



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 : 20220164SW0000888DD1

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/316/2021 / 5771 To 5795
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP-88/2021-22
दिनांक Date : 11-01-2022 जारी करने की तारीख Date of Issue 13.01.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 05/DC/CGST/2019-20 दिनांक: 16.03.2020 issued by Deputy Commissioner (Prev.), CGST & Central Excise, HQ, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Vishal Infraglobal Pvt Ltd
Appeal Avenue, Behind Dharti Flats,
Opp. Gayatri Temple, Mehsana

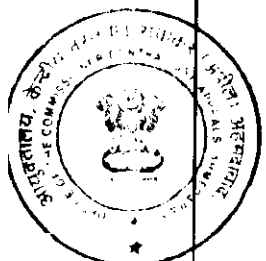
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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:

- (1) 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।
- (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 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 वो 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 दिनोंक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इका 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.

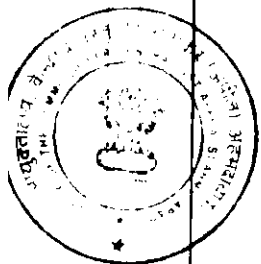
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 not withstanding 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 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 कान्यायालय 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.

- (66) 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.

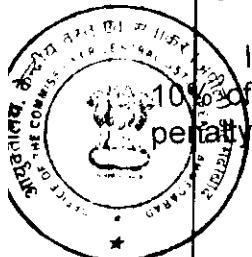
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (clxxxi) amount determined under Section 11 D;
- (clxxxii) amount of erroneous Cenvat Credit taken;
- (clxxxiii) 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."



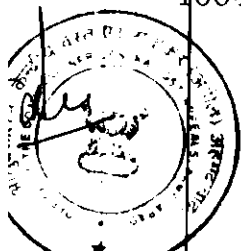
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Vishal Infraglobal Pvt Ltd, Appeal Avenue, Behind Dharti Flats, Opposite Gayatri Temple, Mehsana – 384 002 (hereinafter referred to as the appellant) against Order in Original No. 05/DC/CGST/2019-20/DK dated 16-03-2020 [hereinafter referred to as “*impugned order*”] passed by the Deputy Commissioner, CGST & Central Excise, H.Q., Commissionerate : Gandhinagar [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case is that the appellant was engaged in providing service in relation to Construction of Residential and Commercial premises and receipt of Transport of Goods by road service and holding Service Tax Registration No. AAECV2187JSD001. It appeared that the appellant was not paying service tax under reverse charge for the expenses incurred towards 'Transport of Goods by Road' during the F.Y. 2009-10 to 2015-16. Therefore, they were issued the SCNs, for recovery of the applicable service tax, as under :

- 1) F.No. IV/16-64/PI/Gr.I/13-14 dated 22.10.2014 for the period from F.Y. 2009-10 to 2013-14 (upto December, 2013)
- 2) F.No. V.ST/15-43/DEM/OA/15-16 dated 22.09.2015 for the period from January, 2014 to March, 2014
- 3) V.ST/15-93/DEM/OA/16-17 dated 21.04.2017 for the period from April, 2014 to March, 2016.

21 For the subsequent period, the appellant was asked to submit the details of the expenditure incurred towards Transportation of Goods by Road for the period F.Y. 2016-17 to 2017-18 (upto June, 2017). As per the details submitted by them, it was found that they had totally incurred expenditure of Rs. 1,94,01,920/- during the said period towards Carting and Asphalt Carting expenses involving Service Tax of Rs.22,06,403/-, which was not paid by them. Therefore, the appellant was issued SCN bearing No. V.ST/11A/53/Vishal/2018-19 dated 18.03.2019 seeking to demand and recover Service Tax amounting to Rs.22,06,403/- under Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.

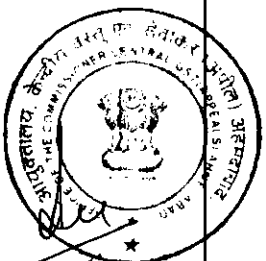


Imposition of penalty under Section 76 and 77 of the Finance Act, 1994 was also proposed.

3. The said SCN was adjudicated vide the impugned order and the demand for service tax was confirmed along with interest. Penalty was also imposed under Section 76 and 77 of the Finance Act, 1994.

