
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन सप्तवीमजिल पॉलिटेक्निक के पास आम्बावाडी, अहमदाबाद-380015 079-26305065	 GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015 टेलीफेक्स : 079-26305136
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क फाइल संख्या : File No : V2/158/GNR/2018-19 / 10871 to 10876

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-08-19-20

दिनांक Date : 27-05-2019 जारी करने की तारीख Date of Issue:

03/06/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

G. file

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

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : AHM-CEX-003-ADC-AJS-006-18-19 दिनांक : 04-10-2018 से सृजित

Arising out of Order-in-Original: AHM-CEX-003-ADC-AJS-006-18-19, Date: 04-10-2018
 Issued by: Additional Commissioner, CGST, Div: RRA, HQ, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Oswal Infrastructure 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।

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।

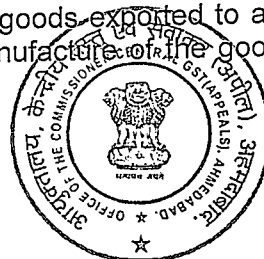
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

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 83 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."

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.

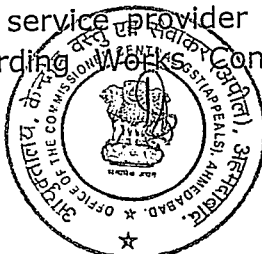


ORDER IN APPEAL

M/s. Oswal Infrastructure Ltd., Block No. 258, Village Ola, Ta. Kalol (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number AHM-CEX-003-ADC-AJS-006-18-19 dated 04.10.2018 (*hereinafter referred to as 'impugned order'*) passed by the Additional Commissioner, Central GST & Central Excise, Gandhinagar (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that on the basis of information that the appellants were indulged in the activity of evasion of Central Excise duty and Service Tax, a search was conducted at two premises of the appellants. One premises was at village Ola (mentioned above) and the other one was at 123/3, Ravi Industrial Estate, Bileshwarpura, Kalol-Mehsana Highway, Chhatral. During the course of search, some discrepancies were noticed and accordingly, a show cause notice, dated 28.04.2017, was issued to the appellants. Said show cause notice was adjudicated by the adjudicating authority, vide the impugned order. The adjudicating authority confirmed the demand of ₹9,95,981/- (Works Contract Service ₹5,88,896/- + Rent-a-Cab Service ₹64,333/- + Manpower Supply Service ₹3,42,752/-) under Section 73(1) of the Finance Act, 1994 and ordered to appropriate the amount of ₹6,58,500/- already paid by the appellants. The adjudicating authority further demanded interest under Section 75 of the Finance Act, 1994 and ordered to appropriate the interest of ₹71,598/- already paid by the appellants. He imposed penalty under Section 78 of the Finance Act, 1994 amounting to ₹9,95,981/- and ordered to appropriate the penalty of ₹43,940/- already paid by the appellants. The adjudicating authority further confirmed demand of wrong availment of Cenvat credit amounting to ₹24,35,862/- (₹91,112/- + ₹20,15,110/- + ₹6,489/- + ₹3,23,151/-) under Section 73(1) of the Finance Act, 1994 and imposed interest and penalty under Section 75 and 78 respectively of the Finance Act, 1994. The adjudicating authority also imposed penalty under Section 77(1) and 77(2) of the Finance Act, 1994, amounting to ₹10,000/- each. He charged late fee of ₹500/- in respect of ST-3 returns for the period of October 2013 to March 2014, under Section 70 of the Finance Act, 1994. The adjudicating authority also charged late fee of ₹300/- in respect of ER-1 return for the month of March 2013, under Rule 12 of the Central Excise Rules, 2002. The adjudicating authority confirmed demand of interest of ₹6,66,461/- and ₹96,544/- under Section 75 of the Finance Act, 1994 for delayed payment of Service Tax of ₹98,30,096/- and ₹14,30,000/- respectively and ordered to appropriate the said amounts of interest already paid by the appellants. The above demands were raised against the Bileshwarpura unit of the appellants. Finally, the adjudicating authority confirmed demand of late fee of ₹40,000/- (@ ₹20,000/- per return) in respect of ST-3 return for the periods of October 2012 to March 2013 and April 2013 to May 2013 of their Ola unit under Section 70 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellants preferred the present appeal before me. The appellants argued that they are not liable to pay Service Tax under Reverse Charge Mechanism, pertaining to Works Contract Services, Rent-a-Cab Service and Manpower Supply Service amounting to ₹9,95,981/-. Regarding Rent-a-Cab service, the appellants quoted that the vehicles were hired not on Km basis but on monthly rent and thus, cannot be treated as Rent-a-Cab service. Moreover, they had purchased diesel from the service provider and on the same, Service Tax cannot be charged. Regarding Works Contract Services, the appellants



claimed that same was not in nature of Works Contract and was of service simpliciter contracts. Regarding Manpower Supply services, the appellants argued that the service providers provided the service in the nature of construction activity. Under the said activity, payment made to the service providers was not related to number of laboures supplied but quantum of work carried out. Further, the workers of the service providers were not under the superintendence or control of the appellants. Regarding the issue of wrong availment of Cenvat credit, the appellants stated that they were eligible for the said Cenvat credits except the one amounting to ₹91,112/- where, the appellants had not availed the same but entered in their books of account.

4. Personal hearing in the case was granted on 01.05.2019 wherein Shri Bishan Shah, Chartered Accountant, appeared before me, on behalf of the appellants, and reiterated the contents of the grounds of appeal. He also submitted a synopsis of the entire issue.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I find that the case has several issues and therefore I take up all the issues serially.

