
 केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX वस्तु एवं सेवा कर भवन GST Building 7 <sup>th</sup> Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015 सप्तमी मंजिल पॉलिटेक्निक के पास आम्बावाडी, अहमदाबाद-380015 079-26305065		 टेलीफैक्स : 079-26305136
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क फाइल संख्या : File No : V2(30)104/AHD-III/2016-17

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-079-17-18

दिनांक Date : 28.08.2017 जारी करने की तारीख Date of Issue: 18-9-17

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 :  
AHM-CEX-003-DC-048-054-15-16 दिनांक : 29.12.2016 से सृजित

Arising out of Order-in-Original: AHM-CEX-003-DC-048-054-15-16, Date: 29.12.2016  
Issued by: Deputy Commissioner, Central Excise, Div:kalol, Ahmedabad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

**M/s. Kosha Laboratories**

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 4<sup>th</sup> 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- णबी/35-इ के अंतर्गत:-

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

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलवा 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 मैनटल 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 रुपए 5 लाख या उससे कम है वहां रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 5 लाख या 50 लाख तक हो तो रुपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 50 लाख या उससे ज्यादा है वहां रुपए 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 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 paisa 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 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।

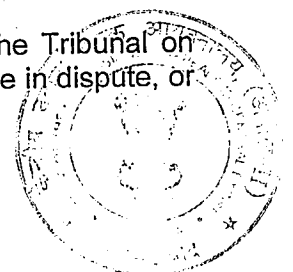
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994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

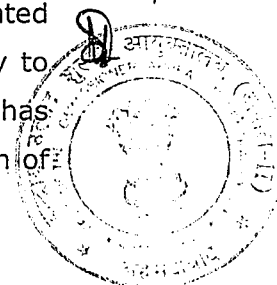
(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

This appeal has been filed by M/s Kosha Laboratories, 819/B, Rakanpur, Ta-Kalol, Dist. Gandhinagar [hereinafter referred to as "the appellant"] against Order-in-Original No.AHM-CEX-003-DC-048-2016 dated 229.12.2016 [hereinafter referred to as "the impugned order"] passed by the Deputy Commissioner, Central Excise, Kalol Division [hereinafter referred to as "the adjudicating authority"].

2. Briefly stated, the appellant was holding Central Excise registration No.AACFK11744408HXM001 and was engaged in the manufacture of P.P. Medicines falling under chapter sub-heading 3003 of the first schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). The appellant was availing value based SSI exemption up to clearance value of Rs.100 Lakhs under Notification No. 08/2003 dated 01/03/2003 (as amended) (hereinafter referred to as the 'SSI notification') for clearance of its own goods, whereas the goods manufactured for loan licensees under various brand names not belonging to the appellant, was cleared on payment of Central Excise duty @ 16% from the first clearance during 2004-05 and 2005-06. The appellant was availing CENVAT credit of duty paid on inputs used in the branded goods manufactured on behalf of loan licensees and cleared on payment of duty from first clearance in a financial year, whereas in respect of its own manufactured goods, CENVAT credit was availed after crossing the SSI exemption limit of Rs.100 Lakhs aggregate clearance value. The factory of the appellant was falling within '**rural area**' as defined in paragraph 4 of the SSI notification. The exemption contained in the SSI notification did not apply to specified goods bearing a brand name or trade name whether registered or not, of another person, except in cases where such branded specified goods were manufactured in a factory located in a '**rural area**'. It appeared that the appellant was liable to take into account also the value of branded goods for the purpose of determining the exemption limit of aggregate of first clearance value not exceeding 100 Lakhs Rupees made on or after 1<sup>st</sup> April in a financial year and also for the purpose of determining the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories, or from a factory by one or more manufacturers not exceeding 300 Lakhs Rupees (Rs.400 lakhs w.e.f 01.04.2005) in the preceding financial year. As the appellant had failed to add the value of branded goods for the purpose of determining the said aggregate values of clearances of their own manufactured goods to calculate the limit of 100/300 (400) lakhs for availment of the benefit of SSI notification for the year 2004-05 to 2005-06, a show cause notice dated 28.09.2006 was issued for demand of short paid duty with interest and imposition of penalty thereof. The said show cause notice was adjudicated by the Assistant Commissioner of Central Excise, Kalol Division, vide order No.01/D/07-08 dated 26.04.2007, by confirming the demand with interest and imposed equal penalty to the duty amount. The appellate authority, vide his OIA dated 31.08.2007 has confirmed the demand only for the period of 2005-06, by rejecting the allegation of



suppression of facts on the part of the appellant. Accordingly, the appellate authority has confirmed the demand of Rs.3,71,707/- and reduced penalty to Rs.50,000/-.