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

- i. They are mainly road contractor and their service regarding road construction is exempted under the Finance Act, 1994. They construct roads in village, town or small part of the area for which they take certain raw material like sand choriya from local villager or small contractor at site.
- ii. The so called transportation expenses infact is the purchase amount of consumable material only i.e. sand, greets, kapachi etc.
- iii. For classification of expenses under transportation service the following condition should be fulfilled : There should be transaction for transportation of goods; Transportation service should have been provided by the agency; goods are received under cover of consignment note as per Rule 4A of the Service Tax Rules; There has to be declaration regarding service tax payable by the consignor and there was payment of transportation charges by them. They submit that they have made payment of material only.
- iv. They do not fulfill any of the criteria in terms of Section 65 (50b), Rule 4A and 4B of the Service Tax Rules. No bill mentions the details of transportation charges, the kilometer to be transported, place of origin to destination. All the bills are in the nomenclature mentioning the supply of consumable material. So there was no ingredients of transportation, only supply of material, hence no service tax liability arises.
- v. The adjudicating authority has not considered their submission regarding non-liability of service tax on individual person. Each expense is required to be verified to determine the category under which they fall. They have received material/goods transportation by

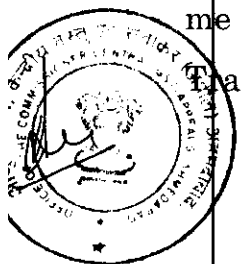


individual transport which are not covered under service net and not liable under GTA category. They rely upon the judgment in the case of Rathil Tiles Pvt Ltd Vs. CCE wherein it was held that service of individual transporters are not covered under GTA and not liable to service tax.

5. The appellant was granted a Personal Hearing on 12.10.2021, however, the same was not attended by them. They vide letter dated 11/10/2021 informed that they are in financial stress and working has stopped since last two years. They sought adjournment for two months. The appellant was thereafter granted another opportunity of personal hearing on 28.10.2021, which was not attended by them and no adjournment was also sought. Therefore, the appellant were again called for a personal hearing on 17.11.2021 but no one appeared on behalf of the appellant and neither was any adjournment sought by them. The appellant were again called for a personal hearing on 21.12.2021 but again no one appeared and no adjournment was also sought by the appellant.

6. As per Section 85 (5) of the Finance Act, 1994, the provisions of the Central Excise Act, 1944 are made applicable to the appeals under Section 85 of the Finance Act, 1994. In terms of the provisions of Section 35(1A) of the Central Excise Act, 1994, hearing of the appeal can be adjourned on sufficient cause being shown. However, as per the proviso to the said Section 35 (1A), no adjournment shall be granted more than three times to a party during hearing of the appeal. In the present appeal, the appellant were called for a personal hearing on four different dates, however, they did not attend on any of the dates and sought adjournment only in respect of the hearing granted on 12.10.2021. I am, therefore, satisfied that the appellant have been granted ample opportunities to be heard, which they have not availed. I therefore, proceed to decide the case, ex-parte, on the basis of the material on available on record.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the material available on records. The issue before me for decision is whether the appellant had availed the service of Transportation of Goods by Road and are liable for payment of service tax on



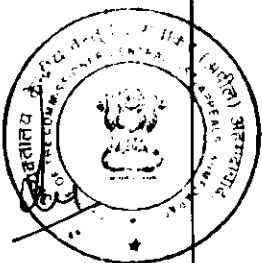
reverse charge or otherwise. The demand pertains to F.Y. 2016-17 to 2017-18 (upto June, 2017).

8. It has been alleged by the department that the appellant had availed the service of Transportation of Goods by Road i.e. GTA and therefore, were liable to pay service tax under reverse charge in terms of Section 68 of the Finance Act, 1994. The demand has been raised on the basis of the details furnished by the appellant wherein the expenses were shown as 'Gross amount of carting and asphalt carting expense'. The appellant on the other hand have contended that the said some of the expense pertains to the purchase of raw material used in road construction and also that some of the transporters are individual persons who are not goods transport agency and, therefore, no service tax is applicable or payable by them.

8.1 I find that the demand confirmed by the impugned order was raised vide a SCN which has been issued to the appellant under Section 73 (1A) of the Finance Act, 1994. The appellant was also issued three SCNs for the earlier period, one of which dated 07.08.2018 was adjudicated by OIO No. AHM-STX-003-JC-AKS-002-18-19 dated 07.08.2018. The appellant had filed appeal before the Commissioner (Appeals), Ahmedabad against the said OIO. The appeal was rejected vide OIA No. AHM-EXCUS-003-APP-167-18-19 dated 31.12.2018. Since the issue involved in the earlier OIA is same as that in the present appeal, I find it pertinent to refer to the relevant part of the said OIA dated 31.12.2018, which is reproduced as under :

6. First, I have to examine whether appellant is liable to pay service tax on GTA services availed under Reverse Charge Mechanism or otherwise. I find that the appellant is engaged in the road construction work and has availed services of goods transport agency/individual truck owners for carting of goods viz. Sand, Kapchi, Greet etc. being recipient of service. This fact is not in dispute. I find that appellant being body corporate established under the law is liable to pay service tax as recipient of Goods Transport Agency service in terms of Notifn. No.30/2012-ST dated 20.06.2012.

