

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

क फाइल संख्या : File No : **V2/18/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-82-18-19**

दिनांक Date : **30.08.2018** जारी करने की तारीख Date of Issue: **11/9/2018**

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 :
21/D/GNR/NK/201-18 दिनांक : **28-02-2018** से सृजित

Arising out of Order-in-Original: **21/D/GNR/NK/201-18**, Date: **28-02-2018** Issued by:
Assistant Commissioner, CGST, Div: Gandhinagar, Gandhinagar
Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. AGC Network 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।

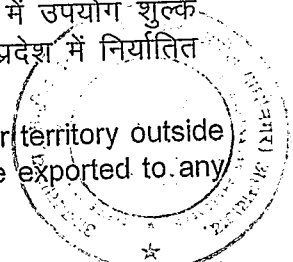
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

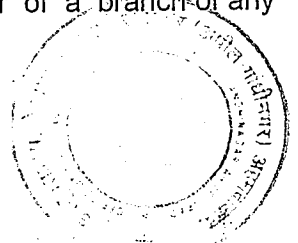
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना 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 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 34F 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 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 अर्जी एवं अपील को लागू नहीं होंगे।

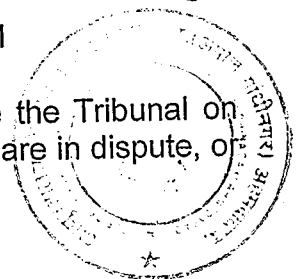
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994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



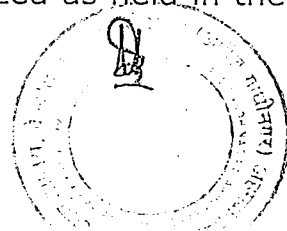
O R D E R - I N - A P P E A L

M/s AGC Network Ltd., E-1/1, Electronic Estate, Sector-25, Gandhinagar (henceforth, "*appellants*") have filed the appeal against the Order-in-Original No. 21/D/GNR/NK/2017-18 dated 28.02.2018 (henceforth, "*impugned order*") passed by the Asstt. Commissioner of C.Excise, Division-Gandhinagar, Ahmedabad-III (henceforth, "*adjudicating authority*").

2. Briefly stated, the facts of the case are that a show cause notice dtd. 13.01.2017, based on departmental audit was issued to the appellant on for recovery of wrongly availed Cenvat credit of Rs. 21,48,053/- by invoking extended time availed by the appellants during the period 2014-15 and 2015-16. Out of this amount, credit of Rs. 1,32,421/- was taken excess through oversight and credit of Rs. 20,15,590/- was taken on ineligible invoices as they were in the name of appellants' branch offices which were not registered. The appellants paid the amount of Rs. 1,32,421/- with interest and paid the amount of Rs. 20,15,590/- on being pointed out but did not pay the interest thereon. The adjudicating authority, vide the impugned order, disallowed the Cenvat credit and ordered appropriation of the amount paid by the appellants along with interest. Penalty amounting to Rs. 21,48,053/- was also imposed under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1994.

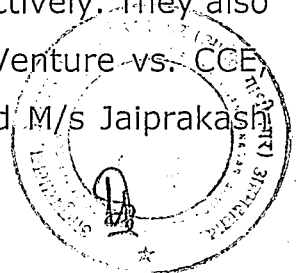
3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- a) That the excess availment of credit was voluntarily paid by them and such excess availed credit had never been utilized by them and therefore the amount of interest paid by them should be refunded to them;
- b) That the Rule 14 provided for recovery of interest where the cenvat credit has been taken or utilized wrongly but the word "or" has been substituted with the expression "and" by virtue of Notification No. 18/2012-CE(NT) dtd. 17.03.2012 with effect from 01.04.2012 and therefore interest could be recovered from an assessee only where cenvat credit had been taken and utilized. In the instant case, cenvat credit was not utilized but was only taken so no interest is recoverable as held in the case of Maruti Udyog Ltd. reported in 2007(214) ELT-173 (P&H);
- c) That interest is a compensatory measure and hence interest could be charged and recovered only when it was utilized as held in the case of



