
	केन्द्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX		
सत्यमेव जयते	वस्तु	एवम् सेवा	कर भवन
	सातवी मंजिल पॉलिटेक्निक के पास		आम्बावाडी, अहमदाबाद-380015
	आम्बावाडी, अहमदाबाद-380015		
	: 079-26305065		टेलिफैक्स : 079-26305136

क फाइल संख्या : File No : **V2/49/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-77-18-19**

दिनांक Date : **30.08.2018** जारी करने की तारीख Date of Issue: **6/9/2018**

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 : **44/AC/EX/MEH/17-18** दिनांक : **20-03-2018** से सृजित

Arising out of Order-in-Original: **44/AC/EX/MEH/17-18**, Date: **20-03-2018** Issued by: Assistant Commissioner, CGST, Div: Mehsana, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

**M/s. Windsor Machine 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।

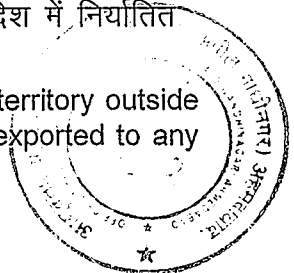
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case,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

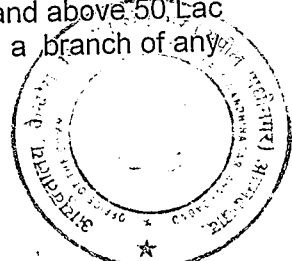
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के 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 हॉस्पिटल 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर 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 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 (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, 1994 की धारा 43 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

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

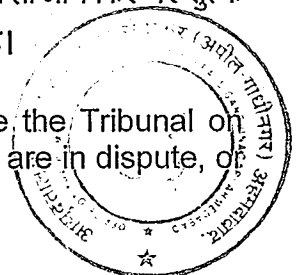
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

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



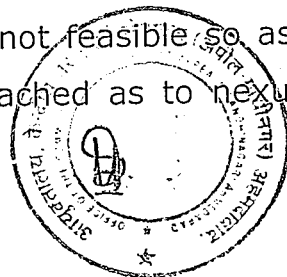
**ORDER IN APPEAL**

This appeal has been filed by M/s Windsor Machine Ltd., Pot No. 06-07, Phase-I, GIDC, Chhatral, Taluka - Kalol (herein after referred to as the appellants) against the OIO No. 44/AC/EX/MEH/17-18 dtd. 20.03.2018 (herein after referred to as the impugned order) passed by the Assistant Commissioner, Central Excise, Division-Mehsana (herein after referred to as the adjudicating authority).

2. The brief facts of the case are that the appellants were engaged in manufacturing wiring harness and were availing the benefits of cenvat credit as per Cenvat Credit Rules, 2004 (for brevity "CCR"). During the audit, it was noticed that the appellants had availed cenvat credit amounting to Rs. 9,98,938/- on outdoor catering services and legal services received by them for setting up other unit overseas. The appellants were issued show cause notice for wrongly availing cenvat credit amounting to Rs. 9,98,938/-. The adjudicating authority found that the appellants were not entitled for cenvat credit amounting to Rs. 5,48,463/- on outdoor catering services as it did not fall in the given definition in Rule 2(1) of the CCR and cenvat credit amounting to Rs. 4,50,475/- on legal services as it did not fall in the definition of input services as defined in Rule 2 (I) of CCR as the "services used in relation to setting up" premises of provider of output service or an office relating to such factory or premises is omitted from inclusive portion of the definition of the input service with effect from 01.04.2011. The adjudicating authority accordingly rejected the cenvat credit amounting to Rs. 9,98,938/- and order recovery of the same along with interest and also imposed penalty of equivalent amount under Section 11AA of the Central Excise Act, 1944.

3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- a) That the service of the canteen contractor is towards fulfillment of the legal obligation as per the Factory Act which makes providing canteen facility mandatory;
- b) That the cost of such services clearly forms part of the cost of production and therefore is part of the value charged by them. When the cost of service is part of cost of production, the credit is clearly admissible as held in the case of GTC Industries Ltd. reported in 2008 (12) STR-468 (Tri.-LB);
- c) That in case of input services, it is not feasible so as to establish nexus and there is no condition attached as to nexus etc. in the



said definition. They rely on the judgement of Hon'ble Supreme Court in the case of Ramala Sahkari Chini Mills Ltd. vs. CCE, Meerut-I-2016 (334) E.L.T. 3 (S.C.) and the legal service is clearly covered in the inclusive part of the definition;

d) That the demand is also barred by limitation as there was no intention to evade payment of duty.

4. The personal hearing in the case was held on 27.06.2018 in which Shri Vimal Thakkar and Shri Vishal Patel, Authorised persons appeared on behalf of the appellants. They reiterated the grounds of appeal. They further stated that the legal help was taken for takeover of a company in Italy and the tax was paid under reverse charge mechanism.

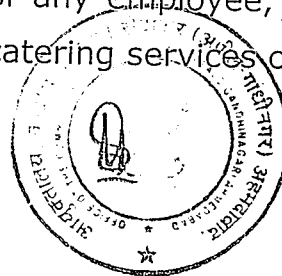
5. I have carefully perused the documents pertaining to the case and submitted by the appellants along with the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions during personal hearing.

6. I find that the issues to be decided in the instant case are whether the cenvat credit has been rightly rejected by the adjudicating authority on outdoor catering and the other on legal charges paid outside India for setting up business on the ground mentioned in the impugned order.