6.1 As regards the contention of the appellant regarding whether they were liable to pay service tax on the bills of individual transporter, I find that the issue revolves around whether the bills raised by the disputed individual truck owners can be considered as 'consignment note' or otherwise and accordingly whether the appellant is liable to pay service tax under RCM for availing services of inward transportation i.e GTA. I find that the terms 'consignment note' is defined in Rule 4B of the Service tax Rules, 1994 which is reproduced below for the sake of ease:



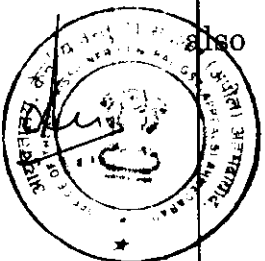
“Explanation. - For the purposes of this rule and the second proviso to rule 4A, “consignment note” means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the names of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.]”

In view of the above, I find that any document which contains above details can be termed as ‘consignment note’. In the instant case, I find that individual truck owners have issued bills for carting of goods for the appellant. The evidences placed before me indicates that bills have pre-printed serial numbers, name of the recipient of goods, quantity transported and its rate. I find that all vital element stated in the explanation is present in the bills raised by the individual truck owners except mentioning about person liable for paying service tax whether consignor, consignee or the goods transport agency. I find that these individual truck owners may be having lack of knowledge of taxation and can be considered as procedural lapse and needs to be condoned. But as recipient of service, the appellant cannot refuse service tax payment liability under RCM just because truck owner/operator violates provisions of Rule 4Bibid. In this regard, I find that Hon’ble CESTAT, Hyderabad in case of M.L. Agro Products Ltd. Vs. CCE&ST, Guntur[2017(6) GSTL-96(Tri. Hyd.)] has held as under:

“Goods Transport Agency Service - Recipient of service - Transportation of tobacco by private truck operators and payment of freight charges - Consignment note not issued - HELD : Consignment notes may be issued in any form, as seen from definition of GTA in Section 65(50)(b) of Finance Act, 1994 - Sample vouchers/invoices available describing truck number, amount and load - Assessee recipient of service paying freight charges - Department rightly applied GTA and demanded Service Tax - Without accompanying paper/document, goods cannot be received and document forms basis of amount for payment - No reason to interfere with impugned orders - Impugned order sustains - Section 65(50)(b) of Finance Act, 1994 and Rule 2(1)(d)(v) of Service Tax Rules, 1994. [para 6.3]”

Accordingly, I hold that bills issued by the individual truck operators fulfills the vital elements to be ‘consignment note’ and accordingly, the respondent is liable for service tax under RCM.”

8.2 I find that the facts involved in the present appeal are the same as that in the OIA cited supra. I further find that there is no change in the legal provisions nor has there been any judicial ruling contrary to the aforesaid orders. I also find that there is nothing on record to indicate that the OIA cited supra have been overruled by any higher appellate authority. That being so, I do not find any reason to take a different view in the matter. Hence, following the above OIA on similar facts, it is held in the present case also that the ‘Transportation of Goods by Road service availed by the



appellant is GTA service and the appellant are liable to pay service tax under reverse charge. The demand confirmed in the impugned order, is therefore, upheld.

9. In view of the facts discussed herein above, I uphold the impugned order and reject the appeal filed by the appellant.

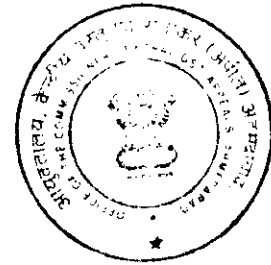
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Akhilesh Kumar
(Akhilesh Kumar)
Commissioner (Appeals)
Date: .01.2022.

Attested:

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



BY RPAD / SPEED POST

To

M/s. Vishal Infraglobal Pvt Ltd,
Appeal Avenue, Behind Dharti Flats,
Opp. Gayatri Temple,
Mehsana – 384 002

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.