
 सत्यमेव जयते	केन्द्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन सातवीं मंजिल, पोलिटिकनिक के पास, आम्बावाडी, अहमदाबाद-380015		
079-26305065		टेलीफैक्स : 079-26305136	

6705106907

क) फाइल संख्या : File No : **V2/102/GNR/2018-19**

ख) अपील आदेश संख्या : Order-In-Appeal No. : **AHM-EXCUS-003-APP-109-18-19**

दिनांक Date : **11-09-2018** जारी करने की तारीख Date of Issue: **1-11-2018**

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

C. file

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग) अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
43/AC/EX/MEH/17-18 दिनांक : **20-03-2018** से सृजित

Arising out of Order-in-Original: **43/AC/EX/MEH/17-18**, Date: **20-03-2018** Issued by:
 ,CGST, Div., Gandhinagar Commissionerate, Ahmedabad.

घ) अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. SWASTIK CERACON 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।

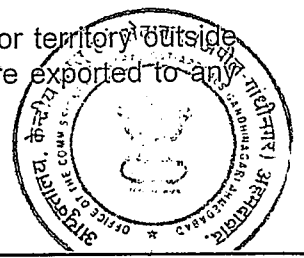
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 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- ष0बी/35-इ के अंतर्गत:-

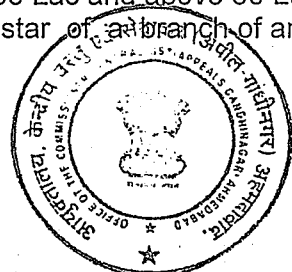
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, 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, मेघाणी 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 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 वहां 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 वहां 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 any 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 पढी 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 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 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 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 होगा।

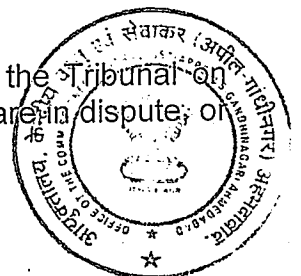
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994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

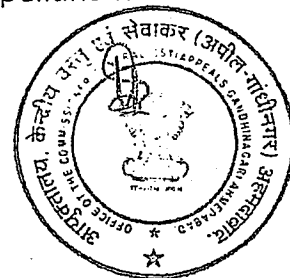


ORDER-IN-APPEAL

M/s Swatik Ceracon Ltd (Unit-2), 25, Shobhasan Road, Taluka & Dist Mehsana, Gujarat (hereinafter referred as "the appellant") has filed this appeal against the Order-in-Original No. 43/AC/EX/Meh/17-18 dated 22.08.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central GST, Mehsana Division, Gandhinagar (hereinafter referred to as "the adjudicating authority").

2. The appellant is engaged in the manufacture of Ceramic Glaze Floor Tiles falling under Chapter 69 of Central Excise Tariff Act, 1985 and holding Central Excise Registration. The appellant's factory premise and other sister concern units located at other places were searched by the Central Excise Officers on 08-10.07.2015, on the basis of information that the appellant had indulged in gross negligence to the obligations cast upon them under Central Excise procedures. During the course of search at the factory premise of the appellant, the central excise officers had taken physical stock of finished goods lying in the factory and it was observed that 40099 Nos of Ceramic Glaze Floor Tiles of various Grade and Size lying excess as compared to stock report as on 07.07.2015. The said goods valued at Rs.1,34,42,455/- (Rs.73,93,350/- after 45% abatement) was found not accounted for in their books and accounts. The said entire stock of finished goods found excess lying in the factory premises was seized on the reasonable belief that the same was intended to be cleared without payment of duty. After investigation, a Show Cause Notice dated 04.01.2016, proposing for confiscation of seized goods and imposition of penalty under Rule 25 of Central Excise Rules, 2002 was issued. This SCN was adjudicated vide impugned order, wherein the seized goods were ordered for confiscation with an option to redeem on payment of fine of Rs. 18,48,340/-. Further, a penalty of Rs.9,24,169/- was imposed under Rule 25 of Central Excise Rule, 2002 on the appellant.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that there was no evidence of any clandestine removal or pointing to *malafide* on the part of appellant; that improper accountable of goods and shortage of finished goods found during stock taking was due to clerical error and bonafide mistake due to daily mass production and clearances; that there was no malafide intention to clear the excess goods clandestinely without payment of duty and no concrete evidence brought on record in this regard; that merely on presumption and assumptions, it could not be said the goods are meant for clandestine removal; and that in view thereof, fine and penalty ought to have been set aside. The appellant has cited various case laws in support of their arguments.