3. The appeal filed by the department against the order Appellate authority, dated 31.08.2007 was decided by the CESTAT vide its order No.A/11505-11506/2015 dated 02.09.2015, under which the case was remanded to Adjudicating Authority to examine whether the duty being demanded upheld by Commissioner (Appeals) would be neutralized against the amount of duty paid by the appellant. Accordingly, the adjudicating authority has decided the matter vide the impugned order by holding that the aggregating value upto Rs.100 lakhs duty paid by the appellant on branded goods of third party cannot be taken in the account as they had already availed Cenvat credit on the inputs on branded goods and under SSI exemption. In view of above, the adjudicating authority has confirmed the duty of Rs.3,54,685/- with interest, during 2005-06 on clearance value of branded goods and their own after exceeding Rs.100 lakhs. A penalty of Rs.25,000/- is also imposed.

4. Being aggrieved, the appellant has filed the instant appeals on the following grounds:

- The sole point required to be considered in the de-novo proceedings was whether the duty demanded was neutralized by the quantum of duty paid or otherwise; that the ruling of the Tribunal is to the effect that the duty paid on the branded goods is required to be adjusted against the duty being demanded.
- The Tribunal's order has restricted the adjudicating authority to the mere role of verification of the facts and figures as to whether the duty demanded is more than duty paid or otherwise and the answer is positive, the duty demanded stands neutralized as per the Tribunal's order.
- The adjudicating authority has travelled beyond the scope of the said Tribunal's order.
- Total duty payable during 2005-06 was Rs.4,80,453/- against which they have paid Rs.5,38,755/-.

5. Personal hearing in the matter was held on 20.07.2017. Shri Archit Kotwal, Owner of the appellant appeared for the same and reiterated the grounds of appeal. I have carefully gone through the facts of the case and submissions made by the appellant.

6. I have briefly laid out the facts in para 2 and 3 *supra*. At the outset, I observe that the case was taken for adjudication by the adjudicating on the basis of Hon'ble Tribunal's order No. A/11505-11506/2015 dated 02.09.2015, under which the Tribunal has directed to examine as to whether the duty paid by the appellant in question would be neutralized against the demand raised during the relevant period. For the sake of clarity, I reproduce the gist of relevant Tribunal's order *supra*.



"By following the ratio of above decision, we agree with the learned advocate. Admittedly, the branded goods have been cleared on payment of duty, which according to Revenue should not have the paid duty. As such, duty already paid on such branded goods is required to be adjusted against the duty now being demanded from the appellant. It is the appellant's contention that the duty paid on the branded goods is much more than the duty now being demanded and would neutralize the entire demand, and is required to be verified. For the said purpose, we remand the matter to the original adjudicating authority. We also find favour with the appellant's plea of limitation, we direct the Commissioner that such re-quantification exercise is to be done only for the period within limitation.

According to the Tribunal's decision *supra*, the adjudicating authority is required to be examined/verified the duty paid by the appellant during the relevant period and adjust the same against demand raised during the relevant period in question.

7. I observe that on the basis of Hon'ble Tribunal's order dated 02.09.2015 *supra*, the adjudicating authority has come to the conclusion that the appellant is required to pay duty amounting to Rs.3,54,685/- as per following details.

