012 and subsequently also as it is covered under the entry no. (a) of Section 66D of the FA '94;
- that interest on lease rent is an amount collected from the traders or shopkeepers who fail to deposit the rent in the pre-determined period of time; that these are not service charges but compensatory charges and hence not liable to service tax.

5. Personal hearing in the matter was granted on 19.1.2016, 19.2.2016, 18.3.2016, 16.6.2016 with an option to appear on 17.6.2016, 12.7.2016 with an option to appear on 13.7.2016 and finally on 25.7.2016 with an option to appear on 26.7.2016. However, nobody appeared for the personal hearing. M/s. Rajesh Shah and Associates vide their letter dated 16.6.2016 in response to the personal hearing fixed on 16.6.2016, sought adjournment for four weeks. Thereafter, M/s. Rajesh Shah and Associates, once again vide their letter dated 12.7.2016 and 26.7.2016 again sought an adjournment for 4 weeks. Personal Hearing was thereafter granted on 17.10.2016 which was also telephonically informed to M/s. Rajesh Shah and Associates. However, nobody appeared for the said hearing slated on 17.10.2016.

6. I have carefully gone through the facts of the case on record and the submissions made in the appeal memorandum. Since more than adequate opportunity has already been granted, I take up this appeal for decision. While I am aware that personal hearing is the crux of the principles of natural



justice, one cannot wait in perpetuity, for the appellant to appear for personal hearing for deciding an appeal.

7. The plea of the appellant is that transfer charges and interest on lease rent would not form basis for collection of service tax under "Renting of immovable proper service"; that their additional plea is since they were in a remote area and did not have qualified professionals to guide them about the service tax issue and as they were under the impression that Government Organization are exempt from the whole of service tax, no registration was taken and no service tax was collected or paid. They have questioned levy of service tax under the service *ibid*, on 'transfer charges' and 'interest on lease rent', however, they have not questioned the levy on 'rent and hoarding rent collected' [refer para 4 of the show cause notice dated 14.10.2013].

8. Hence, the issue to be decided is:

[i] whether the charges viz 'transfer charges' and 'interest on lease rent' from shopkeepers/traders for providing shops, offices godowns on rental basis are liable to service tax under "Renting of immovable proper service"; and

[ii] whether they are liable to pay service tax on the entire amount under the said service in view of entry no. [a] of Section 66D of FA '44.

9. Before going into the issue, it would be prudent to first look into the definition & scope of service viz Renting or immovable property services introduced w.e.f. 1.6.2007:

(B) Definition and scope of service:

"Immovable property", for the purpose of section 65(105)(zzzz), includes-

- (i) building and part of a building, and the land appurtenant thereto;
- (ii) land incidental to the use of such building or part of a building;
- (iii) the common or shared areas and facilities relating thereto; and
- (iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate, but does not include-
  - (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
  - (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
  - (c) land used for educational, sports, circus, entertainment and parking purposes; and
  - (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation.- For the purpose of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce.  
(Section 65 (105) (zzzz) of Finance Act, 1994 as amended)

"Renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include —

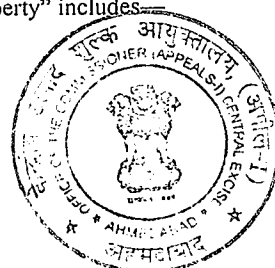
- (i) renting of immovable property by a religious body or to a religious body; or
- (ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre; Explanation.—For the purposes of this clause, "for use in the course or furtherance of business or commerce" includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings;

[Explanation 2.- For the removal of doubts, it is hereby declared that for the purposes of this clause "renting of immovable property" includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property.  
(Section 65 (90a) of Finance Act, 1994 as amended)

"Taxable Service" means any service provided or to be provided to any person, by any other person, by renting of immovable property or any other service in relation to such renting for use in the course of or, for furtherance of, business or commerce.

Explanation 1.—For the purposes of this sub-clause, "immovable property" includes—

- (i) building and part of a building, and the land appurtenant thereto;
- (ii) land incidental to the use of such building or part of a building;
- (iii) the common or shared areas and facilities relating thereto; and



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(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate, but does not include-

- (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
- (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
- (c) land used for educational, sports, circus, entertainment and parking purposes; and
- (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation 2.—For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce.

(Section 65 (105) (zzzz) of Finance Act, 1994 as amended)

10. In respect of para [8(i)] above, first I would like to deal with 'transfer charges' – which as per the appellant, is charges collected when the trader or the shopkeeper transfers the occupancy of the premises to another person. I find that the original order nowhere mentions what 'transfer charges' are, leave alone examining whether the said charges would be leviable to service tax or otherwise. To this extent, I find that the original order is not a speaking order.

11. Now in respect of "interest on lease rent [penalty]" the appellants plea is that since it is collected by the Municipality from traders and shopkeepers who fail to deposit their rent within the pre-determined time period, the same is not leviable to service tax under 'Renting of immovable property services'. In this connection attention is invited to clarification issued by CBEC vide its letter no. B1/16/2007-TRU dated 22.5.2007, which states as follows:

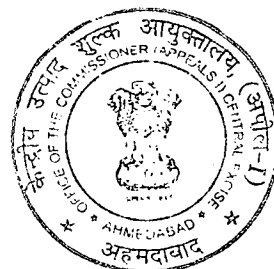
*(2) However, any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons cannot be treated as property tax for the purposes of this exemption and hence, deduction of such amount from the gross amount charged shall not be allowed.*

In view of the foregoing, it appears that the finding of the original adjudicating authority holding that the amount collected towards "interest on lease rent [penalty]" is liable towards service tax is legal and proper. However, vide notification No. 22/2016-ST dated 13.4.2016, the following entry has been inserted in Not. No. 25/2012-ST dated 20.6.2012.

