


	केन्द्रीय 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	सतवाणीमंजिल पोलिटिकनिक के पास	380015	
	आम्बावाडी अहमदाबाद-380015		
	079-26305065		079-26305136

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

5654705658

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-42-18-19**

दिनांक Date : **13/07/18** जारी करने की तारीख Date of Issue: *10/8/2018*

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 :
46/AC/EX/MEH/17-18 दिनांक : **23/03/2018** से सृजित

Arising out of Order-in-Original: **46/AC/EX/MEH/17-18**, Date: **23/03/2018** Issued by:
Assistant Commissioner, CGST, Div. Mensana, Gandhinagar Commissionerate,
Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Shah Alloys 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।

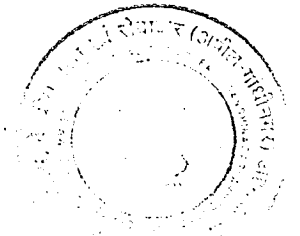
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

(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:-

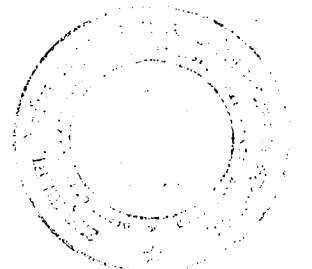
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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

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



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

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा 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 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

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

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

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) 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 होंगे।

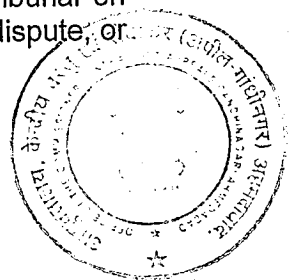
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994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

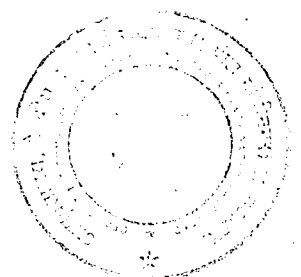
This order arises out of an appeal filed by M/s. Shah Alloys Ltd., Block No.2221/2222, Shah Industrial Estate, Sola-Kalol Road, Taluka Kalol, Distt. Gandhinagar (in short 'appellant') against Order-In-Original No. 46/AC/EX/MEH/17-18 dated 23.03.2018 (in short 'impugned letter') passed by the Assistant Commissioner, Central GST, Division Mehsana (in short 'adjudicating authority').

2. Briefly stated that periodical Show Cause Notice dated 30.06.2016 (for the period June-2015 to December-2015) was issued for wrong availment of Rs.6,00,736/- being Cenvat credit of service tax paid on **GTA Outward Transportation, Business Auxiliary Services viz. Consignment Commission Agent, Director Fees, Air Ticket Travel Agent, Insurance Survey Fees, Share Transfer Agent charges, Stock Exchange Listing Fees, Courier services and Technical & Testing Analysis Fees** as the same did not qualify the taste of 'input service' as defined in Rule 2(l) of the Cenvat Credit Rules, 2004 and as amended w.e.f. 01.04.2011. This SCN was adjudicated by the adjudicating authority vide impugned order wherein Cenvat credit of Rs.6,00,736/- wrongly availed was disallowed and ordered for recovery alongwith interest under Rule 14 ibid read with Section 11A(1) and 11AA of the Central Excise Act, 1944 respectively and also imposed penalty of Rs.6,00,736/- under Rule 15(1)ibid on the appellant.

