

	केंद्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
वस्तु एवं सेवा	कर भवन	GST-Building-7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad- 380015	
सत्यमेव जयते			
	सातवीं मंजिल: पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015		
 079-26305065			टेलीफैक्स : 079-26305136

1014570/10149

क फाइल संख्या : File No : **V2/44/RA/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-210-18-19**

दिनांक Date : **26-03-2019** जारी करने की तारीख Date of Issue:

29/4/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Cr. file

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

ग **अपर** आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **PLN-AC-CEX-07/2018**
दिनांक : **31-10-2018** से सृजित

Arising out of Order-in-Original: **PLN-AC-CEX-07/2018**, Date: **31-10-2018** Issued by:
Assistant Commissioner, CGST, Div: Palanpur, Gandhinagar Commissionerate,
Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Balaji Infratech,

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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।

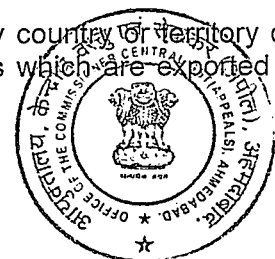
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

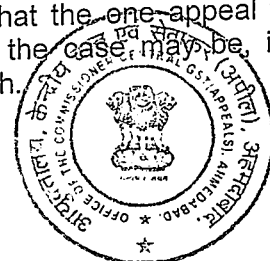
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(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 रूपर 5 लाख या उससे कम है वहां रूपर 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहां रूपर 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 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 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 63 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 हैं

- (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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

This appeal has been filed by the Assistant Commissioner of CGST Division, Palanpur under Section 35E of Central Excise Act, 1944 [hereinafter referred to as "the department" against Order-in-Original No.PLN-AC-C.EX-07/2018 dated 31.10.2018 [impugned order] passed by the Assistant Commissioner of CGST Division, Palanpur [hereinafter referred to as "adjudicating authority"] in case of M/s Balaji Infratech, Vill-Merwada, Tal-Palanpur, Dist.-Banaskantha (Gujarat) [hereinafter referred to as "the respondent"].

2. Briefly stated, the fact of the case is that based on the intelligence gathered that the respondent was removing their finished goods viz. PSC poles to M/s UGCVL, Palanpur (Gujarat) without maintaining proper account and without payment of central excise duty, a offence case was booked against them and during investigation, it was found that [i] finished goods viz., 2105 Nos. of Poles, valued at Rs.35,57,450/- involving duty of Rs.4,44,681/-, were lying in the premises without any proper account; and [ii] the respondent had cleared finished goods to M/s UGCVL under central excise invoices without payment of duty amounting to Rs.49,22,716/- during April 2014 to May 2015. The goods lying in the factory premises were seized by the officers under Panchnama dated 09.06.2015. The appellant had paid the duty amounting to Rs.4,44,681/- involved towards the seized goods and also paid penalty @15% of the duty amount on 06.11.2015. They also paid duty amounting to Rs.49,22,716/- with interest and penalty of Rs.66,702/- on 17.11.2015 in respect of illicit clearance made to M/s UGCVL. A Show Cause Notice dated 07.12.2015 was issued to the appellant for proposing confiscation of seized goods and imposition of penalty under Rule 25 of Central Excise Rules, 2002. The said show cause notice was adjudicated vide OIO dated 18.02.2016, wherein the seized goods were ordered for confiscation with an option to redeem on payment of fine of Rs. 8.89,370/-. Further, the duty amounting to Rs.4,44,681/- was confirmed and a penalty of Rs.4,44,681/- was also imposed on the appellant. The Commissioner (Appeals), vide OIA No.AHM-ECUS-003-APP-226-16-17 dated 25.01.2017 has uphold the OIO dated 18.02.2016 which was remanded by the Hon'ble CESTAT, vide order No.A/10124/2018 dated 01.01.2018, to the original adjudicating authority to re-consider the issue on the basis of whole submission made by the respondent. Accordingly, the adjudicating authority has decided the matter vide impugned order and concluded all proceedings initiated in the show cause notice.

