



सत्यमेव जयते

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 : 20211064SW000033353D

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/343/2020 **/3905 703909**
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-48/2021-22**
 दिनांक Date : **25-10-2021** 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. **19/D/GNR/DK/2020-21** दिनांक: **22.07.2020** issued by Deputy Commissioner(Prev.), CGST& Central Excise, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Hitachi Hi-Rel Power Electronics Pvt Ltd.(Unit-IV)
 B-52, Corporate House, Near Judges Bungalow,
 Bodakdev, Ahmedabad

कोई व्यक्ति इस अपील आदेश से अरांतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

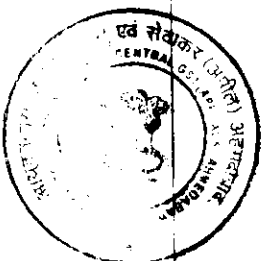
Revision application to Government of India :

(1) 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 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.



(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 हो 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 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 इस कामुख्य शीर्षक 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 कम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न कर कम 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.

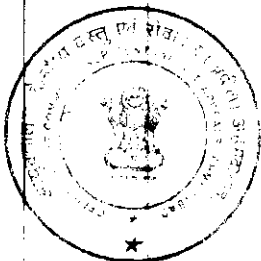
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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(Appel) 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 यथार्थिती 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गतनिर्धारितकिए अनुसारउक्तआवेदन या मूलआदेश यथार्थितीनिर्णयनप्राधिकारी के आदेशमेंसेप्रत्येक की एक प्रतिपर रु.6.50 पैसेका न्यायालय शुल्कटिकटलगानाहोना 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) इनऔरसंबंधितमामलोंकोनियंत्रण करनेवालेनियमों की ओरभी ध्यानआकर्षितकियाजाताहैजोसीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 मेंनिहितहै।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (26) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण(सिस्टेट)के प्रतिअपीलो के मामलेमेंकर्तव्यमांग(Demand) एवंदंड(Penalty) का10%पूर्वजमाकरनाअनिवार्यहै। हालांकि, अधिकतमपूर्वजमा10 करोड़रुपएहै।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीयउत्पादशुल्कऔरसेवाकरकेअंतर्गत, शामिलहोगा "कर्तव्यकीमांग"(Duty Demanded)-

- (i) (Section) खंड 11D केतहतनिर्धारितराशि;
- (ii) लियागलतसेनवैटक्रेडिटकीराशि;
- (iii) सेनवैटक्रेडिटनियमोंकेनियम 6 केतहतदेयराशि.

⇒ यहपूर्वजमा 'लंबितअपील' मेंपहलेपूर्वजमाकीतुलनामें, अपील' दाखिलकरनेकेलिएपूर्वशर्तबनादियागयाहै.

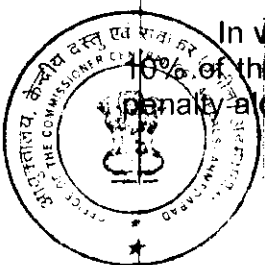
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (ixi) amount determined under Section 11 D;
- (ixii) amount of erroneous Cenvat Credit taken;
- (ixiii) amount payable under Rule 6 of the Cenvat Credit Rules.

इसइस 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. Hitachi Hi-Rel Power Electronics P. Ltd, Unit-IV, E-131, GIDC Electronic Zone, Sector 26, Gandhinagar, Gujarat-382 044 (hereinafter referred to as the appellant) against Order in Original No. 19/D/GNR/DK/2020-21 dated 22-07-2020 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, CGST & Central Excise, Commissionerate Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. The facts of the case, in brief, is that the appellant was engaged in the manufacture of UPS System and Parts thereof falling under Chapter 85 of the Central Excise Tariff Act, 1985 and were having Central Excise Registration No.AAACH3875MEM005. The appellant had surrendered their Central Excise Registration on 15.12.2015. The appellant was subjected to Audit by the officers of the Central Excise department for the F.Y. 2013-13 to F.Y. 2015-16 and FAR No. 1229/2017-18 dated 16.03.2018 was issued. As per Revenue Para 2 of the said FAR, the appellant had shown balance of finished goods valued at Rs.92,04,768/- in the Trial Balance at the end of F.Y. 2015-16, which appeared to be liable to Central Excise duty amounting to Rs.12,65,656/-.

2.1 As per Revenue Para 3 of the said FAR, the appellant had availed Cenvat Credit of Rs.15,59,347/- in respect of input services on the basis of the advices received from the Input Service Distributor (hereinafter referred to as ISD). It was observed that the appellant unit was added in the ISD registration on 29.01.2016, which was much after the appellant had surrendered the Central Excise Registration. The appellant also claimed that all services involved in the ISD advices were pertaining to their plant only i.e. Unit IV however, they failed to submit original invoices for verification and therefore, the credit taken by them was not admissible.



