



आयुक्त(अपील)काकार्यालय,
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 : 20211064SW000000A448

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1184/2020 / 14045 704049

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP-47/2021-22
 दिनांक Date : 18-10-2021 जारी करने की तारीख Date of Issue 27.10.2021

आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**

ग Arising out of Order-in-Original No. 25/D/GNR/KP/2020-21 दिनांक: 30.09.2020 issued by
 Assistant Commissioner, CGST & Central Excise, Division Gandhinagar, Gandhinagar
 Commissionerate

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

M/s Beeline Broking Limited
 101-103, Vishwa Complex,
 Navrangpura, Ahmedabad-380009

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नोचे बताए गए संक्षम 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 :

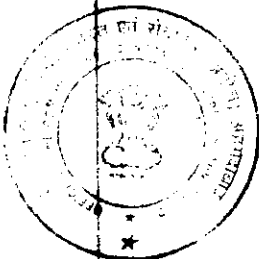
Revision application to Government of India :

(1) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अततनीचे 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.



(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 मामले 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 जोड़यूटीक्रेडिटमान्य 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।

(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 दिनों के सेतीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. 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 संलग्न कर एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न कर 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.

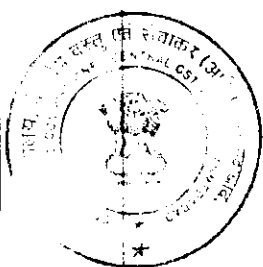
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 लिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर 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 पढी 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 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 यथासंशोधित 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 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.

- (25) 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 रुपए 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 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।

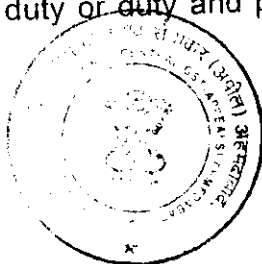
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (lviii) amount determined under Section 11 D;
- (lix) amount of erroneous Cenvat Credit taken;
- (lx) 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."

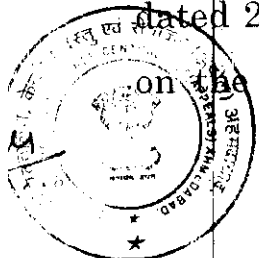


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Beeline Broking Ltd, 101-103, Vishwa Complex, Opposite Jain Derasar, Navrangpura, Ahmedabad (hereinafter referred to as the appellant) against Order in Original No. 25/D/GNR/KP/2020-21 dated 30-09-2020 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division- Gandhinagar, Gandhinagar Commissionerate [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant are engaged in providing 'Stockbroker Services' and are holding Service Tax Registration No. AAGCB0134PSD001. They are availing Cenvat Credit of the duty paid on input services as provided under the Cenvat Credit Rules, 2004 (hereinafter referred to as CCR, 2004). EA 2000 audit on the records appellant was conducted for the period from April, 2016 to June, 2017. As per Revenue Para 3 of FAR No. 577/2019-20 dated 21.10.2019, it was observed by audit officers that the appellant was engaged in providing non-taxable/Exempted services like 'Trading of Shares' along with taxable services and that they had availed full Cenvat credit of common input services and had not maintained separate records for the common input services received by them. As per Rule 2 (e) of the CCR, 2004, 'exempted services' includes services on which no service tax is leviable under Section 66B of the Finance Act, 1994. Since Trading activity is specifically included in the exempted services, it appeared that the appellant had to reverse the proportionate Cenvat Credit availed on the trading activity as per the provisions of Rule 6 (3) of the CCR, 2004.

2.1 A query memo dated 16.08.2019 was issued to the appellant with a request to pay the unpaid Service Tax. The appellant vide letters dated 27.08.2019 and 25.09.2019 did not agree with the audit objection on the ground that the service tax levied on various charges by the



stock exchange while buying and selling of the shares on behalf of the clients as well as on their own account had already been paid. Further, credit had not been availed or utilized on shares traded for their own account. Hence, Rule 6 (3) is not applicable in their case.

3. The appellant was issued SCN No. 205/19-20 dated 25.11.2019 from F.No. VI/1(b)-111/IA/C-VIII/MIS/19-20 proposing to :

- i. recover the wrongly availed Cenvat Credit amounting to Rs.10,25,907/- under Section 73 (1) of the Finance Act, 1994 read with Rule 14 (1) (ii) of the CCR, 2004;
- ii. Charge and recover Interest under Section 75 of the Finance Act, 1994 read with Rule 14 (1) (ii) of the CCR, 2004;
- iii. Impose penalty under Section 78 (1) of the Finance Act, 1994 read with Rule 15 (3) of the CCR, 2004.