*57. Services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract;*

In the present dispute, since the demand is for the period prior to 13.4.2016, the amount collected towards "interest on lease rent [penalty]" has been correctly held as liable to service tax.

12. The second plea raised is that with the advent of negative list, effective from 1.7.2012, the services provided by local authority are not taxable; that only specified services by the Government or local authority are liable for service tax & that collection of transfer fees is not covered by any of the above mentioned specified services & as a consequence not liable for service tax. The above plea is based on their reliance on Section 66D entry no. [a] and 65B(31) of the Finance Act, 1994.



13. For the sake of ease of reference, Section 66D as was in vogue during the period of dispute is reproduced below:

*"66D. The negative list shall comprise of the following services, namely:--*

*(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere-*

*(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;*

*(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;*

*(iii) transport of goods or passengers; or*

*(iv) support services other than services covered under clauses (i) to (iii) above, provided to business entities"*

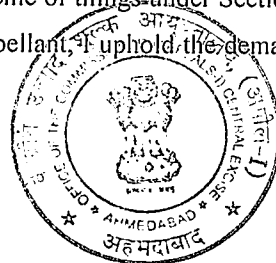
*"Support services" in Section 65B(49) is defined as:*

*"support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis".*

14. Local authority has been defined under Section 65B (31) of FA '94 & includes a Municipality as referred to in clause (e) of article 243P of the Constitution of India. Now it is clear that under the negative list, the services by local authority is exempted. However there is an exclusion clause wherein under (iv) *supra*, it is mentioned that *support services* provided to business entities are excluded from the negative list. Now support services as defined under 65B(49) includes renting of immovable property. In view of the foregoing, the contention of the appellant that effective from 1.7.2012, the services provided by local authority are not taxable & that collection of transfer fees is not covered by any of the above mentioned specified services, is not tenable. I therefore, uphold the confirmation of the service tax made by the original adjudicating authority subsequent to 1.7.2012.

15. As far as the contention with regard to cum-duty benefit is concerned, Section 67 of the Finance Act, 1994 is emphatic which states that in case where the provision of service is for a consideration in money, the gross amount charged by the service provider for such service provided will be the value of the taxable service. Regarding grant of benefit of property taxes paid by the appellant is concerned, the contention appears legally correct in terms of Not. No. 24/2007-ST dated 22.5.2007. However, since the amount paid as property tax is not mentioned, the question of granting this benefit at this stage does not arise.

16. So far as the plea with regard to non imposition of penalty is concerned, I find that the penalty was proposed under sections 76, 77 and 78 and the same has been imposed after recording proper reasons. As far as imposition of penalty under Sections 76 and 78 of FA '94, is concerned, the appellant has raised a plea relying on the proviso under Section 78, *ibid*, that simultaneous penalty cannot be imposed under sections 76 and 78 of FA '94. However, on going through the order portion it is evident that penalty under section 76 and 78 have been imposed concurrently only upto 9.5.2008, since the proviso relied upon by the appellant was made effective from 10.5.2008. Further, as far as interest demanded under section 75 of the FA '94 is concerned, the law as it stands clearly states that delayed payment of service tax attracts interest. In-fact under the scheme of things under Section 75, interest being a corollary to delayed payment of service tax by the appellant, I uphold the demand of interest under section 75 of the Finance Act, 1994.



*[Handwritten signature]*

17. In view of the foregoing, I partly allow the appeal in so far as service tax on transfer charges are concerned in respect of the entire period by way of remand. Since the exigibility of 'transfer charges' needs to be determined afresh, the matter is remanded back to the original adjudicating authority in terms of para 10 above. This would lead to re-determination of duty, interest and penalty imposed under sections 76, 77 and 78 of the FA '94, to this extent. The rest of the demand is upheld. While remanding the matter, I rely on the case of M/s. Associated Hotel Limited [2015(37) STR723 (Guj.)].

18. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

18. The appeal filed by the appellant stands disposed of in above terms.

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स - I)

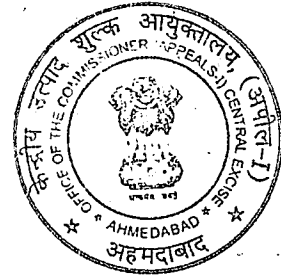
Date : 11.10.2016.

Attested by

*Vinod Lukose*  
(Vinod Lukose)  
Superintendent (Appeal-I)  
Central Excise,  
Ahmedabad.

**BY R.P.A.D.**

M/s Patan Municipality,  
Municipal Office,  
Bhadra,  
Patan (NG)



Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III
3. The Assistant Commissioner, Central Excise, Gandhinagar Division.
4. The Additional Commissioner(Systems), Central Excise, Ahmedabad-III.
5. Guard file.
6. P.A.

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