3. Aggrieved with the impugned order, the appellant filed the present appeal wherein, *inter alia*, submitted that :

- (a) Regarding denial of Cenvat credit of Rs.2,11,850/- availed on outward freight, conditions prescribed in Board's Circular No.97/8/2007-ST dated 23.08.2007 are fulfilled since ownership of the goods remained with them until the goods are delivered to the buyers in acceptable condition as per contract/agreement and the freight is integral part of the price of the goods sold.
- (b) Services of professionals and Directors are essential for purchase and sale of goods and related matters including litigation etc. A director of the company also directs the affairs of the company and therefore is in the nature of professional. The adjudicating authority has overlooked the facts that the Hon'ble CESTAT, Ahmedabad vide Order No.A/12958/2017 dtd.03.10.2017 in their own case has allowed Cenvat credit of service tax paid on directors fees.
- (c) Courier services utilized by them for delivering documents to the buyers which is clearly in the nature of "activities relating to business" as contemplated in inclusive part of definition under Rule 2(l).
- (d) The Hon'ble CESTAT has allowed the Cenvat credit of service tax paid on travel agent service in a catena of decisions. The denial of Cenvat credit is therefore contrary to the settled legal position.
- (e) As regards denying credit on sales commission, the explanation inserted under sub-clause (c) of Rule 2(l) ibid vide Notifn. No.2/2016-CE(NT) dtd.03.02.2016 has clarified that Sales Commission Agent's services were also in nature of "input service" for the purpose of Cenvat credit. The

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clarification issued by the Board vide Circular No.943/4/2011-CX dated 29.04.2011 at Sr.No. 5 that credit was admissible on service of sale of goods on commission basis, and this circular is still not withdrawn.

- (f) The adjudicating authority has erred in holding that the services on which credit has been taken have no nexus with the manufacturing and clearance of final products and rely upon case laws of Coca Cola India Pvt. Ltd. reported in 2009(242) ELT-168.
- (g) The case laws relied upon by the adjudicating authority rendered on entirely different set of facts and circumstances and not applicable to their case.
- (h) Credit of Testing analysis service is admissible since it is integrally required for finished goods to be tested and without testing the finished goods cannot be said to be marketable. Similarly, stock exchange listing fees is admissible since business can run only when the company has sound source of funding and better corporate structure.
- (i) Penalty imposed under Rule 15 is unjustified in the facts of the case.
- (j) Section 11AA is not attracted in the instant case hence order to recover interest under Rule 14 is without authority in law.

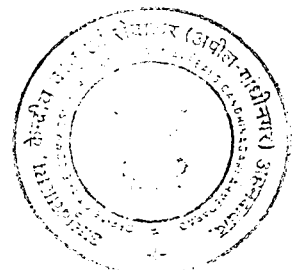
4. Personal hearing in the matter was fixed on 27.06.2018. Ms. Shilpa P. Dave, Advocate, appeared before me and reiterated the grounds of appeal and submitted that issues settled in earlier OIA has also not been allowed; submitted compilation of case laws and OIA in her favour.

5. I have carefully gone through the appeal memorandum, submissions made at the time of personal hearing and evidences available on records. I find that the main issue to be decided is whether the appellant is eligible for taking credit of service tax paid on various input services mentioned in para 2 supra or otherwise. Accordingly, I proceed to decide the case on merits.

6. Prima facie, I find that as per definition under Rule 2(l) of the Cenvat Credit rules, 2004, the services which are enumerated in the inclusive clause of the definition of "input service" are required to have been used upto the "place of removal". Therefore, only activities relating to business, which were taxable services and used by the manufacturer in relation to manufacture and clearance of final product upto the place of removal would be eligible as "input services". After the final product is cleared from the place of removal, there would be no scope for subsequent use of service to be treated as input service. Services beyond the stage of manufacture and clearance of the goods cannot be considered as input services. Thus, for the purpose of ascertaining the admissibility of Cenvat credit of service tax paid on services, the nature of service availed should be in consonance with the said parameters.

7. In the present case, I find that the SCN dtd.30.06.2016 was issued to the appellant for denying input service credit of service tax on (1) GTA Outward Transportation (2) Director's fees (3) Courier Services (4) Air Ticket Travel Agent





Services (5) Consignment Commission Agent (6) Insurance Survey Fees (7) Share Transfer Agent Charges (8) Stock Exchange Listing Fees and (9) Testing & Analysis services for the period June-2015 to December-2015. The appellant has stated during the personal hearing that the issues are settled in their own case in earlier OIA has not been allowed by the adjudicating authority. Since, there are many services involved in the present case, I take up one by one.

