



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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टेलिफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

(DIN:20210664SW0000000AEF)

क फाइल संख्या : File No : GAPPL/COM/STP/625/2020 /1756 70 1761
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP- 14/2021-22

दिनांक Date : 10-06-2021 जारी करने की तारीख Date of Issue 21-06-2021

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No 07/D/Meh-DK/20-21 dated 11.05.2020 issued by Deputy Commissioner, CGST & Central Excise, Preventive Section, Gandhinagar.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Real Enterprise, 1, Natraj Park Society, Behind P.B. Petrol Pump, Mehsana-384002.

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 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) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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 :

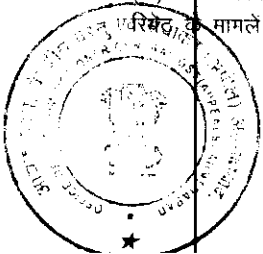
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(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.

(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।

(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 मामले 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.

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) केंद्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-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 ई 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, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केंद्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-

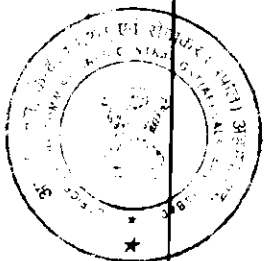
Under Section 112 of CGST act 2017 an appeal lies to:-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय 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 यथारिथति 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 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.

- (50) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

- (51) केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

(i) (Section) खंड 11D के तहत निर्धारित राशि;

(ii) लिया गलत सेनवैट क्रेडिट की राशि;

- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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

(xci) amount determined under Section 11 D;

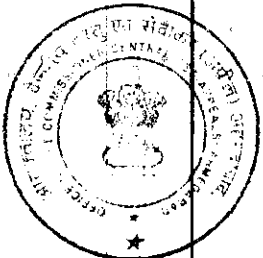
(xcii) amount of erroneous Cenvat Credit taken;

(xciii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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 appellate tribunal whenever it is constituted within three months from the president or the state president enter office.



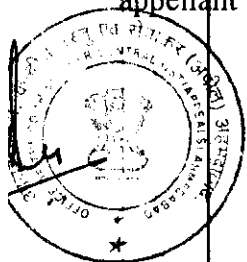
ORDER-IN-APPEAL

M/s. Real Enterprise, 1, Natraj Park Society, Behind P.B.Petrol Pump, Mehsana-384002 (*hereinafter referred as 'appellant'*) has filed the present appeal against the Order-in-Original No. 07/D/Meh-DK/20-21 dated 11.05.2020 (*hereinafter referred as 'impugned order'*) passed by the Deputy Commissioner, CGST & Central Excise, Preventive Section, Gandhinagar Commissionerate (*hereinafter referred as 'adjudicating authority'*) .

2(i). The facts of the case, in brief, are that the appellant was holding service tax registration no.AAKFR0582QST001 for providing Cargo Handling Services. During the test check of records of M/s. Gujarat Energy Transmission Co. (*hereinafter referred as 'GETCO'*) by the officers of CERA Audit, Ahmedabad, it was noticed that GETCO had received taxable service from the appellant and paid service tax on 50% on taxable value under reverse charge mechanism. The remaining 50% service tax, payable by the service provider, was retained by GETCO. Thus, it appeared that such retention has resulted into non-payment of service tax. Such amount was worked out to Rs.5,829/- by CERA Audit Officers. This observation was subsequently converted into LAR No. ST-108/2014-15 dated 20.05.2014. The Asstt. Commissioner, Central Excise & Service Tax, Mehsana Division, vide its letter dated 29.05.2014 reported to CERA Officer that in the instant case, the service receiver has fulfilled his liability towards payment of service tax to the extent of 50%. The remaining 50% amount of service tax shall be reimbursed to the service provider after he fulfils his share of service tax liability. Hence, there is no retention of collected service tax by the service receiver i.e. GETCO.

2(ii). Meanwhile, the Range Superintendent vide its letter dated 22.12.2014 informed the appellant about their liability to pay 50% service tax in respect of Work Contract Service (*hereinafter referred as 'WCS'*). The appellant was also requested to provide details of service tax payment, copy of contract in respect of GETCO, Profit & Loss Account, Balance Sheet for the last five years. Reminders were also issued on 10.11.2015, 28.11.2016, 25.04.2017, 13.09.2017, 20.09.2017, 15.02.2018, 15.06.2018, 21.08.2018 & on 04.09.2018, but the appellant did not provide any document.

2(iii). Since the appellant was not providing any document, Income Tax Office, Ward-2 was requested to provide the documents relevant for assessing service tax liability and the same were provided vide letter dated 23.02.2018. From perusal of the documents, it was noticed that during the period from 01.04.2013 to 31.03.2017, the appellant had provided WCS to various Service Recipients and received consideration.



which is liable for payment of service tax in view of Notification No.24/2012-ST dated 06.06.2012 and Notification No.30/2012-ST dated 01.07.2012. It was further noticed that no service tax returns were filed for the said service.