3. Being aggrieved with the impugned order dated 31.10.2018, the department has filed the instant appeal on the grounds that:

- (i) the order passed by the adjudicating authority is incorrect in terms of legal provisions. The proceedings have been treated as concluded in terms of the Section 11 AC (1) (d) of the Central Excise Act, 1944 which is incorrect.



- (ii) the adjudicating authority did not take consideration of the judgment of Hon'ble Court of Madras in the case NGA Steels (P) Ltd. CCE, Salem/CESTAT-2017(350) ELT 51(Mad) wherein it was held that "however, mere payment of duty before issuance of show cause notice would not preclude the department, from levying redemption fine, once the fact of evasion of duty is made out, be it mala fide or not."
- (i) the Board vide Circular No. 11/2016-Customs dated 15.03.2016, which deals with Section 28 of the Central Excise Act, 1944, clarified that Section 28 applies only for recovery of duty or erroneous refund and same cannot be extended to different section from Section 110 to 121 of the Customs Act, 1962. Thus, no imposition of Redemption Fine by the adjudicating authority on the ground of demand conclusion of proceeding is legally erroneous:
- (ii) The adjudicating authority failed to appreciate the fact that act of the respondent of non-accounting of finished goods in daily stock register i.e. RG-1 register and non-maintaining of daily stock account, in contravention of Rule-10 of the Central Excise Rules, 2002.
- (iii) The adjudicating authority made gross error while construing the clarification given by Board vide Circular No. 137/46/2015-ST dated 18.08.2015.
- (iv) The adjudicating authority decided the case without taking into all legal aspects.

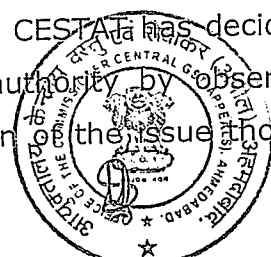
The department further requested to set-aside the impugned order and to remand the matter for considering the all the aspects.

4. The respondent has filed cross-objection on the appeal filed by the department, wherein, inter-alia stated that the reply filed against the show cause notice dated 07.12.2015 may be considered in the interest of natural justice.

5. Personal hearing in the matter was held on 07.03.2019. Shri N. R. Parmar, Consultant appeared for the same and explained the case. He further submitted an additional submission in this regard.

6. I have carefully gone through the facts of the case and submissions made by the department as well as by the respondent.

7. In the instant cases, I observe that the case is relating to confiscation of 2105 PSC poles valued at Rs. 35,57,450/- under Rules 25(1) (b) and (d) of Central Excise Rule, 2002 and imposition of redemption fine of Rs.8,89,370/-on release of seized goods. I find that the instant issue was decided by me, vide OIA dated 25.01.2017, by upholding the confiscation of the said goods and imposition of redemption fine imposed by the Assistant Commissioner vide his OIO dated 18.02.2016. The said OIA dated 25.01.2017 was set aside by the Hon'ble CESTAT vide Order dated 01.01.2018. The Hon'ble CESTAT has decided the matter by way of remand to the original adjudicating authority by observing that he has not recorded any findings regarding conclusion of the issue though it was specifically

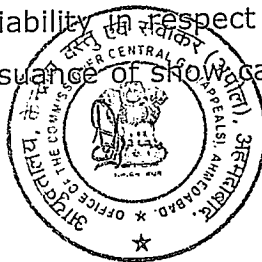


pleaded by the respondent. The order of the Hon'CESTAT is re-produced herein below:

"On perusal of records, it transpires that the issue is regarding confiscation of excisable goods manufactured and found in the factory premises during the visit of the Excise Officers and the said goods were not accounted for in the statutory accounts. The case of the Revenue in the show cause notice is that these goods were not accounted by the appellant for removal of the goods clandestinely, while it is the case of appellant before the Adjudicating Authority in the show cause notice that they have already discharged Central Excise duty along with 15% penalty which concludes the issue and there cannot be any confiscation. On deeper perusal of the entire records, I find that this point was specifically pleaded before the Adjudicating Authority and the Adjudicating Authority has not recorded any findings on this point and the First Appellate Authority it seem has recorded sketchy finding. In my view, this point being specifically raised by the appellant before the adjudicating authority, he should have addressed to, having not done so, in my view, the matter needs reconsideration by the adjudicating authority....."

