

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 : 20220164SW000000DDC2

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1437/2021 / 5636 TO 5640
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-85/2021-22**
दिनांक Date : **05-01-2022** जारी करने की तारीख Date of Issue 10.01.2022
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **37/AC/MEH/CGST/20-21** दिनांक: **11.02.2021** issued by Assistant Commissioner, CGST & Central Excise, Division Mehsana, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Gozaria Nagrik Sahakari Bank Ltd
Main Bazar, At & Post Gozaria,
Mehsana, Gujarat - 382825

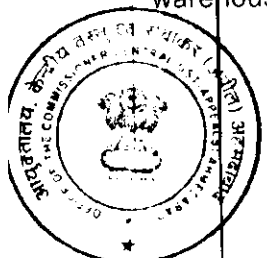
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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 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।
- (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 माल की हानि के मामले में जब ऐसी हानिकार खाने 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 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 जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित दो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(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 भीतरमूल-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 रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

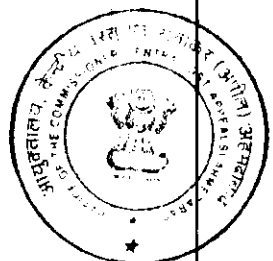
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2ndमाला, 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 केन्द्रीय 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 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 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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.

- (64) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर 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.

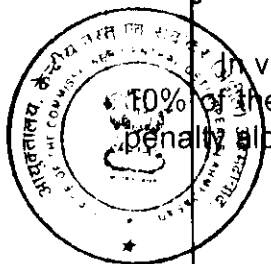
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (clxxv) amount determined under Section 11 D;
- (clxxvi) amount of erroneous Cenvat Credit taken;
- (clxxvii) 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

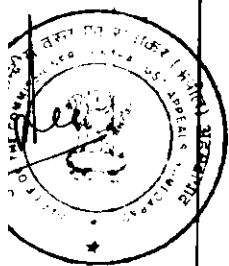
The present appeal has been filed by M/s. Gozaria Nagrik Sahakari Bank Ltd, Main Bazar, At & Post Gozaria, Mehsana, Gujarat – 382 825 (hereinafter referred to as the appellant) against Order in Original No. 37/AC/MEH/CGST/20-21 dated 11-02-2021 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, CGST, Division- Mehsana, Commissionerate : Gandhinagar [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case is that the appellant was holding Service Tax Registration No. AAAAT1074GST001. During the course of audit of the records of the appellant conducted by the departmental officers for the period from April, 2014 to June, 2017 the following observations were raised.

2.1 It was observed that the appellant had availed cenvat credit amounting to Rs.2,31,061/- on Insurance Services which were not related to output services. The insurance was paid by the appellant on the deposits accepted by them in the form of Fixed Deposit, Recurring Deposit, Savings and Current deposits. Although insurance taken by the bank is mandatory as per the Reserve Bank of India (RBI), it appeared that the cenvat credit was ineligible as the input credit is not related to output service.

2.2 It was also noticed during the audit that the appellant had claimed cenvat credit amounting to Rs.3,576/- on Swachh Bharat Cess (SBC) in contravention of the Cenvat Credit Rules, 2004 (hereinafter referred to as CCR, 2004).

2.3 It was further observed on verification of the financial records in the course of the audit that the appellant had wrongly availed cenvat credit of Rs.6,076/- on bills pertaining to Courier and Telephone bills of other branches neither registered with the service tax department nor possessing centralized service tax registration for the purpose of cenvat credit.



2.4 On verifying the service tax challans for the F.Y. 2015-16 it was observed that there was a delay in payment of service tax on which the interest amounting to Rs.150/- had not been paid.

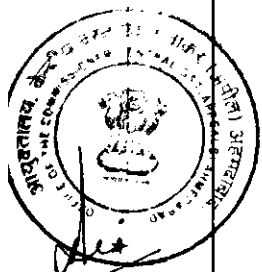
2.5 On verifying the financial records it was observed that the appellant had incurred legal expenses but failed to pay service tax amounting to Rs.12,954/- under Reverse Charge.

2.6 On reconciliation of the Balance Sheet with the ST-3 returns it was observed that the appellant had short paid service tax amounting to Rs.67,077/- during the F.Y. 2014-15 to 2016-17.

2.7 It was also observed in the course of the audit that the appellant was providing locker facility to their customers, the income from which is liable to service tax. From 2014 the appellant had instead of charging rent amount from their customers, accepted Locker deposit in the form of fixed deposit on which no monetary benefit was extended to the customers. As such amount was used for extending loan to other persons at applicable interest rate, the appellant was beneficiary of locker deposit amount in lieu of Locker rent. The appellant was therefore, required to discharge service tax amounting to Rs. 2,00,391/-.

