

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :

: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :

: आंबावाडी, अहमदाबाद- 380015. :

क फाइल संख्या : File No : V2(72)117/Ahd-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-178-16-17

दिनांक Date 21.12.2016 जारी करने की तारीख Date of Issue 23/12/16

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-I) Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल आदेश स 01/D/GNR/APB/2015-16 दिनांक : 22.12.2015, सृजित

Arising out of Order-in-Original: 01/D/GNR/APB/2015-16 Date: 22.12.2015

Issued by: Assistant Commissioner, Central Excise, Div: Gandhinagar, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Vinayak TMT Bars Pvt. Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

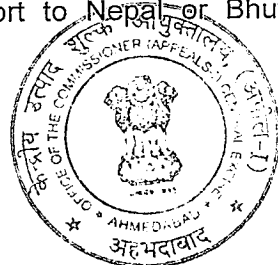
(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- णबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

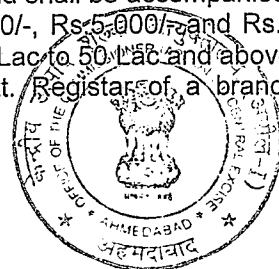
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/ and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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 होंगे।

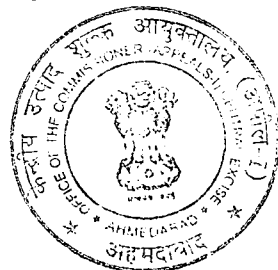
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994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

(6)(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।

(6)(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."



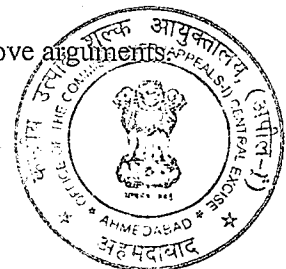
ORDER-IN-APPEAL

This appeal has been filed by M/s Vinayak TMT BarsPvt Ltd, SurveyNo.25/1, 25/2 & 24/p, Barotna Mausamput, Bayad Road, Post Sampa, Taluka-Dehgam, Dist-Gandhinagar, Gujarat (for brevity-"the appellant") against order-in-original No.01/D/GNR/APB/2015-16 dated 22.12.2015 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central Excise, Gandhinagar Division (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case is that on the basis of CERA Audit objection, a show cause notice dated 23.02.2015 was issued to the appellant for the issue relating to (i) Capital goods viz. Gasfire manufactured and captively consumed within the factory production by the appellant have been removed at the value of Rs.17,97,142/- without payment of central excise duty on the transaction value of the said goods; and (ii) the appellant had taken service tax credit of Rs.42,617/- on foreign tours of 16 company persons by Thomas Cook India Ltd at Prag (Chec-Republic) ,which was not relevant to the activities relating to manufacture/business. The appellant has paid the duty amounting to Rs.1,85,105/- with interest, involved in clearance of the said capital goods on 22.05.2014. The said show cause notice was adjudicated vide the impugned order by confirming the duty amounting to Rs.1,85,105/- with interest and ordered to recover amounting to Rs.42,617/- towards service tax credit wrongly taken with interest. Vide the impugned order, equal penalty for duty demanded and service tax taken wrongly was also imposed.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that:-

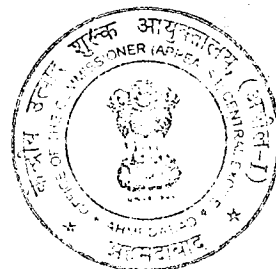
- The adjudicating authority has agreed that the duty calculation taken CERA audit on in respect of capital goods cleared was not legal as pointed by the appellant; that the appellant himself willingly and voluntarily paid duty with interest on transaction value and inform the authority as per Section 11A(1) of CEA before issue of show cause notice and in that case no show cause notice is required to be issued as per Section 11A(2) of CEA.
- The service tax paid on travel agent bill cannot be denied on the ground of having no relation with manufacture/business; that the expenditure incurred are revenue expenditure relating to final products included in assessable value and such it has been covered for eligibility of credit.
- No malafide intention and suppression of facts involved in the instant case as the goods in question manufactured and cleared are reflected in records; that all the facts was within the knowledge of the department and under these circumstances, the show cause notice issued was bar by limitation and extended period cannot be applicable in the case.
- The appellant has cited various case laws in support of their above arguments.



4. A personal hearing in the matter was held on 20.12.2016. Shri D.U.Chauhan, Consultant appeared before me on behalf of the appellant. He reiterated the grounds of appeal and stated that the appellant is contesting demand of duty on travel and tours and penalty on capital goods viz. Gasfire removed. The Ld. Consultant submitted additional submissions.

5. I have gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue to be decided in the matter is (i) whether duty is applicable while clearing the capital goods viz Gasfire, which was manufactured and used captively by the appellant; and (ii) whether the input service credit taken on foreign tours conducted by 16 persons of the appellant is admissible or otherwise.