8. I find that while passing the impugned order in the instant case, the adjudicating authority has considered all the facts and submissions pleaded by the respondent before him, as directed by the Hon'ble CESTAT's vide its order supra. I find that the instant case is only relating to confiscation of goods seized during investigation and penalty imposed thereof. Since the provisions of Rule 25 of CER is subject to the provisions of Section 11AC of CEA, all the proceedings under Rule 25 for confiscation of seized goods will be governed under the provisions of Section 11AC of CEA. As per provisions of Section 11 AC (d) of the CEA, 1944 *"where any duty demanded in a show cause notice and the interest payable thereon under section 11AA, issued in respect of transactions referred to in clause (c), is paid within thirty days of the communication of show cause notice, the amount of penalty liable to be paid by such person shall be fifteen per cent. of the duty demanded, subject to the condition that such reduced penalty is also paid within the period so specified and all proceedings in respect of the said duty, interest and penalty shall be deemed to be concluded;"*

9. I find that the department has concluded the main issue against the respondent, relating to illicit clearance of goods involving duty amounting to Rs.49,22,716/- as per the above cited provision, as the respondent had paid the entire duty liability with interest and penalty and the same was communicated to them by the department vide letter dated 24.10.2016. The issue involved in the instant case is also a part of the said offence case booked against the respondent. In the instant issue, I find that the respondent has also paid the entire duty involved in respect of seized goods along with requisite penalty @15% before the issuance of show cause notice. Since the goods in question were not removed by the respondent outside the factory premises, the adjudicating authority upholds that they were not liable to pay interest. I find merit consideration in the said contention. Therefore, I find that the liability in respect of seized goods has been discharged by the respondent before issuance of show cause notice. Therefore, the



respondent's case is well within the ambit of Section 11 AC (d) of CEA supra. Further, as contended by the adjudicating authority, there is no exclusion is given in respect of goods seized/confiscated in respect of transactions referred to in clause © of 11AC. Therefore, the issue is required to be concluded as per provisions of Section 11 AC (d) of CEA, as requested by the respondent.

10. The department has relied on the case law in respect of NGA Steels (P) Ltd. CCE, Salem/CESTAT-2017(350) ELT 51(Mad), wherein it has been held that mere payment of duty before issuance of show cause notice would not preclude the department, from levying redemption fine. Since the above referred statute clearly provides that all proceedings in respect of the duty, interest and penalty shall be deemed to be concluded in case of payment of the said duty, interest and penalty before issuance of notice or within thirty days of issuance of show cause notice, I do not find any merit in applying the ratio of the said decision in the instant case.

11. In the above circumstances, I find that the adjudicating authority has correctly refrained from imposing redemption fine in lieu of confiscation under the provisions of the section ibid. Therefore, I find no reason to interfere with the impugned order and uphold the same. The appeal filed by the department is rejected.

12. The appeal filed by the department stands disposed of in above terms.

उमाशंकर

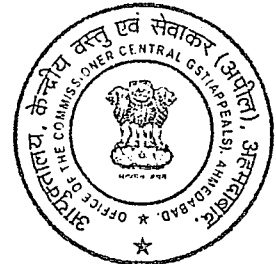
(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date: /03/2019

Attested

Mohan V.V
(Mohan V.V)
Superintendent (Appeals)
CGST, Ahmedabad



By R.P.A.D

1. To
M/s Balaji Infratech, Vill-Merwada,
Tal-Palanpur, Dist.-Banaskantha (Gujarat)
2. The Assistant Commissioner of CGST
Palanpur Division, Sardar Patel
Vyapar Sankul, Malgodown Road,
Mehsana-384002

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner, System-CGST Gandhinaar.
4. Guard File.
5. P.A. File.