3. The appellant were, therefore, issued a SCN dated 09.10.2019 from F.No. VI/1(b)-246- Gozaria Sahkari Bank/1A/18-19/AP-62 wherein it was proposed to :

- (i) Demand and recover the wrongly availed cenvat credit of Rs.2,31,061/- and Rs.24,740/- under the proviso to Section 73 (1) of the Finance Act, 1994 read with Rule 14 (1) (ii) of the Cenvat Credit Rules, 2004 along with interest under Section 75 of the Finance Act, 1994 read with Rule 14 (1) (ii) of the Cenvat Credit Rules, 2004.
- (ii) Demand and recover service tax of Rs.12,954/-, Rs.67,077/-, Rs.2,00,391/- and short paid interest of Rs.150/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.



(iii) Impose penalty under Section 78 (1) of the Finance Act, 1994 read with Rule 15 (3) of the Cenvat Credit Rules, 2004.

4. The SCN was adjudicated by the impugned order wherein the demands were confirmed along with interest and penalties, as proposed, were also imposed.

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

- They were not granted personal hearing. In terms of CBIC circular dated 27.04.2020, for conducting personal hearing through virtual mode, the consent of the appellant is required.
- Only one letter dated 01.02.2021 was issued through email for personal hearing on 04.02.2021. They came to know about the letter after issuance of the impugned order dated 11.02.2021. Without providing any further opportunity and within seven days the impugned order was issued. Hence no opportunity for representing their case or submitting reply to the SCN was provided. The impugned order was issued in violation of the principles of natural justice.
- They had vide letter dated 24.10.2019 requested for personal hearing and had requested atleast 3 to 4 weeks before granting personal hearing to enable them to make arrangement of hearing by virtual mode. As their request was not considered and the impugned order was passed without providing any opportunity of being heard, the impugned order is required to be set aside on this ground itself.
- They rely upon the decision in the case of Jay Arts Vs. Commissioner of C.Ex., Mumbai-II – 2006 (202) ELT 144 (Tri.-Mumbai); Kesari Marine Services Vs. UOI – 2021 (44) GSTL 71 (AP).
- They are a banking company as defined under Banking Regulation Act, 1949 and are mandatorily required to be registered with Deposit Insurance and Credit Guarantee Corporation Act, 1961 (DICGI) as per RBI guidelines and are required to take insurance in respect of deposits taken. They had availed cenvat credit of service tax paid on the insurance premium paid for insurance of deposits with DICGI.



- To operate as a bank it is compulsorily required to take insurance of its deposits. One of the core banking functions is to accept deposits for the purpose of lending and investment. Hence, for providing output services of 'banking and other financial services' they have to accept deposits and insure the same with DICGI as per RBI guidelines.
- It is clear from Rule 2 (l) of the CCR, 2004 that any service used by a provider of output service for providing output service is covered under the definition of output service. There is a direct nexus between input service of insurance and output banking and financial service provided by them.
- They rely upon the decision in the case of Bank of Maharashtra Vs. Commissioner of CGST & C.Ex., Pune-II – 2020 (42) GSTL 491 (Bom.); South Indian Bank Vs. Commissioner of Customs & C.Ex. & St, Calicut – 2020 (41) GSTL 609 (Tri.-LB).
- During 2014-15 to June, 2017 due to omission certain branches were not included in Centralised Service Tax registration, but they have complied with all provisions of law relating to such branches. It is a settled law that procedural violation should not result in loss of substantial benefit granted by law.
- There is no dispute regarding receipt of services and the documents were also produced before the department. There is also no dispute regarding recording of these transactions in books of accounts.
- They rely upon the decision in the case of Commissioner of C.Ex., Vapi Vs. Jindal Photo Ltd. – 2009 (240) ELT 728 (Tri.- Ahmd); Commissioner of C.Ex, Vapi Vs. Samita Conductors Ltd. – 2012 (278) ELT 492 (Tri.-Ahmd).
- The interest on late payment of service tax will be deposited in a short duration of time.
- The service tax on reverse charge basis amounting to Rs.1854/- demanded in respect of legal expenses pertains to the year 2013-14 which is time barred even when extended period is invoked.
- The service tax paid on reverse charge basis would be available to them as credit and there was no revenue benefit available to them. Hence, in such case they cannot be considered to have suppressed facts with the intent to evade payment of service tax.