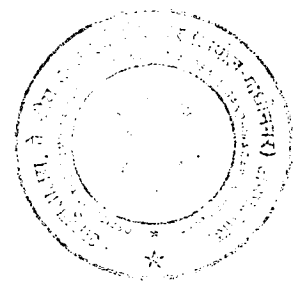
7.1 As regards GTA Outward transportation, I find that in earlier OIA, the appellant had challenged Cenvat credit of service tax paid on GTA Outward Transportation on exported goods whereas in the present case the appellant has challenged it for domestic sale. In this regard, I find that the appellant, in their reply dtd.22.07.2016 to the SCN dtd. 30.06.2016, has clearly resorted to the clarification issued by the Board vide Circular No.97/8/2007-ST dated 23.08.2007 on the subject matter and binding various case laws of higher appellate forum but the adjudicating authority has failed to follow the judicial discipline and without focusing and discussing on it as to how the same are not applicable in the appellant's case disallowed the Cenvat credit of service tax paid on said GTA Outward Transportation and ordered for recovery alongwith interest. Hence, to this extent, the matter is remanded back to the adjudicating authority to decide a fresh in light of the above.

7.2 As regards the Director's Fees, Courier services, Air Ticket Travel Agent Services, Consignment Commission Agent, this authority has already settled the issue vide OIA No. 193/16-17 dated 23.12.2016 and 20/16-17 dated 25.05.2016 in the appellant's own case. Hence, I do not find it necessary to discuss it again.

7.3 As regards the Insurance Survey Fees, I find that neither the appellant has put-forth any argument, in their reply dtd.22.07.2016 to the SCN dtd. 30.06.2016, nor the adjudicating authority has given any findings on it. Hence, to this extent, the matter is remanded back to the adjudicating authority for giving reasoned findings.

7.4 As regards Share Transfer Agent Charges and Stock Exchange Listing Fees, I find that the adjudicating authority has simply quoted the definition given in the Finance Act, 1994 and SEBI Rules respectively and disallowed the Cenvat credit without considering the submissions put forth by the appellant vide reply dtd.22.07.2016 to the SCN dated 30.06.2016. I find that the Adjudicating authority did not conduct any inquiry from end of service provider to ascertain nature of service provided and whether such service was consumed either in manufacture or providing output service by appellant. Exhaustive proper test and inquiry is required to be conducted to discover truth of input credit claimed Hence, to this extent, the matter is remanded back to the adjudicating authority for giving reasoned findings.





7.5 As regards Technical & Testing Analysis Fees, the appellant has submitted that testing and analysis service is integrally required for the finished goods to be tested and without this the finished goods cannot be called marketable and put forth catena of case laws. In this regard, I find that the appellant is manufacturer of goods falling under Chapter 72 and 73 of the Central Excise Tariff Act, 1985. So, the testing and analysis is invariably required to be done, whether inside or outside the factory premises and whether as per customer's requirement or otherwise, to meet the specific standard in the competitive market before clearance of the goods. I have also carefully gone through the case laws relied upon on the subject matter put forth at the time of personal hearing. I find that most of them relates to export of goods. I also find that in the instant case whether the testing and analysis fees were incurred for exported goods or otherwise. Hence, to this extent, the matter is remanded back to the adjudicating authority for giving reasoned findings.

8. In view of the above discussion and findings, the appeal filed by the appellant is partly allowed and partly remanded back to the adjudicating authority to decide afresh within 30 days of communication of this order after following the principle of natural justice.

9. 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)
Dt. 13.07.2018

Attested:

B.A. Patel
09/08/18
(B.A. Patel)
Supdt.(Appeals)
CGST, Ahmedabad.

BY SPEED POST TO:

M/s. Shah Alloys Ltd.,
Block No.2221/2222, Shah Industrial Estate,
Sola-Kalol Road, Taluka Kalol,
Distt. Gandhinagar.

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Gandhinagar (RRA Section).
- (3) The Asstt. Commissioner, CGST, Division Mehsana.
- (4) The Asstt. Commissioner(System), CGST, Gandhinagar.
(for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.