2(iv). Since various provisions of service tax law was found to be contravened by the appellant, a Show Cause Notice (*hereinafter referred as 'SCN'*) dated 15.10.2018 was issued to the appellant, proposing

- (a) an amount of Rs.9,0,5,03,804/- to be considered to be taxable value for the purpose of calculation of service tax for the period April-2013 to March-2017;
- (b) demand and recovery of service tax amounting Rs.46,33,085/- under Section 73 of the Finance Act, 1994 on such taxable value;
- (c) charging of interest under Section 75 of the Finance Act, 1994;
- (d) imposition of penalty under Section 76, 77(2) and 78 of the Finance Act, 1994 and
- (e) charging of late fee of Rs.1,60,000/- for non-filing/late-filing of service tax returns during the said period under Section 70 of the Finance Act, 1994.

2(v). The adjudicating authority granted the opportunity of personal hearing to the appellant on 12.03.2020. Shri R.K.Chaudhary, Partner of the appellant, attended the hearing but neither submitted written reply nor produced any documents in their defense. Thus, the adjudicating authority vide the impugned order (a) confirmed the demand and recovery of service tax alongwith interest as proposed in the SCN; (b) Charged late fee on non-filing/late-filing of service tax returns; and (c) imposed Penalties as proposed in SCN.

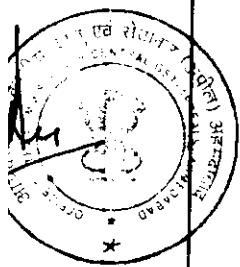
3. Being aggrieved with the impugned order, the appellant has filed the present appeal on the following grounds :

- (i) *that the SCN fails to point out the reason on the basis of which the services provided by them were considered as taxable service;*
- (ii) *that the Department was in possession of all the documents related to their contracts with GETCO since the inquiry has started from GETCO itself; that the status of GETCO as a body corporate has been purposefully ignored;*
- (iii) *that Section 33A of the Central Excise Act, 1944 regarding the adjudication procedure is made applicable to the Service Tax by virtue of Section 83 of the Finance Act, 1994 and there is a violation of principle of natural justice;*
- (iv) *that during the personal hearing they requested for time to submit the documents and another opportunity of personal hearing which has not been given to them;*
- (v) *that just weeks after the date of personal hearing, Government has declared the lockdown due to outbreak of covid pandemic and during that period it was not possible for appellants to compile and produce the required documents;*



- (vi) *that the valuation aspect, reverse charge mechanism aspect applicable therein for working out the tax liability and all such rules and provisions were conveniently ignored in the impugned order;*
- (vii) *that all the income earned by them have been classified as WCS which is factually erroneous and incorrect; that they have also provided service by way of supplying Manpower to various customers during the disputed period which is covered under reverse charge mechanism as they are partnership firm and service recipients were body corporate ; however due to amendment their liability is restricted to the period from 01.04.2013 to 28.02.2015 and would be limited to only 25% value of the total income earned during the said period;*
- (viii) *that they have provided service by way of transportation of goods by road to M/s. Kaira Can Company Ltd. during the F.Y. 2014-15 and such service provided by them is covered under negative list; that such service is provided by them being a partnership firm to the service recipient being body corporate;*
- (ix) *that they have provided service to Mehsana Municipality regarding waste management service which is exempted by virtue of Notification No.25/2012-ST dated 20.06.2012, as amended;*
- (x) *that the valuation arrived at for the purpose of WCS is also not correct as stipulated under Rule 2A of Service Tax (determination of Value) Rules, 2006 read with Notification No. 24/2012-ST dated 20.06.2012;*
- (xi) *that even the service tax liability arrived at upon WCS is not correct and contrary to the provisions of Notification No. 30/2012-ST dated 20.06.2012;*
- (xii) *that value of the service provided by them should be treated as cum-tax and for this reliance is placed on case law of M/s. Maruti Udyog Ltd. reported in 2002(49)RLT 1(SC) and M/s. Advantage Media Consultant reported at 2009(14)STR J49(SC) read with Section 67(2) of the Finance Act, 1994;*
- (xiii) *that extended period is not applicable to their case as they were under bonafide belief that they are not liable to pay service tax and they never concealed any details from the department purposefully; that they maintained regular books of accounts and all transactions are duly recorded and books of accounts are maintained in usual manner; their case is solely based on their balance sheet;*
- (xiv) *that since they were not liable to pay service tax, penalty is not imposable and charging of service tax is also not at place; that they rely upon certain case laws wherein it has been held that there can be no penalty when bonafide belief;*
- (xv) *that they refer Section 80 of the Act which says that no penalty shall be imposed on the assessee for any failure referred to in Section 76, 77 or 78 of the Act, if the assessee proves that there was reasonable cause for the said failure;*
- (xvi) *that issue involved in their case is interpretation of law;*
- (xvii) *that penalties under Section 76 & 78 can not be imposed simultaneously as they are mutually exclusive and they rely upon various case laws in this respect;*
- (xviii) *that since they were not registered under the service tax the question of late filing the returns does not arise and therefore the late-fee/penalty under Rule 7C of Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 can not be invoked. The said Rule is for delayed filing of ST3 Returns whereas the appellants have not filed any returns so such late fee are not applicable in their case.*