6. As regards (i) above, I observe that the appellant had paid duty amounting to Rs.1,85.105/- with interest willingly and voluntarily by accepting the duty liability on clearance of capital goods in question and only disputed the issue regarding imposition of penalty under Section 11 AC of the Central Excise Act, 1944. The appellant has contended that since they had paid the duty with interest before issuance of show cause notice, issuance of show cause notice is unwarranted as per the provisions of Section 11A(2) of CEA. The section *ibid* stipulates that the department shall not serve any show cause notice to a person who has paid the duty under clause (b) of sub-section (1) of Section 11A at his own ascertainment or ascertained by the Central Excise Officer and informed the authority of such payment. In this case, it is a fact that the appellant has paid the duty with interest on ascertained by the audit officers. I observe that the appellant had cleared the capital goods without payment of duty in the month of December 2011 and paid the duty in question with interest in the month of May 2014. The clearance of such goods came to the notice of the authority only at the time of audit of the records of the appellant. The appellant never bothered to inform the duty liability on such clearance to the authority till it was noticed. The argument of the appellant that such clearances are reflected in the records and it is within the knowledge of the department is without any foundation and not justifiable without any backup. In the circumstances, sub-section (4) of Section 11 A of CEA attracts in the matter; that where any duty of excise has not been levied or paid or has been short paid by reason of any willful mis-statement or suppression facts, extended period of five years for issuing show cause notice can be applicable and a penalty equivalent to the duty specified is imposable. In the circumstances, I observe that the adjudicating authority has rightly imposed the penalty under Section 11 AC of CEA. The appellant has relied on various case laws in support their argument referred to above. I observe that the citations cited by the appellant is irrelevant to the instant case; that in the instant the appellant knew about the duty liability on clearance of goods in question and deliberately avoid the payment of such duty. In view of above, I do not find any merit in the argument of the appellant and I uphold the impugned order in this regard.



7. As regard the issue mentioned at (ii), I observe that the appellant had taken input service credit amounting to Rs.42,617/- under the category of tours and travels. The said credit was taken by the appellant against foreign tours of 16 passengers by Thomas Cook India Ltd at Prag (Chec-Republic). It is the contention of the appellant that the tour in question was organized for expansion of business of manufacture of final product in abroad.

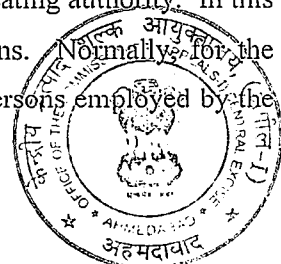
8. "Input service" means any service, –

(i) used by a provider of taxable service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

9. From the above definition of "input service", the meaning to be culled out is that any service to be qualified for input service, should have been used by a manufacturer directly or indirectly for manufacturing final products in or in relation to the manufacture of final product or even in the clearance of final product upto the place of removal. In the instant appeal, I observe that the appellant has taken credit of input services on tours and travels performed by 16 persons of the appellant, by Thomas Cook India Ltd at Prag (Chec-Republic). The 'input service' has been defined to mean any service used by the manufacturer, whether directly or indirectly and also includes, *inter alia*, services used in relation to inward transportation of inputs or export of goods and outward transportation up to the place of removal.

10. The appellant has contended that the tour undertaken by the company persons were in connection with business activities and the service tax paid on travel agent bill cannot be denied on the ground of having no relation with manufacture/business. The appellant has also relied on various case laws during the course of personal hearing in support of their argument that air travel agent is input service by air by designated person with sale agent for sale promotion. I observe that the issue regarding air travel performed for the purpose of company business is no more res integra and settled by various decisions viz. the Hon'ble CESTAT, Principal Bench, New Delhi in case of Goodluck Steel Tubes Ltd V/s C.C.E, Noida reported at 2013(32)S.T.R. 123 (Tri.-Del.) etc. The adjudicating authority observed that the appellant has not made any business activity of export or import from Chec-Republic; that they have not produced any evidence/documents to prove that the said tour was organized for business purpose. I do not find any merit to interfere the observation made by the adjudicating authority. In this case, tour was carried out by 16 passengers of company persons. Normally, for the purpose of business activity, no need to take a tour of group of persons employed by the



company. If the tour activity is actually for the purpose business, necessary supporting documents to that effect should have produced by the appellant. In the instant case, the appellant have neither submitted such documents before the adjudicating authority nor before the appellate authority. In the circumstances, the argument of the appellant is not acceptable and the citations relied by them is not applicable to the present issue. Therefore, I uphold the impugned order and the appellant is liable to pay the amount of Rs.42,167/- with interest towards the credit wrongly taken. Looking into the apt of the case, I also find no reason to interfere the penalty imposed in this regard.

11. In view of above discussion, I reject the 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 stand disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

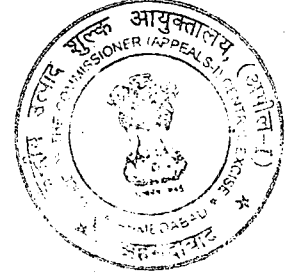
Date: 21/12/2016

Attested

Mohan V.V
(Mohan V.V)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D.

M/s Vinayak TMT Bars Pvt Ltd,
Survey No.25/1, 25/2 & 24/p, Barotna Mausamput, B
ayad Road, Post Sampa, Taluka-Dehgam,
Dist- Gandhinagar, Gujarat



Copy to:-

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