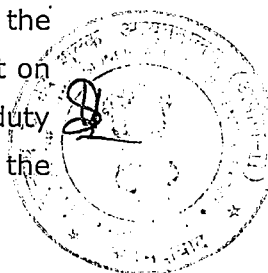
Period after exemption limit of Rs.100 lakhs	Clearance exceeding Rs.100 lakhs	Duty payable	Duty paid	Difference
December-2005 to March 2006	Rs.29,43,953/-	Rs.4,80,453/-	Rs.1,25,768/-	Rs.3,54,685/-

Further, I observe that while calculating the amount referred to above, the adjudicating authority has not considered the amount paid by the appellant up to December 2005 on the ground that during exemption period of aggregating value up to Rs.100 lakhs, they had already availed Cenvat credit on the inputs used for manufacturing of branded goods, though on exempted goods Cenvat credit could not be available on branded goods under SSI exemption.

9. On the contrary, the appellant has submitted that they had paid duty amounting to Rs.4,80,453/- during 2005-06 as per following details:

Clearance Value (Rs)			Duty Paid (Rs)		
Own goods	Branded goods	Total	PLA	Cenvat	Total
95,78,170	33,65,779	1,29,43,949	4,17,344/-	1,21,411/-	5,38,755/-

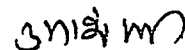
10. From the facts narrated above, I observe that the adjudicating authority has not adhered to the Tribunal's order *supra* to its force. In the Tribunal's order, though the department has argued that the duty paid on branded goods would not be considered as paid duty, specific direction was given that duty already paid on such branded goods is required to be adjusted against the duty being demanded from the appellant. Thus, according to the said order, whatever duty paid by the appellant on branded goods should have been considered as duty and adjusted against the duty whatever demanded during the relevant period. In instant case, as contended by the



appellant, an amount of Rs.4,17,344/- and Rs.1,21,411/- was paid by them through PLA and Cenvat respectively during the period of 2005-16 in respect of clearance of their own as well as towards branded goods. Considering the contention of the adjudicating authority that the appellant is not eligible for availing Cenvat credit on input used for on branded goods during exemption period (up to 19.12.2005 as per impugned show cause notice), the fact the appellant had cleared the branded goods on payment through PLA cannot be ignored. Though the contention of the adjudicating authority that the appellant is not eligible to avail the Cenvat credit on inputs during exemption period on manufacturing of branded goods find merit consideration, I am of the considered view that only the payment made through Cenvat credit would not be admissible to them during relevant period and whatever amount paid by them through PLA should be considered as payment, as contended by the Hon'ble Tribunal *supra*.

11. In the instant case, as per details furnished by the appellant, they had made payment of Rs. 4,17,344/- through PLA and Rs. 1,21,411/- through Cenvat Credit during 2005-06. The duty total payable by the appellant, according to the adjudicating authority is Rs. Rs.4,80,453/- during 2005-16 and paid Rs.1,25,768/-. I observe that the appellant was availing CENVAT credit of duty paid on inputs used in the branded goods manufactured on behalf of loan licensees and cleared on payment of duty from first clearance in a financial year, whereas in respect of its own manufactured goods, CENVAT credit was availed after crossing the SSI exemption limit of Rs.100 Lakhs aggregate clearance value. In view of fact discussed above, they were entitled for availing Cenvat credit and payment thereof, after crossing the SSI exemption. Thus, payment of Rs.4,17,344/- said to be made through PLA and payment from Cenvat credit made after crossing of Rs.100 lakhs are to be considered as duty. Adjudicating authority may exercise the duty calculation as per records and raise/confirm the demand if any short paid. Therefore, I remand the matter to Adjudicating Authority to examine the matter in above terms.

12. In view of above, I set aside the impugned order and remand the case to adjudicating authority. The appeal filed by the appellant disposed of accordingly.



(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 28/08/2017

Attested

  
(Mohanan V.V.)

Superintendent (Appeal-I)  
Central Excise, Ahmedabad  
BY R.P.A.D.

To,  
M/s Kosha Laboratories, 819/B, Rakanpur, Ta-Kalol, Dist. Gandhinagar



1. The Chief Commissioner of Central Excise Zone, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III.
3. The Additional Commissioner(Systems) Central Excise, Ahmedabad - III
4. The Additional Commissioner, Central Excise, Ahmedabad-III
5. The AC/DC, Central Excise, Kalol Division
6. Guard file
7. P. A