4. Personal hearing in the matter was held on 06.09.2018 and Shri Nilam A Shah, authorized person of the appellant appeared before me, on behalf of the appellant. He reiterated the averments made in their grounds of appeal and submitted CESTAT's order dated 12.01.2018 in their own case.

5. I have carefully gone through the facts of the case narrated in the appeal and other relevant documents. The case relates to confiscation of seized goods valued at Rs.1,34,42,455/-, found not properly accounted; and consequent imposition of redemption fine and penalty.

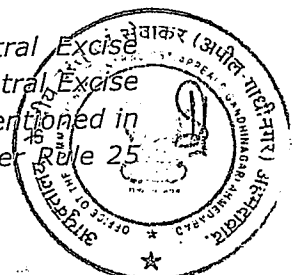
6. The appellant has argued that the appellant authority has decided similar issue regarding confiscation of 1242 boxes of ceramic tiles in appellant's sister concern unit No.4, vide order-in-Appeal No. AHM-EXCUS-003-APP-030-17-18 dated 16.05.2017 and uphold the order passed by the lower authority. However, the Hon'ble CESTAT, Ahmedabad, vide order No. A/10150/2018 dated 12.01.2018, has set aside the said OIA. The finding portion of the said order is as under:

"6. I find that undisputedly there were 1242 boxes of Tiles of different sizes and grades found in excess during the course of visit of the officers on 10.07.2015. In the Panchnama as well as in the statement though it has been recorded that these goods were found in excess, however, no where the appellant nor the representative has admitted to have stored this excess quantity of goods meant to be cleared clandestinely without payment of duty, not any evidence in this regard brought on record by the Revenue.

7. In these circumstances, I do not find any reason to direct confiscation of the goods found in excess in view of the Judgment of Hon'ble Gujarat High Court in Saurashtra Cement's case (supra). Further, I find that admittedly there was non-accountal of the goods in the statutory RG-1 register, but since the penalty has been imposed under 11AC of Central Excise Act, 1944 and in absence of suppression of facts, mis-declaration etc penalty cannot be confirmed under the said provision. Besides, no other penal provision for imposition of penalty has been invoked in the show cause notice. Hence, no penalty is imposable on the appellant. Accordingly, the impugned order is set aside and the Appeal is allowed.

7. I find that the Hon'ble Tribunal has set aside the OIA supra in view of judgment of Hon'ble High Court in Saurashtra Cement's case [2010 (260) ELT 71-Guj]. On perusal of the said judgment, I observe that the Hon'ble Gujarat High Court in case of Saurashtra Cement has decided the issue relating to delay in payment of duty about 25 to 56 days on clearance finished goods and wherein, show cause notices were issued for demanding Central excise duty under Section 11A of the Central Excise Act, 1944 along with interest under Section 8(3) (sic) of the Act and penalty under Rule 25 of the Rules. The Hon'ble Court has held that:

"-Penalty whether imposable under Rule 25 or Rule 27 of Central Excise Rules, 2002 - Rule 25 ibid invocable subject to Section 11AC of Central Excise Act, 1944 - Ingredients like suppression or wilful mis-statement mentioned in Section 11AC ibid to be considered while determining penalty under Rule 25



*ibid - Intention to evade duty payment absent in present case - Duty could not be paid in time due to stringent financial conditions and the same paid with interest as soon as liquidity was available - Impugned order holding penalty under Rule 25 *ibid* not imposable for alleged default and restricting to penalty of Rs. 5,000 under Rule 27 *ibid*, sustainable*

