



आयुक्त(अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद 380015.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलीफैक्स 07926305136



DIN : 20211064SW000000CB3E

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/619/2020 / 14015 TO 14019
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-29/2021-22**
दिनांक Date : **20-09-2021** जारी करने की तारीख Date of Issue 20.10.2021
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original No. **04/GNR-II/DBS/2020-21** दिनांक: **10.07.2020** issued by
Superintendent, CGST & Central Excise, AR-II, Division Gandhinagar, Gandhinagar
Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Effective Teleservices Pvt Ltd
101 to 103, 1st Floor, IT Tower-IV,
Infocity, Gandhinagar, Gujarat-382007

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 :

- (i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा 47(1) के अन्तर्गत जारी किए गए आदेशों 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।
- (ii) 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 गलती 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 गलती 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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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 जोड़यूटीकेडिटमान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित हो समय पर या बाद में विस्तृत अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

(c) 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 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। उस के साथ खाता ई.का.मुख्य शीर्ष 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 सलग्नरकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ सलग्नरकम 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-बी/35-इ के अंतर्गत:-

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

(क) उक्त लेखित 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 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 न्यायाधिकरणको एक अपील या केन्द्रीय सरकारको एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs. 100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथाराशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेशों 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 और संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर 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.

- (13) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर 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 रूपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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 सेन वैट क्रेडिट की राशि;
- (iii) सेन वैट 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.

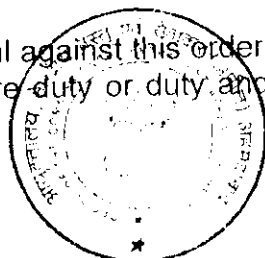
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs. 10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (xxii) amount determined under Section 11 D;
- (xxiii) amount of erroneous Cenvat Credit taken;
- (xxiv) amount payable under Rule 6 of the Cenvat Credit Rules.

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।

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."



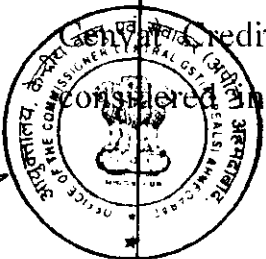
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Effective Teleservices P Ltd, 101 to 103, 1st Floor, IT Tower-IV, Infocity, Gandhinagar, Gujarat-382 007 (hereinafter referred to as the appellant) against Order in Original No. 04/GNR-II/DBS/2020-21 dated 10-07-2020 [hereinafter referred to as "*impugned order*"] passed by the Superintendent, Central GST- AR-II, Division, Gandhinagar, Commissionerate-Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. The facts of the case, in brief, is that the appellant was having Service Tax Registration No. AAACE9318EST002 for providing "Business Auxiliary Service" and "Renting of Immovable Property Service". The appellant was subjected to Departmental Audit covering the period from April, 2014 to March, 2016 in the course of which it was observed that the appellant was availing Cenvat Credit on "Rent-a-cab" service received from various clients. The Audit was of the view that the said service was not an input service in terms Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter also referred to as CCR, 2004) amended with effect from 01.04.2012. The appellant was issued a Show Cause Notice dated 19.06.2017 for the period 01.06.2012 to 31.03.2012 which was adjudicated by Order in Original No. 07/D/GNR/NK/2018-19 dated 29.08.2018 by the Assistant Commissioner, CGST & Central Excise, Gandhinagar wherein demand of the wrongly availed Cenvat Credit amounting to Rs.24,36,666/- was confirmed.

3. The appellant had filed an appeal before the Commissioner (Appeals), Ahmedabad against Order in Original No. 07/D/GNR/NK/2018-19 dated 29.08.2018 by the Assistant Commissioner, CGST & Central Excise, Gandhinagar which was decided vide OIA No. AHM-EXCUS-003-APP-137-18-19 dated 17.12.2018. In the said case the Order of the adjudicating authority denying Cenvat Credit on rent-a-cab service availed by the appellant was upheld and the appeal filed by the appellant was rejected.

4. Subsequently, upon the department seeking the details, the appellant submitted that during the period from 01.04.2016 to 30.06.2017 they had availed Cenvat Credit of Input Service i.e. Rent-a-cab service. Since the same was considered inadmissible by the department, a Show Cause Notice No. IV/16-



22/Effective Teleservices/GNR-II/18-19 dated 26.03.2019 for this further period was issued to the appellant seeking to :

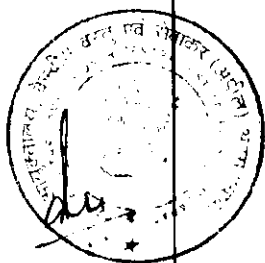
- i. disallow Cenvat Credit of Rs.7,53,110/- and recovery of the same under Rule 14(1)(ii) of the CCR, 2004 read with proviso to Section 73 (1) of the Finance Act, 1994.
- ii. Recovery of Interest under Rule 14 (1) (ii) of the CCR, 2004 read with Section 75 of the Finance Act, 1994.
- iii. Imposition of penalty under Rule 15(3) of the CCR, 2004 read with Section 78 of the Finance Act, 1994 and
- iv. Imposition of Penalty under Rule 15 (1) of the CCR, 2004 read with Section 76 of the Finance Act, 1994.