7. First of all, I take up the case of rejection of cenvat credit availed for outdoor catering services. The rule 2 of the Cenvat Credit Rules, 2004 deals with the various definitions for the purpose of allowing or otherwise cenvat credit. The main part of the definitions with which we are concerned in the instant case is Rule 2 (I) which defines "input service". After the Notification No. 3/2011-C.E. (N.T.) dtd. 01.03.2011, the exclusion clause (C) which deals with the category of input services on which cenvat credit will not be allowed, reads as under:

*"such as those provided in relation to **outdoor catering**, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, **when such services are used primarily for personal use or consumption of any employee;**" (emphasis provided)*

On going through the definition of the input services and reading that with the specific exclusion of certain category of input services which are used primarily for personal use or consumption of any employee, it leaves no doubt that the cenvat credit taken on outdoor catering services cannot be held admissible.



Moreover the interpretation cannot add words to the definition, where definition is unambiguous and crystal clear. The Hon'ble High Court of Bombay in the case of Nicholas Piramal (India) Limited [2009(244) ELT 321 (Bom)], has on the question of interpretation of Rules, made the following observation:

*"We may only mention that hardship cannot result in giving a go-by to the language of the rule and making the rule superfluous. In such a case it is for the assessee to represent to the rule making authority pointing out the defects if any. Courts cannot in the guise of interpretation take upon themselves the task of taking over legislative function of the rule making authorities. In our constitutional scheme that is reserved to the legislature or the delegate.*

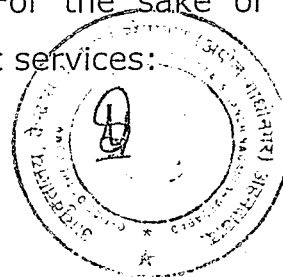
*Hardship or breaking down of the rule even if it happens in some cases by itself does not make the rule bad unless the rule itself cannot be made operative. At the highest it would be a matter requiring reconsideration by the delegate.*

*It is never possible for the Legislature to conceive every possible difficulty. As noted a provision or a rule can occasion hardship to a few, that cannot result in the rule being considered as absurd or manifestly unjust.*

*In our opinion, the rule must ordinarily be read in its literal sense unless it gives rise to an ambiguity or absurd results."*

8. I find that the Hon'ble Tribunal's had pronounced eligibility of CENVAT credit on various items, before 2011. Despite the Legislature being aware of these judgements/orders, yet it chose to restrict the credit by changing the eligibility in 2011, by excluding these items. Hon'ble Supreme Court has very categorically stated that *"Courts cannot add words to a statute or read words into it which are not there"* (Parmeshwaran Subramani [2009(242)ELT 162(SC)]). Moreover, in the guise of interpretation, no intention can be added, when intention of legislature is very clear. In view of the foregoing, I agree with the view taken by the adjudicating authority that the CENVAT credit was wrongly availed by the appellant as far as this issue is concerned.

9. Now I take up the issue of disallowance of cenvat credit amounting to Rs. 4,50,475/- on legal services as it did not fall in the definition of input services as defined in Rule 2 (I) of CCR as the "services used in relation to setting up" premises of provider of output service or an office relating to such factory or premises is omitted from inclusive portion of the definition of the input service with effect from 01.04.2011. For the sake of ease, I reproduce the relevant part of the definition of input services:

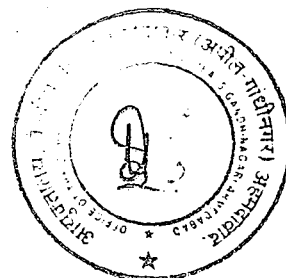


"(I) "input service" means any service, -  
 (i) used by a provider of output service [**OLD- taxable service**] for providing an output service; or  
 (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,]  
 and **includes** services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, **legal services**, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes..."  
 (emphasis supplied)

from the above definition, I find that it has been very clearly mentioned that legal services have been mentioned in the definition and it has been mentioned after the word "includes" which means the list is only illustrative and it is not exhaustive. The adjudicating authority has given findings that the word "setting up" of a factory, premises or provider of output services etc. has been removed from the definition w.e.f. 01.04.2011 but legal services are there in that illustrative list. There is no clarification as to the purpose for which legal services are used to qualify to be eligible for cenvat credit. It is without doubt that the legal services should be related to the output services or manufacture. I therefore find no reason to disallow the cenvat credit availed on the legal services availed by the appellants.

10. As regards imposition of penalty, in view of the fact that the cenvat credit on legal services has been allowed, the penalty is also reduced proportionately. I do not agree with the contentions of the appellants that the demand was barred by limitation. I find that the outdoor catering services were specifically excluded from the purview of eligibility of cenvat credit and still the appellants availed the cenvat credit. There is no room for confusion about eligibility so the contentions raised by the appellants cannot be accepted.

10. The appeal is disposed off accordingly.



अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

*उमा शंकर*

(उमा शंकर)

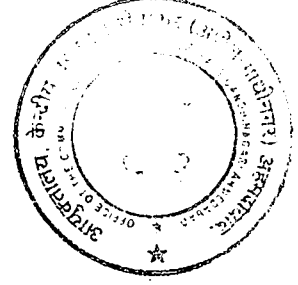
केंद्रीय कर आयुक्त (अपील्स)  
अहमदाबाद

दिनांक:

सत्यापित

*धर्मेंद्र उपाध्याय*

(धर्मेंद्र उपाध्याय)  
अधीक्षक (अपील्स),  
केंद्रीय कर, अहमदाबाद



**By R.P.A.D.**

To:

M/s Windsor Machine Ltd.,  
Pot No. 06-07,  
Phase-I,  
GIDC- Chhatral,  
Taluka - Kalol

**Copy to:-**

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Gandhinagar,
- (3) The Dy./Astt. Commissioner, CGST, Div.-kalol, Gandhinagar,
- (4) The Dy./Astt. Commissioner(Systems),CGST, Gandhinagar,
- (5) Guard File,
- (6) P.A.File.