8. The delay in payment of duty (which is duly reflected in monthly returns) are totally different from non accountal of goods in statutory records and are totally non relevant and different from impugned case. I find that the issue involved in the appellant's case is relating to unaccounted finished goods of 40099 boxes in the statutory records; that such huge stock of finished goods was found lying in the dispatch finished stock area. I find that consignment was so huge that it took 3 days (8th to 10th of September 2015) to just count the stock and detect discrepancies. It is also a fact on record that the appellant could not give any reasons for such unaccounted/excess goods found lying in the dispatch area. I would like to refer to the statements of S/Shri Nitin Narayanbhai Patel and Vimal Ishwarbhai Prajapati. I observe that in the appellant's sister concern a case was booked in 2015 and repeat of such offence is not casual but deliberate because Manager as well as owner could not explain any reasons for such act because there was no valid reason as on that date and they could have been confronted with any concocted story. In the instant case, huge quantity of finished goods of 40099 boxes of finished goods found unaccounted in dispatch area cannot be considered as a procedural lapse on the part of the appellant. I observe that in the instant case, decision of Shree Shyam Pulp & Board Mills Ltd [2014 (309) ELT 497-Tri. Del] is squarely applicable which reads as under:

5. We have considered the submissions made by both the sides and perused the records. The first point of the dispute is regarding confiscation of 34.0791 MT printing and writing paper valued at Rs. 6,47,917/- which was not entered in RG 1 register. The appellants do not dispute the fact of non-accountal of this stock of writing and printing paper which represents more than one day's production. The only explanation given by the appellant is that there was no intention on their part to clear the excess stock without payment of duty. In our view, this explanation is not acceptable, as in terms of the provisions of Rule 25(1)(b) of Central Excise Rules, 2002, penalty under this Rule is attracted for non-accountal of any excisable goods produced or manufactured by an assessee and in this regard mens rea is not required to be established. Therefore, the confiscation of the goods along with the option to the appellant to redeem the same on payment of redemption fine in lieu of confiscation and penalty on appellant company is upheld."

9. Further, it would be pertinent to look at the relevant excerpts from Rule 25 of the CER 2002.

RULE 25. Confiscation and penalty. — (1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, -

(a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or

(b) does not account for any excisable goods produced or manufactured or stored by him; or

(c).....



(d) *contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,*

then, all such goods shall be liable to confiscation

10. The difference between two independent provisions 25(1)(b) and 25(1)(d) *ibid* needs to be highlighted. Any excisable goods, if not accounted, are liable to confiscation and the intent to evade duty is not a necessary prerequisite for the same. Therefore, in view of findings at Para 7 above, all excisable goods found available on 08/09/10.07.2015 were liable for confiscation, in consonance with the provisions enumerated in rule 25(1)(b) of the CER, 2002. The appellant could not give any reasons for such unaccounted of huge quantity of 40099 boxes of finished goods. The above said contraventions and omissions need to be seen in the context of the nature of sensitive commodity due to their easy salability in open market, which are not institutional buyers. These facts compel me to hold that the provisions of Rule 25(1)(d) *ibid* also are attracted independently, to hold confiscation. Therefore, no interference is required to be made in the impugned order with regard to order of confiscation of seized goods.

11. Further, failure to maintain accounts of goods manufactured and cleared by the appellant clearly attracts penalty under the provisions of Rule 25 of Central Excise Rules, 2002 which stipulates a penalty not exceeding the duty on the excisable goods in respect of which such contravention has been committed, or rupees two thousand, whichever is greater. Looking into the facts of the case, blatant disregard for the legal obligations regarding maintaining accounts of production, inventory and clearance, absence of past records, sensitive and evasion prone nature of the seized goods, I find no reason to interfere with the quantum of penalty imposed.

12. In view of above discussions, I reject the appeal filed by the appellant and uphold the impugned order.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

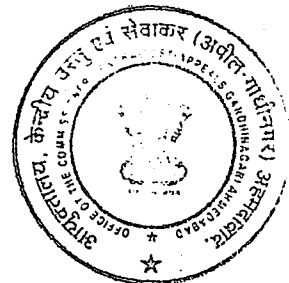
Date: /09/2018

Attested

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

BY R.P.A.D.

To,
M/s Swatik Ceracon Ltd (Unit-2),
25, Shobhasan Road,
Taluka & Dist Mehsana, Gujarat



Copy to:

1. The Chief Commissioner, Central GST Zone, Ahmedabad.
2. The Commissioner, Central GST, Gandhinagar
3. The Addl. Commissioner, (Systems), Central GST, Gandhinagar
4. The Dy. / Asstt. Commissioner, Central GST, Division-Mehsana
5. Guard file.
6. P.A file.