6. The very first issue deals with the demand of ₹9,95,981/- pertaining to Works Contract Service, Rent-a-Cab Service and Manpower Supply Service. Regarding the Rent-a-Cab Service, the appellants claimed that the vehicles were hired on monthly rent and not on km basis and they had purchased diesel and hence, they are not liable for Service Tax. However, no such clarification is given in the definition of Rent-a-Cab Service. Rent-A-Cab Service means renting of any motor vehicle designed to carry passengers. As per Finance Act, 1994 the relevant definitions contained in Section 65 are as follows;

"Section 65(105)(o) - 'taxable service' means any service provided or to be provided "to any person, by a 'rent-a-cab scheme operator' in relation to the renting of a cab."

Section 65(91) - rent-a-cab scheme operator means any person engaged in the business of renting of cabs.

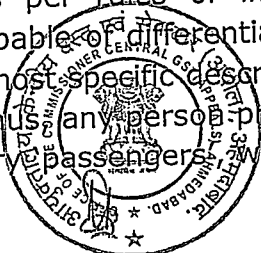
Section 65(20) - Cab means -

(i) a motorcab, or

(ii) a maxicab, or

(iii) any motor vehicle constructed or adapted to carry more than twelve passengers, excluding the driver, for hire or reward: Provided that the maxicab referred to in sub-clause (ii) or motor vehicle referred to in sub-clause (iii) which is rented for use by an educational body imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, shall not be included within the meaning of cab."

For the purposes of abatement and reverse charge mechanism, the service of renting of motor vehicle designed to carry passengers, has been specifically provided. And as per rules of interpretations under Section 66F(2), where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description. Thus any person providing service of 'renting' of motor vehicle designed to carry passengers, which is not covered under the



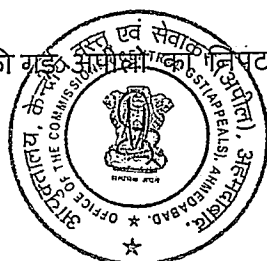
negative list under Section 66D and also not exempted vide Notification number 25/2012-ST dated the 20.06.2012 is covered in the description of rent-a-cab service. It can be clearly seen that renting of any motor vehicle (and not just a cab/taxi) is included. It means it includes renting of motor cars, motor cabs, maxi cabs, mini buses, buses and all other motor vehicles which are designed to carry passengers, irrespective of its passenger carrying capacity. It is pertinent to mention that as per declared service under Section 66E(f), the levy of Service Tax is attracted on transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods. But nowhere it is distinguished as to whether it is hired for fixed period or on km basis. Moreover, prior to 01-07-2012, i.e. in the positive list approach of taxation, various courts held that such services are in the nature of 'transportation service' provided to the customer wherein neither the possession, not the control has been given to the customer and Service Tax not attracted. In the case of *Kuldip Singh Gill Vs. CCE [2006(3) STR 689]*, *[STO-2005-CESTAT-324]* the Tribunal had observed that the vehicle running on kilometre basis are not liable to Service Tax. Also, In the case of *RS Travels Vs. CCE [2008 (12) STR 27] [(2008) 15 STT 437 (New Delhi - CESTAT)]*, where the Tribunal observed that the cab operator providing cab with driver for going from one place to another either on kilometre basis or lump sum basis based on the distance is that of a transportation service and observed that no Service Tax is payable as the control over the vehicle is with the rent-a-cab operator. Similar view was taken in the case of *Surya Tours & Travels Vs. CCE [2008 (10) TMI 123 - CESTAT, NEW DELHI]*. However, all these judgments are with respect to rent a cab scheme operator service which had a statutory definition under Section 65(91) and is no more applicable in the negative list regime. Thus, in my view, all such services which were earlier termed as transportation service are now liable to Service Tax as rent-a-cab service.

Regarding the issues of Works Contract Services and Manpower Supply Services, the contention of the appellants is not supported by any documentary evidence. Therefore, in absence of any agreement copy or memorandum between the appellants and various service provider, all the arguments tabled before me seem to be afterthought on the part of the appellants and hence I set aside the arguments of the appellants and consider that the adjudicating authority has rightly confirmed the demand of ₹9,95,981/-.

7. Regarding the issue of confirming demand of wrong availment of Cenvat credit amounting to ₹ 24,35,862/-, I have gone through the allegation of the adjudicating authority and the argument of the appellants. I find that the appellants have countered the allegation of the adjudicating authority without any supporting documentary evidence. Mere verbal statement has no *locus standi* in the eyes of law. The argument of the appellants, once again, sounds more like afterthought then genuine. In view of the above, I reject the contention of the appellants and accept the version of the adjudicating authority. Regarding rest of the issues, I find that the appellants have not challenged the decision of the adjudicating authority and therefore, I believe that the appellants have accepted the same.

8. In view of the discussion held above, I do not intend to interfere with the impugned order and reject the appeal filed by the appellants.

9. अपीलकर्ता द्वारा दर्ज की गई अपील को अपीलकर्ता द्वारा उपरोक्त तरीके से किया जाता है।



9. The appeal filed by the appellants stands disposed off in above terms.

उमा शंकर
(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED

S. Dutta
(S. DUTTA) 310519

SUPERINTENDENT,
CENTRAL TAX (APPEALS),
AHMEDABAD.



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Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Gandhinagar.
- 3) The Additional Commissioner, Central Tax, Gandhinagar.
- 4) The Dy./Asst. Commissioner, Central Tax, Div-Kalol, Gandhinagar.
- 5) The Asst. Commissioner (System), Central Tax, Gandhinagar.
- 6) Guard File.
- 7) P.A. File.

