



S सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वरन्तु एवं सेवा

कर भवन,

सातवीं मंजिल, पोलिटेक्निक के पास,

आम्बावाडी, अहमदाबाद-380015

GST Building, 7th Floor,,
Near Polytechnic,
Ambavadi, Ahmedabad-
380015



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क फाइल संख्या : File No : V2(27)1/AHD-III/2017-18 / 10952 to 10356

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-0153-17-18

दिनांक Date : 23.11.2017 जारी करने की तारीख Date of Issue 04-12-17

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
41/D/GNR/VHB/2016-17 दिनांक : 16.03.2017 से सृजित

Arising out of Order-in-Original: 41/D/GNR/VHB/2016-17, Date: 16.03.2017 Issued by:
Assistant Commissioner, Service Tax, Div:Gandhinagar, Ahmedabad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Hindustan Petroleum Corporation Limited

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 प्रक्रिया 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- षोबी/35-इ के अंतर्गत:-

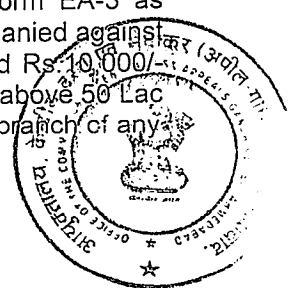
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों 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.

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 इए-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 रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 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 by (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 Appellant 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 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 अर्जी 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 order arises out of an appeal filed by M/s. Hindustan Petroleum Corporation Limited, Survey No. 124/1, N.H. 08, Near S.P. Ring Road, Nana Chiloda, District Gandhinagar, Gujarat (in short 'appellant') against Order-in-Original No. 41/D/GNR/VHB/2016-17 dated 17.03.2017 (in short 'impugned order') passed by the then Assistant Commissioner, Central Excise Division, Ahmedabad-III Commissionerate (in short 'adjudicating authority').

2. Briefly stated a periodical show cause notices dated 23.09.2016 was issued to the appellant for the period January-2016 to June-2016 alleging wrong availment of Cenvat credit of :

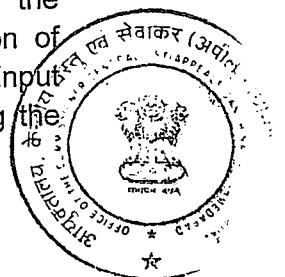
- [a] Rs. 6,31,593/- on **outward transportation** of compressed natural gas [CNG] filled into "high pressure gas cylinders" which were mounted LCV and sent from mother station to daughter stations; and
- [b] Rs. 3,69,794/- in respect of service utilized for **operation and maintenance** of CNG Hydraulic Compressor sets, installed at various CNG stations/daughter stations

and its recovery alongwith interest under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944; imposition of penalty under Rule 15(1)ibid. This SCN was adjudicated by the adjudicating authority vide impugned order wherein said demand was confirmed alongwith interest and imposition of penalty.

3. Aggrieved with the impugned order, the appellant has filed the present appeal wherein, interalia, stated that:

- when CNG is sold from Daughter station, the place of removal is Daughter station and place reliance on the definition of 'place of removal' as provided in Section 4 of the Central Excise Act, 1944.
- operation and maintenance services have been used for CNG hydraulic compressors installed at daughter stations;
- inclusive part of the definition of input service specifically includes the outward transportation service and operation and maintenance services upto the place of removal;
- that since CNG is sold from daughter station, the place of removal is daughter station;
- In case of depot sales of goods, the credit of service tax paid on the transportation of goods up to such depot would be eligible, irrespective of the facts, whether the goods were chargeable to excise duty at specific rate or ad valorem on the basis of valuation under section 4A of the CEA, 1944.
- the Larger Bench of the Tribunal in the case of ABB Ltd Vs. CCE, Bangalore reported in 2009(15)STR-23(Tri.LB) has held that the services availed by a manufacturer for outward transportation of final products from the place of removal should be treated as input service in terms of Rule 2(l)(ii) of CCR,2001 thereby enabling the

[Signature]



manufacturer to take credit of the service tax paid on the value of such services;

- the clarification issued by the Board vide circular no. 875/13/200/-CX dated 16.10.2008, is in respect of denying credit in respect of inputs/capital goods received at daughter station;
- as service tax credit has been utilized correctly there is no case for interest
- some activity of compression is taking place at Daughter station and hence it is also to be treated as 'place of removal' and accordingly the eligibility for Cenvat credit on the service tax paid on the subject two services is not questionable and penalty is not applicable.

4. Personal hearing in the matter was held on 16.11.2017. Shri Viraj K. Chauhan, Accounts Officer, and Shri Abhinav Kasliwal, Operation Officer, appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal.

5. I have gone through the appeal memorandum, submission made at the time of personal hearing and evidences available on records. The main issues to be decided is [a] whether the CENVAT Credit can be availed on **outward transportation** of CNG from mother station to daughter station; and [b] whether CENVAT credit can be availed in respect of **operation and maintenance** of CNG Hydraulic Compressor sets installed at various CNG stations/daughter stations.

6. Prima facie, I find that the issue revolves around CENVAT credit on input services, which is defined in Rule 2(l) of the CENVAT Credit Rules, 2004, is reproduced below for the sake of ease:

[(l) "input service" means any service, -

- (i) used by a provider of [output 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;

[but excludes], -

- [(A)
- (B).....
- (C).....