4. The SCN was adjudicated vide the impugned order wherein Cenvat Credit amounting to Rs.10,25,907/- was ordered to be recovered under Section 73 (1) of the Finance Act, 1994 read with Rule 14 (1) (ii) of the CCR, 2004 along with interest under Section 75 of the Finance Act, 1994. Penalty of Rs.10,25,907/- was also imposed under Section 78 (1) of the Finance Act, 1994 read with Rule 15 (3) of the CCR, 2004.

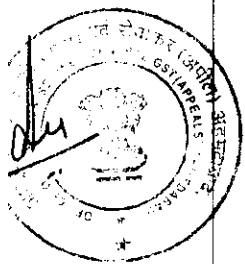
5. Aggrieved with the impugned order, the appellant firm has filed the instant appeal on the following grounds:

- i) They purchase and sell security and also has done transaction on the stock exchange in their own name. Thus, there is no element of service involved as the activity is for self. They are not providing services to any other person and that trading of shares on own account is not a service and is not covered under the definition of exempted services. They refer to the Order of



the Hon'ble Tribunal in the case of M/s.Swastika Investemart Limited Vs. Commissioner of C.Ex., & S.T, Indore (M.P).

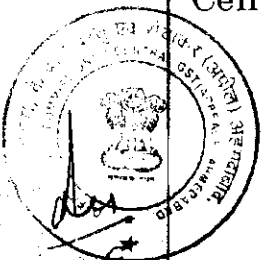
- ii) No credit has been availed or utilized on shares traded for their own account. Hence, Rule 6 (3) is not applicable in their case.
- iii) The activities of purchase and sale of shares for the company itself cannot be treated as activity of trading of securities which is covered within the meaning of exempted services. So, in case a person purchase shares/securities, it is an investment activity and no reversal of Cenvat Credit is required.
- iv) The adjudicating authority has completely ignored the fundamental principle that in order to levy service tax there should be a service provider and a service receiver. In the present case they cannot be termed as Service Provider. It is clear that buying and selling of shares on own account does not amount to service as the said activity is not for another person which is the condition precedent in sub-section 44 of Section 65D of the Finance Act, 1994. So, buying and selling shares in their own account also does not amount to trading as defined in Rule 2 (e) of CCR, 2004.
- v) In the case of M/s.Swastika Investemart Limited Vs. Commissioner of C.Ex., & S.T, Indore (M.P) the Hon'ble Tribunal vide Order dated 31.07.2019 held that buying and selling of shared in own account does not amount to trading as defined in Rule 2 (e) of the CCR, 2004 and set aside the demand and penalty.
- vi) They rely upon the Hon'ble Tribunal's order dated 15.04.2021 in a similar matter of Ace Creative learning Pvt Ltd Vs. Commissioner of Central Tax, Bengaluru South.
- vii) It is clear in the subject matter that they are not a trader in securities and the question of reversal of proportionate credit on common input services used for trading and output services, under Rule 6 (3) (b) does not arise.



- viii) They also rely upon Letter F.No. 137/25/2011-Service Tax dated 3.8.2011 of the CBIC.
- ix) As trading of share executed through Contract Note only which includes both sale and purchase, delay charges are always collected through separate accounting. The delay charges are not in the nature of services and neither is it taxable services not exempted services, hence, no input credit is liable to be reversed.
- x) The extended period of limitation has been wrongly invoked and substantial demand is barred by limitation. The period in dispute is F.Y. 2016-17 and F.Y. 2017-18 and the SCN was issued on 25.11.2019 which is substantially time-barred. Suppression cannot be alleged as they have been regularly filing returns and have provided all the information and records during the audit and the SCN is an outcome of the audit. They rely upon decisions in various cases.

6. Personal Hearing in the case was held on 16.09.2021 through virtual mode. Shri Mukesh Laddha, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum and those made in additional submissions during hearing.

7. 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 material available on records. I find that the appellant are providing taxable as well as exempted/non-taxable services and had availed full Cenvat credit on common inputs services and not maintained separate records for the common input services. Therefore, the notice has been issued to them proposing reversal of proportionate Cenvat Credit in terms of Rule 6 (3) of the CCR, 2004.