4. Personal hearing in the matter was held on 29.04.2021 in virtual mode. Shri Pratik Trivedi, Chartered Accountant, attended the hearing for the appellant. He reiterated the submission made in appeal memorandum and submitted that he could not make



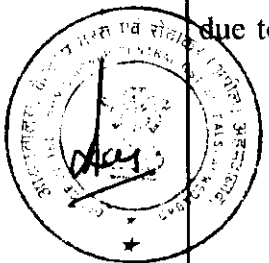
written submission due to lockdown and hence requested to remand the case to the adjudicating authority.

5(i). I have carefully gone through the facts of the cases, the records/documents available in the matter and the submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue in the present matter is whether the appellant is liable to pay the service tax as confirmed under the impugned order.

5(ii). It is observed that the appellant has not disputed that they have not rendered any service and also not disputed that the SCN dated 15.10.2018 has not been received by them. When the receipt of SCN was not in dispute, it was on part of the appellant to reply it and defend themselves within the reasonable time limit. The appellant failed to file any reply till almost one year and seven months and the facts, have been specifically mentioned under para-21 of the impugned order dated 11.05.2020 that the appellant had not submitted any defence reply against the action proposed in the said SCN. It is clearly forthcoming from the impugned order that the same has been issued on 11.05.2020. So it is apparent from the facts on record that the appellant remained careless and negligent and did not bother to file any reply towards the action proposed by the Department till almost one year and seven months. The opportunity of personal hearing, granted by the adjudicating authority has also been availed by the appellant on 12.03.2020. Hence, the contention raised by the appellant regarding the violation of principle of natural justice does not hold ground and therefore not acceptable and is thus rejected.

5(iii). The reason of lockdown for non-submission of documents, put forward by the appellant, also does not hold any water as the first lockdown was imposed w.e.f. the month of March-2020 whereas the SCN was issued on 15.10.2018. Thus, appellant was having more than one year time to submit the required document and their reply, which they did not submit.

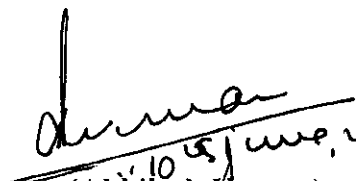
5(iv). However, it has been contended by the appellant that they have rendered services other than WCS viz. Manpower Supply, Transport of Goods by Road, and waste management service (to Mehsana Municipality, which is exempted by virtue of Notification No.25/2012-ST dated 20.06.2012). They have also raised the contention regarding the valuation method adopted by the adjudicating authority to ascertain service tax. All these issues have not been attended and considered by the adjudicating authority due to absence of relevant documents and non availability of reply of the appellant and



there are also no finding of the adjudicating authority in these respect. It would therefore be prudent that the matter is remanded back to the adjudicating authority. Appellant has also specifically requested for remanding the matter to the adjudicating authority during the course of personal hearing before this authority.

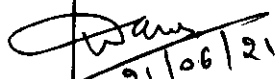
5(v). In view of above, the matter is remanded back to the adjudicating authority to pass an order afresh as per the provisions of law by following the principle of natural justice in the matter. The appellant is also directed to file the reply, raise contentions and submit the relevant documents in support of their contentions before the adjudicating authority.

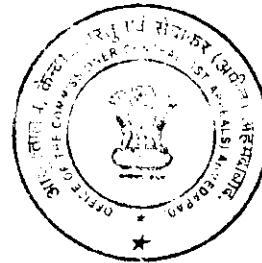
6. The appeal of the appellant is disposed of accordingly.


(Akhilesh Kumar)
Commissioner (Appeals)

Date : .06.2021.

Attested


21/06/21
(Jitendra Dave)
Superintendent (Appeal)
CGST, Ahmedabad.



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4. The Dy./Asstt. Commissioner, CGST & Cen. Excise, Mehsana Divn, Gandhinagar Comm'rate.
5. The Dy. Commr. (Prev) of CGST & Cen. Excise, Hq., Gandhinagar Comm'rate.
- ✓ 6. Guard File.
7. P.A. File.