Bill Forge Pvt. Ltd. – 2012 (26) STR-204 (Kar.) and Pearl Insulation Ltd. – 2012 (281) ELT-192 (Kar.);

- d) That they had balance in their cenvat credit account so no malafide intention can be attributed to them. They are maintaining all the records are being maintained at the premises where manufacturing activity is taking place and the branch offices have no separate accounting system and accounts of the branch form part of the head office accounts;
- e) That the receipt of the input and their utilization for providing output service is not disputed so credit should not be denied. They rely on the case laws of Manipal Advertising Services Pvt. Ltd. vs. CCE, Mangalore – 2010 (19) STR-506 (Tri.Bang), Rajasthan Diesel Sales & Services vs. CCE-Jaipur-II – 2014 (36) STR-832 (Tri.Del.); Mahindra & Mahindra Ltd. vs. CCE, Nagpur – 2015 (38) STR-830 (Tri.Mum.) and Ketan Motors Ltd. vs. CCE, Nagpur – 2015 (39) STR-858 (Tri. Mum.)
- f) That the issue of availment of credit on the basis of invoices issued in the name of the branch offices which were not registered is no more res-integra as held in the case laws of Adbur Pvt. Ltd. vs. CCE, Delhi Reported in 2017 (5) GSTL-334 (Tri-Del.), Manipal Advertising Services Pvt. Ltd. vs. CCE, Mangalore – 2010 (19) STR-506 (Tri.Bang); General Electric International INC vs. CCE, Delhi – 2009 (13) STR-565 (Tri.Del.), EXL Service Com India Pvt. Ltd. vs. CCE & Cus., Noida – 2016 (43) STR-294 (Tri.All.) and Mahindra & Mahindra Ltd. vs. CCE, Nagpur – 2015 (38) STR-830 (Tri.Mum.);
- g) That the charge of suppression of facts is not correct as they had shown the details of cenvat credit availed in their ST-3 returns.
- h) That it is wrong to confirm demand under rule 9 (1) of the CCR as it only stipulates the documents on the basis of which credit can be availed by the assessee and since in the instant case, credit is availed on the basis of manufacturer/service provider invoices showing duty payment, there is no contravention of Rule 9;
- i) That they were under a bonafide impression that they were not duty bound to disclose the information about availment of credit on invoices addressed to branches. The Hon'ble Supreme Court in the case of Padmini Products and Chemphar Drugs & Liniments reported in 1989 (43) ELT-195 (SC) and 1989 (40) ELT-276 (SC) respectively. They also relied upon case laws of Continental Foundation Jt. Venture vs. CCE, Chandigarh reported in 2007 (216) ELT-177 (SC) and M/s Jaiprakash Industries Ltd. reported in 2002 (146) ELT-481 (SC).



4. The personal hearing in the case was held on 15.06.2018 in which Smt. Shilpa P. Dave, Advocate appeared on behalf of the appellants. She reiterated the grounds of appeal. She submitted that huge balance was lying in their accounts and the credit was availed on invoices which were in the name of branch offices. She cited the case law of Adbur (supre).

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 and additional written submissions submitted during personal hearing.

6. The issues to be decided are of availment of excess cenvat credit and of admissibility of Cenvat credit on invoices which contained names of different person and not of the appellants.

7. First of all, I take up the issue of availment of excess cenvat credit of Rs. 1,32,463/- which has been voluntarily paid by the appellants with interest. From the case records, it is found that the excess credit was taken in the month of January, 2015. The adjudicating authority has confirmed the recovery of interest in view of the provisions of Rule 14 (2) of the CCR which were incorporated vide Notification No. 06/2015-CE (NT), DT. 01/03/2015 which provided the sequence of availment and utilization of cenvat credit. These changes were effected from 01.03.2015 whereas the credit was availed in January, 2015. So these provisions will not be applicable in the instant case and the confirmation of recovery of interest is not tenable. There are plethora of case laws in which it has been held that when cenvat credit availed wrongly is reversed without utilization of the same, no interest liability arises. I also hold accordingly.