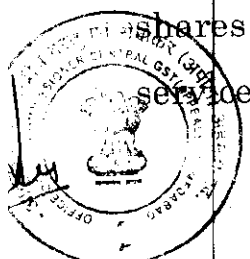


7.1 The appellant have contested the issue on the grounds that trading of shares on their own account does not amount to service as the said activity is not for another person which is the condition precedent in sub-section 44 of Section 65B of the Finance Act, 1994. So, buying and selling shares in their own account also does not amount to trading as defined in Rule 2 (e) of CCR, 2004. They have also relied upon the decision of the Hon'ble Tribunal in the case of M/s.Swastika Investemart Limited Vs. Commissioner of C.Ex., & S.T, Indore (M.P) and Ace Creative learning Pvt Ltd Vs. Commissioner of Central Tax, Bengaluru South.

8. I find that Rule 6 (1) of the CCR, 2004 was amended w.e.f 01.04.2016 vide Notification No. 13/2016-CE (NT) dated 01.03.2016. In the amended Rule 6 (1), Explanation 3 was inserted which reads as under:

"For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a 'service' as defined in section 65B(44) of the Finance Act, 1994."

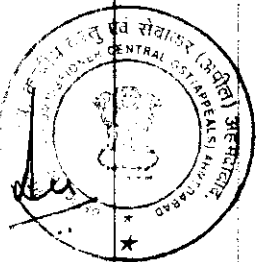
8.1 In view of the changes brought out in legal provisions through Notification No. 13/2016-CE (NT) dated 01.03.2016, w.e.f 01.04.2016, exempted services also included an activity which is not a service in terms of the definition given in Section 65B(44) of the Finance Act, 1994. Accordingly, the exempted services referred to in Rule 6 (3) includes an activity which is not a service. The period in dispute in the present appeal is F.Y. 2016-17 and F.Y. 2017-18 (upto June, 2017). Consequently, the issue has to be examined in the light of the provisions of the amended Rule 6 of the CCR, 2004. The trading of shares by the appellant on their own account may not amount to service as contended by the appellant. However, from 01.04.2016, for the purpose of Rule 6 of the CCR, 2004, the appellant's activity of trading of shares on their own account is covered by the scope of exempted services.



8.2 In view of the amended Rules, it is clear that the appellant, who are providing taxable services as well as engaged in trading of shares on their own account, and had availed full Cenvat credit on common input services are liable to reverse the proportionate Cenvat credit in terms of Rule 6 (3)/(3A) of the CCR, 2004.

8.3 As regards the judgements relied upon by the appellant, I find that the same are not applicable to the facts of the present appeal inasmuch as the judgement in the case of M/s. Swastika Investemart Limited Vs. Commissioner of C.Ex., & S.T, Indore (M.P) was pronounced in the context of Rule 6 of the CCR, 2004 as it stood prior to its amendment w.e.f 01.04.2016. I further find that in the case of Ace Creative learning Pvt Ltd Vs. Commissioner of Central Tax, Bengaluru South, there is no reference to either the amended Rule 6 (1) of the CCR, 2004 or Notification No. 13/2016-CE (NT) dated 01.03.2016. Therefore, the said judgement is distinguishable from the facts and legal position involved in the present appeal.

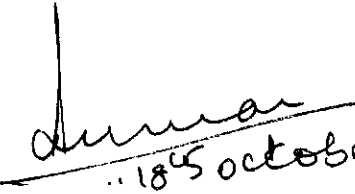
9. The appellant have also raised the issue of limitation. In this regard, I find that the fact of the appellant availing full Cenvat Credit on common input services without maintaining separate records for taxable services and exempted services came to the notice of the department only in the course of the audit of the appellant's records. The appellant had not declared to the department the fact of their being engaged in providing taxable services as well as exempted services and neither was the fact that full Cenvat Credit was being availed in respect of common input services. Non furnishing of the details/information in the statutory returns filed with the department is clearly suppression of material facts from the department. I, therefore, find that the extended period of limitation has been rightly invoked.



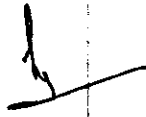
10. In view of the above discussions and the material available on record, I reject the appeal filed by the appellant and uphold the impugned order.

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

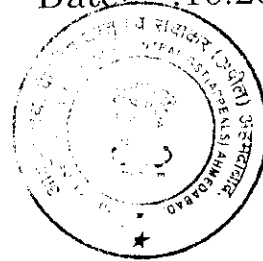
The appeal filed by the appellant stands disposed off in above terms.


 18th October, 2021
 (Akhilesh Kumar)
 Commissioner (Appeals)

Attested:


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

Date: 10.2021.



BY RPAD / SPEED POST

To

M/sBeeline Broking Ltd,
 101-108, Vishwa Complex,
 Opp. Jain Derasar, Navrangpura,
 Ahmedabad - 380 009.

Appellant

The Assistant Commissioner,
 CGST & Central Excise,
 Division- 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.