5. The said Show Cause Notice was adjudicated vide Order in Original No. 04/GNR-II/DBS/2020-21 dated 10.07.2020 wherein :

- I. The Cenvat Credit of Rs.7,53,110/- was disallowed and ordered to be recovered under Rule 14 (1) (ii) of the CCR, 2004 read with the provisions of Section 73 of the Finance Act, 1994;
- II. Interest was ordered to be recovered under Rule 14 (1) (ii) of the CCR, 2004 read with Section 75 of the Finance Act, 1994;
- III. Penalty of Rs.75,310/- was imposed under Rule 15(1) of the CCR, 2004 read with Section 76 of the Finance Act, 1994.

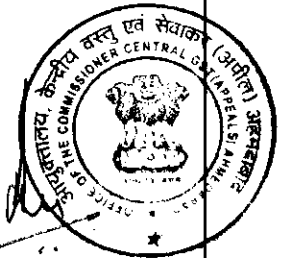
6. Being aggrieved with the impugned order, the appellant firm has filed the instant appeal on the following grounds:

- A. They are providing service of software development, call centre and support service in relation to the information technology service on 24*7. While providing such service they are providing the pick up and drop facility to their employees which has been a precondition for running the concern 24*7. This has been used during the working hour for the activities purpose which is part and parcel of their output service.
- B. The exclusion in the input service under the CCR, 2004 is the service availed for the personal use or consumption of an employee, whereas



in their case the service has been used during office hours for carrying out the job of service i.e. pick up and drop facility for running 24*7 service.

- C. They rely upon Circular No. 943/4/2011-CX dated 29.04.2011 issued by the CBIC. As per the said circular input service listed in the definition has been disallowed if the service has been availed and utilized primarily for personal use or consumption of employees, which is not so in their case.
- D. The Rent-a-cab service provided by them to their employees as a part of the other act which has a direct bearing on the output service provided by them. The employees are also entitled to conveyance allowance and forms a part of the condition of service and the amounts spent on the conveyance of the employees is also a factor taken into consideration for fixing the value of the service provided.
- E. They rely upon the decisions in the case of (1) Hindustan Coca Cola Beverages Pvt Ltd Vs. Commr. Of C.Ex, Nashik reported at 2015 (38) STR 129 (Tri-Mumbai); (2) Commissioner of C.Ex, Bangalore-III Vs. Stanzen Toyotetsu India (P) Ltd reported at 2011 (23) STR 444 (Kar.); (3) Commissioner of Central Excise Vs. Bell Ceramics Ltd reported at 2012 (25) STR 428 (Kar.); (4) Paramount Communication Ltd Vs. Commissioner of Central Excise, Jaipur reported at 2013 (287) ELT 70 (Tri.-Del).
- F. The notice issued on 26.3.2019 covering the period from 01.04.2016 to 30.06.2017 is barred by limitation as the facts were in the knowledge of the department since long. The notice has wrongly alleged suppression of information from the department. The department has issued circular clarifying the allowability of Cenvat Credit, which has been used as an input service for providing output service. Therefore, the question of any willful suppression does not arise.
- G. Penalty cannot be imposed under Section 76 as there is no short payment of service tax. For imposing penalty there should be an intent to evade payment of service tax. They were under the bonafide belief that they were not liable for payment of service tax and there was no intention to evade service tax. Therefore, no penalty is imposable.



They rely upon the decision in the case of Hindustan Steel Ltd Vs. State of Orissa reported in AIR 1970 (SC) 253 which was also followed in the case of Kellner Pharmaceuticals Ltd Vs. CCE reported in 1985 (20) ELT 80.

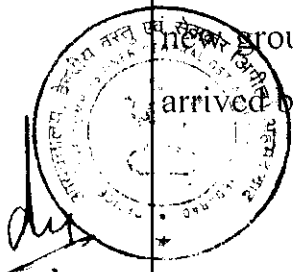
H. Even if there was any contravention of the provisions, the same was solely on account of their bona fide belief and such bona fide belief was based on the reasons stated above. It was not with an intent to evade payment of Service Tax. They rely upon the judgement in the case of Pushpam Pharmaceutical Company Vs. CCE reported at 1995 (78) ELT 401 (SC) and in the case of CCE Vs. Chemphar Drugs and Liniments reported at 1989 (40) ELT 276 (SC).

7. Personal Hearing in the case was held on 16.09.2021 through virtual mode. Shri Vipul Khandhar, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in the appeal memorandum and the written submission filed for personal hearing.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions made at the time of personal hearing and evidences available on records. I find that the issue which requires to be decided in the case is whether the appellant is eligible for Cenvat Credit in respect of the rent-a-cab service availed by them during the period from 01.04.2016 to 30.06.2017.