8. I further find that in the para 9.3 of the impugned order, the adjudicating authority has quoted Rule 14 (1) (ii) of the CCR and I quote the relevant part of the same as under:

*"(1) (ii) Where the CENVAT credit has been **taken and utilized** wrongly or has been erroneously refunded, the same shall be recovered along with interest from the" (emphasis supplied)*

And the adjudicating authority has gone on to rely on the Rule 14 (2) of the CCR which proposes that for the purpose of sub-rule (1), all credits taken during a month shall be deemed to have been taken on the last day of the month and the utilization thereof shall be deemed to have occurred in the following manner i.e. first the opening balance of the month has been utilized, then the credit admissible in terms of these rules taken during the month has been utilized and after that the credit inadmissible in terms of



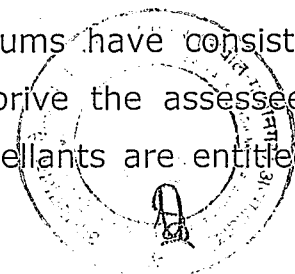
these rules taken during the month has been utilized. The adjudicating authority has gone on to conclude in para 9.5 that due to the provisions of sequence of utilization of cenvat credit, the interest is recoverable. On perusal of the para 9.5, I find that the adjudicating authority has not given any findings regarding opening balance, availment of cenvat credit and month wise utilization. He has merely reproduced the statutory provisions and has reached on conclusion. Without giving any findings based on facts and evidences, it is not allowable to fasten any liability on the appellants. I therefore set aside the impugned order regarding confirmation of recovery of interest on the excess credit taken.

8. Now I take up the issue of availment of cenvat credit on the invoices which were in the name of their branches. I find that the cenvat credit has been denied on this sole ground. From the case records I find that there is no dispute that the input services have been utilized by the appellants in providing their output services and they have paid the value of the input services along with applicable service tax to the input service provider. I accordingly find that the availment of cenvat credit on basis of invoices which were in the name of the appellants' branches is a procedural mistake and therefore substantial benefit cannot be denied. I also find support from the case law of Adbur Pvt. Ltd. vs. CCE, Delhi Reported in 2017 (5) GSTL-334 (Tri-Del.) and I quote the relevant part of the order:

"9. Regarding denial of Cenvat credit on the ground that the invoices were addressed to unregistered premises of the appellant, we note that there is no dispute regarding eligibility of input service for availability of credit to the appellant. The denial of credit is only with reference to address in the document. We find in various decisions, this Tribunal held that the credit cannot be denied on this reason..."

I also find support from the case law of Manipal Advertising Services Pvt. Ltd. Vs. C.C.E., Mangalore cited at 2010 (19) S.T.R. 506 (Tri. - Bang.). I therefore allow the appeal and set aside the impugned order.

In view of the above, I find that no other reason for denial of cenvat credit has been alleged against the appellants and there is no dispute that the appellants are eligible for availing cenvat credit in all other respects. There is no dispute that the branches are of the appellants and there is centralized accounting for all branches and the services are utilized in providing output services. Tribunals and higher forums have consistently held that procedural lapses should be used to deprive the assessee of substantial benefits. I accordingly hold that the appellants are entitled for



credit which they availed on the invoices which were in the names of their branches. I therefore allow the appeal and set aside the impugned order.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा नतीजतन लाभों के साथ उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms with consequential relief.

उमा शंकर

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:

सत्यापित

रमेश

(धर्म उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To,

M/s AGC Network Ltd.,

E-1/1, Electronic Estate,

Sector-25,

Gandhinagar

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Gandhinagar.
3. The Addl Comm'r, Central Tax (System), Gandhinagar, Ahmedabad-III
4. The Astt./Dy. Commissioner, Central Tax, Gandhinagar, Ahmedabad-III.
5. Guard File.
6. P.A.