As such, the "Place of removal" is defined in Rule 2(qa) of the CENVAT Credit Rules, 2004 which is also reproduced below for the sake of ease:

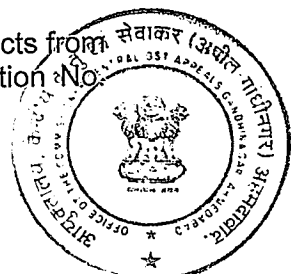
[(qa) "place of removal" means-

- (i) a factory or any other place or premises of production or manufacture of the excisable goods;
- (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
- (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed;]

6.1 First, let me examine the dispute in respect of availment of CENVAT credit on **outward transportation**. A conjunctive reading of the definitions of 'input service' and 'place of removal' clearly shows that CENVAT credit on outward transportation is available upto the place of removal i.e. in this case upto *mother station* where compressors are installed which convert Natural Gas into Compressed Natural Gas [CNG]. The appellant being manufacturer, CENVAT credit in respect of outward transportation would be available upto the place of removal. Thus, CENVAT credit availed in respect of outward transportation of CNG filled in high pressure gas cylinders, from mother station to daughter station would not be available in this case since it is outward transportation and beyond the place of removal.

The appellant has relied upon the case of M/s. ABB Ltd. Vs. CCE&ST, Bangalore reported in 2009 (15) STR-23(Tri. LB) the Tribunal has held that CENVAT Credit in respect of the outward transportation of goods to customer's premises is an *activity relating to business* and credit of service tax thereon would be admissible as per Rules 2(i) and 3 of CENVAT Credit Rules, 2004. However, department filed an appeal before the Hon'ble High Court of Karnataka, who vide its order dated 23.3.2011 [reported at 2011(23) STR 97], held that:

- the finding recorded by the CESTAT that the phrase and expression 'activities relating to business' admittedly covers transportation upto the customer's place was entirely unnecessary;
- vide notification No. 10/2008-C.E. (N.T.), dated 1-3-2008, the words 'clearance of final products upto the place of removal' were substituted in the place of the words 'clearance of final products from the place of removal'. The intention of the legislature is thus manifest. Till such amendment, the words 'clearance from the place of removal' included transportation charges from the place of removal till it reached the destination, namely the customer;
- the interpretation placed by the Tribunal on the words 'activities relating to business' as including clearance of final products 'from the place of removal' which occurred already in the first part of Rule 2(i)(ii) prior to 1-4-2008, runs counter to the language employed in the second part of the definition of 'input service' and is to that extent contrary to the legislative intention and therefore, the said finding is unsustainable in law;
- the interpretation placed by us on the words 'clearance of final products from the place of removal' and the subsequent amendment by notification No.



10/2008-C.E. (N.T.), dated 1-3-2008 substituting the word 'from' in the said phrase in place of 'upto' makes it clear that transportation charges were included in the phrase 'clearance from the place of removal' upto the date of the said substitution and it cannot be included within the phrase 'activities relating to business'.

- we further make it clear that this interpretation is valid till 1-4-2008.

Hence, it is clear that post 1.4.2008, CENVAT credit in respect of outward transportation is admissible only upto the place of removal. I find that since in the case under consideration, the CENVAT credit was availed beyond the place of removal, the credit is not admissible.

6.2 As regards admissibility of Cenvat credit of **operation and maintenance** of CNG Hydraulic Compressor sets installed at various CNG stations/daughter stations, I find that a manufacturer can avail CENVAT Credit in respect of input services when it is used directly or indirectly, in or in relation to the manufacture of final product and clearance of final products upto the place of removal. The appellant has also contested that compression takes place even in daughter stations which means daughter stations cannot be treated simply as dispensing stations as it is located beyond the place of removal. Had this been the case, the appellant would surely have discharged duty at the daughter stations subsequent to taking registration of the daughter stations. Nothing has been provided by the appellant to prove that the daughter stations are registered under Section 6 of the Central Excise Act, 1944. Even otherwise, on going through the function of the hydraulic compressors – said to be installed at daughter stations, it is evident that the function is different from what happens at the mother stations, where actual manufacturing takes place. This would ideally make no difference since the input service is in respect of an equipment installed beyond the place of removal, which since no registration has been taken is not a part of manufacturing activity. Hence, this plea of the appellant is also not tenable.

6.3 As regards the plea of the appellant regarding applicability of Circular No. 875/13/2008-CX, dated 16.10.2008, I find that the circular talks about availment of CENVAT Credit in respect of only those inputs/capital goods, which are used in the registered premises, where actual manufacturing takes place and not on capital goods/inputs at daughter station. This spells out the spirit of the Government. The circular clearly states that registration is to be given only in respect of those premises where CNG is actually manufactured i.e. where compressor is installed to convert Natural Gas into CNG. As stated by the appellant and going by the function of hydraulic compressor installed at the daughter station, it is evident that there is no conversion of Natural Gas into CNG at the said stations. Precisely, it is for this reason, no registration would have been taken. Hence, the argument that CENVAT credit in respect of operation and

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maintenance of CNG Hydraulic Compressor sets installed at various CNG stations/daughter stations is available, is not legally tenable.

7. In view of the above discussion and findings, I reject the appeal filed by the appellant and uphold the impugned order.

8. 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.

उमा शंकर
(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested:

B.A. Patel
(B.A. Patel)
Superintendent(Appeals)
Central Tax, Ahmedabad.

BY SPEED POST TO:

M/s. Hindustan Petroleum Corporation Limited,
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Nana Chiloda, District Gandhinagar, Gujarat.

Copy to:-

1. The Chief Commissioner, Central GST, Ahmedabad Zone, Ahmedabad.
2. The ~~Principal~~ Commissioner, Central GST, ~~Ahmedabad North~~ Gandhinagar (PRA Section)
3. The Deputy/Assistant Commissioner, Central GST, Gandhinagar Division, ~~Ahmedabad North~~.
4. The Asstt. Commissioner(System), Central GST HQ, Gandhinagar.
(for uploading OIA on website)
5. Guard File.
6. P.A.