9. It is observed that the appellant was earlier issued a SCN for the period from 01.06.2012 to 31.03.2016 on same issue, which has already been decided by the Commissioner (Appeals), Ahmedabad vide OIA No. AHM-EXCUS-003-APP-137-18-19 dated 17.12.2018 against the appellant.

9.1 The impugned order which has been challenged in the present appeal has denied Cenvat Credit on rent-a-cab service for the further period from 01.04.2016 to 30.06.2017. I find that the appellant have in the present appeal not put forth any new grounds or judicial pronouncements which call for a different view than that arrived by Commissioner (Appeals) for the earlier period.



10. From the records, I find that there is no dispute as regards the eligibility of Cenvat Credit on rent-a cab service availed by the appellant prior to 01.04.2012. I find that post its amendment w.e.f. 1.4.2012, exclusions to input services as Rule 2(l) (B) of the CCR, 2004 reads as “ *services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods;*”. It is clear from the exclusion clause that appellant was not eligible to avail Cenvat Credit in respect of the services provided by way of renting of a motor vehicle i.e. rent-a-cab service.

11. The appellant have relied upon a few judgements in support of their claim for Cenvat Credit on rent-a-cab service availed by them. I find that the judgements cited by them pertain to the period prior to the amendment of Rule 2 (l) of the CCR, 2004 and, therefore, the same are not applicable to the present case.

12. Further, the decision of the Hon’ble Tribunal in the case of Bombay Dyeing and Manufacturing Ltd Vs. CCE(Appeals), Raigad reported at 2018 (363) ELT 1107 (Tri.-Mumbai) is squarely applicable to the facts of the present case. In the said case the Hon’ble Tribunal had held at para 4 that :

“As regard the rent-a-cab service, it is observed that period involved is June, 2014 to January, 2015 w.e.f. 1-4-2011 rent-a-cab service was excluded from the definition of input service, therefore due to such exclusion the credit in respect of rent-a-cab service is not available to the appellant. In result, I hold that credit in respect of maintenance of company’s vehicle, driver’s service, gardening service is admissible. The credit in respect of rent-a-cab service is not admissible”.

13. The Hon’ble Tribunal had in the light of the amended provisions of the CCR, 2004 excluding rent-a-cab service from the definition of inputs service, held that the credit in respect of rent-a-cab service is not admissible.

14. It is also observed that the appellant have raised the issue of limitation on the grounds that the facts were in the knowledge of the department and therefore, extended period of limitation cannot be invoked. I find that the dispute pertains to the period from 01.04.2016 to 30.06.2017 and the notice was issued to the appellant on 26.03.2019. In terms of the provisions of Section 73 (1) of the



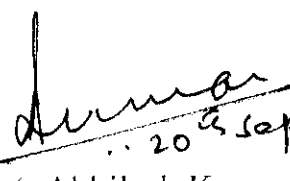
Finance Act, 1994 where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise officer may, within 30 months from the relevant date serve notice to the person chargeable with the service tax which has not been levied or short paid. The period of 30 months is to be reckoned with reference to the relevant date i.e. date of filing of filing of return by the appellant. In terms of Rule 7 (1) of the Service Tax Rules, 1994 the returns are to be filed on half-yearly basis. In view of these provisions, I find that the notice has been issued to the appellant within the period of limitation and therefore, there is no merit in the contention of the appellant as regards limitation.

15. The appellant have also contended that penalty is not imposable upon them as there was no intention in their part to not pay service tax and their actions were under a bona fide belief. I, however, find the issue of non admissibility of Cenvat Credit in respect of rent-a-cab services was within the knowledge of the appellant and they were also served a notice in this regard in the past. Despite this they have proceeded to avail the inadmissible credit in respect of a service which has been excluded from the input services in terms of the CCR, 2004. This act on the part of the appellant clearly indicates their deliberate and knowing contravention of the provisions of law. Therefore, their claim on lack of intent to not pay service tax is without merit.

16. In view of the above discussions and the above decisions of the Hon'ble Tribunal, I reject the appeal filed by the appellant and uphold the impugned order.

17. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

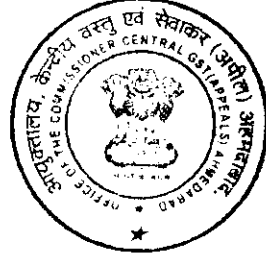
The appeal filed by the appellant stands disposed off in above terms.


20th September 2021
(Akhilesh Kumar)
Commissioner (Appeals)

Attested:

Date: .09.2021.

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.



BY RPAD / SPEED POST

To
M/s Effective Teleservices P Ltd,
101 to 103, 1st Floor, IT Tower-IV,
Infocity, Gandhinagar, Gujarat-382 007

Appellant

The Superintendent,
AR-II, CGST & Central Excise,
Division- Gandhinagar
Commissionerate, Gandhinagar

Respondent

Copy to:

- 1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- 2) The Commissioner, CGST, Gandhinagar.
- 3) The Assistant Commissioner (HQ System), CGST, Gandhinagar.
(for uploading the OIA)
- 4) Guard File.
- 5) P.A. File.