2.2 The appellant was therefore, issued a Notice bearing No. VI/1(b)/04/SCN/C-VIII/18-19 dated 30.06.2018 calling upon them to show cause as to why :-

- i. The Central Excise duty amounting to Rs.12,65,656/- should not be recovered under Section 11A of the Central Excise Act, 1944 by invoking the extended period of limitation;
- ii. Interest on the Central Excise duty should not be recovered under Section 11AB of the Central Excise Act, 1944;
- iii. Penalty should not be imposed under Section 11AC of the Central Excise Act, 1944;
- iv. The Cenvat Credit of Rs.15,51,467/- should not be recovered under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944;
- v. Interest on the inadmissible Cenvat Credit should not be recovered under Rule 14(ii) of the Cenvat Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944;
- vi. Penalty should not be imposed under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Rules, 1944.

2.3 The above SCN was adjudicated vide the impugned order wherein the demand for Central Excise duty as well as the inadmissible Cenvat Credit were confirmed against the appellant along with interest. Penalty was also imposed under Section 11AC in respect of the Central Excise duty and penalty under Rule 15 (2) of the Cenvat Credit Rules, 2004 was imposed in respect of the inadmissible Cenvat Credit.

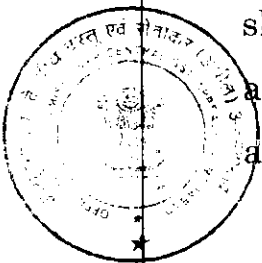
3. Being aggrieved with the impugned order, the appellant firm has filed the instant appeal on the following grounds:

- A. The stock of finished goods shown in the balance sheet for the year 2015-16 were lying in various branches in the country as it was cleared from time to time on payment of duty but not sold from the branches. They had also produced certain duty



paid invoices for transfer of the goods but the same was not accepted by the Audit on the ground that the invoices were of 2014-15.

- B. They had stopped manufacturing activity since December, 2014 but the registration was held till 15/12/2015 for winding up of the unit. The adjudicating authority has erred in confirming the demand without asking for other supporting documents i.e. ER-1, ER-4 etc. and also audited balance sheet.
- C. As regards the Cenvat Credit, there is no dispute by the audit or the adjudicating authority about the services received by them. The only dispute is while passing the credit by the ISD to them, their unit was not added in their registration. Subsequently, the ISD registration was amended.
- D. When there is no dispute about the services on which credit of tax was availed the adjudicating authority has erred in not accepting the decision of the Hon'ble High Court of Gujarat reported in 2016 (41) STR 884 (Guj) and other decisions of the Hon'ble Tribunal on the ground that in the said decision ISD was not registered at the time of passing credit but subsequently obtained and credit was allowed whereas in the present case the Unit was not included in the registration of the ISD.
- E. The adjudicating authority has also erred in invoking the extended period of limitation. They have filed monthly returns wherein production and clearance were recorded from time to time. Even the credit of Service Tax was also shown in the records and in the monthly returns. Therefore, it cannot be said that they had suppressed facts from the department.
- F. The adjudicating authority has erred in imposing penalty because the goods were cleared by them on payment of duty to branches and as it was lying in stock with the branches it was shown as finished goods in stock. Similarly, cenvat credit was availed by them only in respect of services received by them and shown in the monthly returns.



4. Personal Hearing in the case was held on 12.10.2021 through virtual mode. Shri Vijay Bhanuprasad Joshi, Advocate, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum.

5. I have gone through the facts of the case, submissions made in the Appeal Memorandum and in the course of the personal hearing as well as the material available on record. I find that there are two issues involved in the present appeal. The first issue is demand of Central Excise duty in respect of the finished goods shown in stock in the Trial Balance of the appellant. In this regard, I find that the appellant had submitted copies of the invoices under which, they claimed, the goods were cleared to their branches. However, the adjudicating authority has not accepted these invoices on the grounds that the invoices were of the period from 18.9.2014 to 28.10.2014, where as the Central Excise registration was surrendered by the appellant on 15.12.2015. Considering the vast difference of dates, the adjudicating authority did not accept the claim of the appellant that the goods were cleared on payment of duty.

5.1 I find that the adjudicating authority has in para 16.2 of the impugned order given his finding that "*I find that the matter is not free from doubts and the noticee failed to prove their point and such submission ought to have been supported with their ER-1, ERs-4 and audited balance sheets.....In absence of clear cut position and inconclusive reply, the factual and definite position is not emerging from the records and reply tendered by the noticee and in the given scenario, I hold the allegation made in SCN on this issue stands even now.*" I find that the adjudicating authority has held that the contention of the appellant was not supported by records such as their ER-1/ER-4 returns and audited balance sheet. The monthly returns are filed with the department, and therefore, the same are available with the department. The adjudicating authority could have very well, in the interest of justice, verified the contention of the appellant with the returns filed by them with the department. He could have also called for any other records which in



his view were relevant and verified the factual position. However, I find that he has failed to do so.