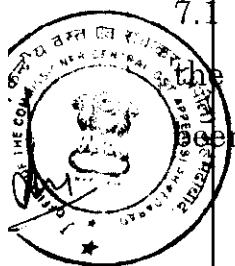


- If personal hearing and time for reply was given they would have explained the difference noticed on reconciling the books and ST-3 returns.
- Regarding demand of service tax on locker rent, the same was charged for the F.Y. 2014-15 as well. But service tax on lockers rent was paid by them. This can also be confirmed from the table in para 12 of the impugned order wherein lockers rent is included and service tax paid thereon.
- It is established principle that notional interest can't be added to the value as consideration for levy of service tax.
- They rely upon the decision in the case of Vimla Infrastructure India Pvt Ltd. Vs. Commissioner of C.Ex., Cus & ST, Raipur – 2020 (41) GSTL 354 (Tri.-Del); Ashiana Maintenance Services LLP Vs. Commissioner of C.Ex. & ST, Jaipur-I – 2019 (24) GSTL 47 (Tri.-Del).
- There is no suppression and hence extended period is not invocable. Therefore, demand confirmed by invoking extended period is not justifiable. In the absence of suppression, penalty under Section 78 is also not proper.

6. Personal Hearing in the case was held on 17.11.2021 through virtual mode. Shri Punit Prajapati, CA, appeared on behalf of the appellant for the hearing. He stated that the order was passed in violation of the principles of natural justice as no personal hearing was done during pandemic times. On merits, he reiterated the submissions made in appeal memorandum.

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 there are seven different issues involved in the present appeal and the appellant have contested the issues on merit. However, during the course of the personal hearing, the appellant have contended that the impugned order was passed in violation of the principles of natural justice as no personal hearing was held.

7.1 I find that in the impugned order it has been recorded at para 18 that the appellant did not file any defence reply in the matter. In para 17 it has been recorded that personal hearing through virtual mode granted to the



appellant on 04.02.2021, 08.02.2021 & 10.02.2021, but nobody turned up for the hearing and that no request for adjournment was received. Thereafter the case was adjudicated ex-parte.

7.2 The appellant have contended that they had only received only the letter sent by mail for personal hearing on 04.02.2021 and that the said letter came to their notice only on 11.02.2021. No further opportunity for personal hearing was granted before adjudicating the case.

7.3 I find that three adjournments as contemplated in Section 33A of the Central Excise Act, 1944 have not been granted to the appellant. Further, considering the prevailing pandemic situation, the adjudicating authority ought to have adopted a more liberal approach in granting opportunity of personal hearing. I find it relevant to refer to the judgment of the Hon 'ble High Court of Gujarat in the case of Regent Overseas Pvt Ltd. Vs. UOI – 2017 (6) GSTL 15 (Guj) wherein it was held that :

“12. Another aspect of the matter is that by the notice for personal hearing three dates have been fixed and absence of the petitioners on those three dates appears to have been considered as grant of three adjournments as contemplated under the proviso to sub-section (2) of Section 33A of the Act. In this regard it may be noted that sub-section (2) of Section 33A of the Act provides for grant of not more than three adjournments, which would envisage four dates of personal hearing and not three dates, as mentioned in the notice for personal hearing. Therefore, even if by virtue of the dates stated in the notice for personal hearing it were assumed that adjournments were granted, it would amount to grant of two adjournments and not three adjournments, as grant of three adjournments would mean, in all four dates of personal hearing.”

7.4 In view of the above, I am of the view that in the interest of the principles of natural justice, the matter is required to be remanded back for denovo adjudication after affording the appellant the opportunity of filing their defence reply and after granting them the opportunity of personal hearing.

8. In view of the above, the impugned order is set aside and the matter remanded back to the adjudicating authority for adjudication afresh. The appellant is directed to submit their written submission to the adjudicating authority within 15 days of the receipt of this order. The appellant should also attend the personal hearing as and when fixed by the adjudicating



authority. Accordingly, the impugned order is set aside and the appeal of the appellant is allowed by way of 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.

Akhilesh Kumar
 5th January, 2022
 (Akhilesh Kumar)
 Commissioner (Appeals)

Attested:

Date: .01.2022.

[Signature]
 (N.Suryanarayanan. Iyer)
 Superintendent(Appeals),
 CGST, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Gozaria Nagrik Sahakari Bank Ltd,
 Main Bazar, At & Post Gozaria,
 Mehsana, Gujarat – 382 825

Appellant

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