5.2 I find it quite surprising that when the adjudicating authority himself was of the view that the matter is not clear and free from doubt, he has still proceeded to confirm the demand against the appellant. When the adjudicating authority is not in a position to form a conclusive opinion, he ought to have called for further documents so as to satisfy himself and come to a clear conclusion before passing the impugned order. I further find that the finding of the adjudicating authority in the impugned order also suffers from infirmity inasmuch as despite there being no allegation against the appellant having cleared the finished goods clandestinely or without issue of proper Central Excise Invoices, the adjudicating authority has proceeded to confirm the demand against the appellant. I, therefore, am of the considered view that the matter is required to be re-examined and decided afresh by the adjudicating authority by considering the invoices submitted by the appellant as well as the monthly returns filed by the appellant and the records pertaining to production and sale maintained by the appellant.

6. I find that the other issue involved in the present appeal is regarding the availment of Cenvat Credit on input services on the basis of advices received from the ISD. It has been alleged that the unit of the appellant was added to the registration of the ISD on 29.01.2016 while the Cenvat credit was availed before addition of their unit in the registration of the ISD. The appellant have contended that this is only procedural and credit cannot be denied when their unit was subsequently added in the registration of the ISD.

6.1 The appellant have relied upon the judgement of the Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise Vs. Dashion Ltd reported in 2016 (41) STR 884 (Guj.) I find that the Hon'ble High Court had in the said case held that :

7. The second objection of the Revenue as noted was with respect of non-registration of the unit as input service distributor. It is true that the Government had framed Rules



of 2005 for registration of input service distributors, who would have to make application to the jurisdictional Superintendent of Central Excise in terms of Rule 3 thereof. Sub-rule (2) of Rule 3 further required any provider of taxable service whose aggregate value of taxable service exceeds certain limit to make an application for registration within the time prescribed. However, there is nothing in the said Rules of 2005 or in the Rules of 2004 which would automatically and without any additional reasons disentitle an input service distributor from availing Cenvat credit unless and until such registration was applied and granted. It was in this background that the Tribunal viewed the requirement as curable. Particularly when it was found that full records were maintained and the irregularity, if at all, was procedural and when it was further found that the records were available for the Revenue to verify the correctness, the Tribunal, in our opinion, rightly did not disentitle the assessee from the entire Cenvat credit availed for payment of duty. Question No. 1 therefore shall have to be answered in favour of the respondent and against the assessee.

6.2 I find that the ratio of the above judgement passed by the Hon'ble High Court of Gujarat is applicable to the facts of the present case. I find that there is no dispute as regards the receipt of the input service by the appellant or they being otherwise entitled to the Cenvat Credit. Therefore, merely because the appellant unit was added to the registration of the ISD at a subsequent date cannot be a ground to deny Cenvat Credit to the appellant. It has been alleged that the appellant unit was added to the ISD registration after the Central Excise Registration was surrendered by the appellant. However, I find that the input services were received by the appellant when they were holding Central Excise registration and the Cenvat credit was also availed while being registered with the Central Excise department. In these circumstances, by applying the ratio of the above judgement of the Hon'ble High Court of Gujarat, I am of the considered view that non addition of the appellant unit to the registration of the ISD is a mere procedural lapse and the same cannot be a ground to deny Cenvat Credit to the appellant. I, therefore, find that the findings of the adjudicating authority in the impugned order in this regard is not legally tenable and is accordingly set aside.



In view of the above discussions, the order passed by the adjudicating authority needs to be remanded back to the adjudicating

authority for deciding the issue of demand of Central Excise duty amounting to Rs.12,65,656/- in respect of the finished goods afresh, after considering and examining the invoices submitted by the appellant, the production and sales records of the appellant, the periodical returns filed by them as well as the balance sheets of the preceding year. The remaining part of the demand is liable to be set aside.

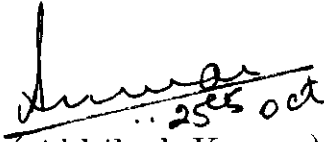
8. Accordingly, the impugned order is partly set aside to the extent it relates to demand of Cenvat Credit and the appeal is allowed. Further, to the extent it pertains to demand of Central Excise duty, the impugned order is set aside and the appeal allowed by way remand.

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

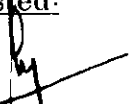
The appeal filed by the appellant stands disposed off in above terms.

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.


 25th October, 2021
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 10.2021.

Attested:


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

BY RPAD / SPEED POST

To
 M/s. Hitachi Hi-Rel Power Electronics P. Ltd, Appellant
 Unit-IV, E-131, GIDC Electronic Zone,
 Sector 26, Gandhinagar,
 Gujarat-382 044

The Deputy Commissioner, Respondent
 CGST, Division : Gandhinagar
 Commissionerate : Gandhinagar

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.