



आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 - टेलिफैक्स 07926305136



DIN : 20220864SW000000CC5C

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/402/2021 / 3283-3287
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP-45/2022-23
दिनांक Date : 26-08-2022 जारी करने की तारीख Date of Issue 30.08.2022
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of OIO No. 30/D/GNR/NRM/2020-21 दिनांक: 08.12.2020 passed by Assistant Commissioner, CGST & Central Excise, Division Gandhinagar, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. M/s Jayshree Instruments Pvt Ltd
B-122, Sector-25, GIDC, Electronic Estate,
Gandhinagar - 382044

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 :

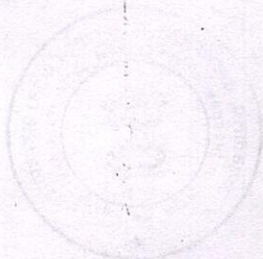
Revision application to Government of India:

(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 इए-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 2ndfloor, 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 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 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 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.

- (67) 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.

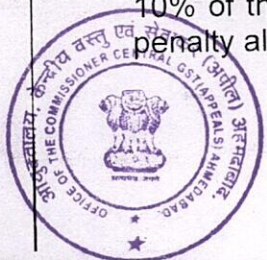
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (clxxxiv) amount determined under Section 11 D;
- (clxxxv) amount of erroneous Cenvat Credit taken;
- (clxxxvi) 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."

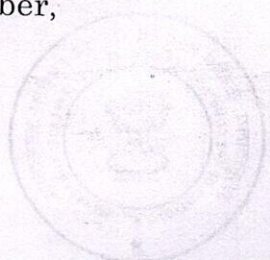


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Jayshree Instruments Pvt. Ltd., B-122, Sector-25, GIDC Electronic Estate, Gandhinagar – 382 044 (hereinafter referred to as the appellant) against Order in Original No. 30/D/GNR/NRM/2020-21 dated 08.12.2020 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, CGST, Division : Gandhinagar, Commissionerate : Gandhinagar [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case is that the appellant were engaged in the manufacture of Electric Controller and Parts thereof falling under CETH 85371000 of the First Schedule to the Central Excise Tariff Act, 1985 and holding Central Excise Registration No. AABCJ3462DXM001. Audit of the records of the appellant was conducted by departmental officers for the period from January, 2015 to June, 2017. On conclusion of the audit, five Revenue Paras were raised under Final Audit Report No. 1493/19-20 dated 20.03.2020 issued by Assistant Commissioner, Circle-VIII, Central Tax Audit, Ahmedabad, which are enumerated below.

2.1 **Central Excise Revenue Para 1** : Reconciliation of the financial records of the appellant with the returns filed by them for F.Y. 2014-15 indicated that the appellant had not reported sale value amounting to Rs.10,998/- in their returns. The appellant agreed orally but did not pay the central excise duty amounting to Rs.1,375/-. **Service Tax Revenue Para 1** : The appellant had paid rent amounting to Rs.2,40,000/- to their Director during F.Y.2015-16 and F.Y. 2016-17. However, they had not paid service tax amounting to Rs.32,232/- under reverse charge. **Service Tax Revenue Para 2** : The appellant had during F.Y. 2014-15 to F.Y. 2017-18 (upto June) not paid service tax amounting to Rs.826/-, under reverse charge, on the freight paid to the GTA service provider. **Service Tax Revenue Para 3** : The appellant had not obtained service tax registration though they were liable to pay service tax on Director’s Service and GTA Service under reverse charge. Therefore, they were liable to penalty under Section 77(1) (a) of the Finance Act, 1994. **Service Tax Revenue Para 4** : The appellant had not filed service tax returns for the period from October,



2014 to June, 2017. They were, therefore, liable to pay late fee at, the maximum amount of Rs.20,000/-, totally amounting to Rs.1,20,000/- in terms of Section 70 (1) of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

3. Subsequently, the appellant was issued SCN No. 272/19-20 dated 23.02.2020 from F.No. VI/1(b)-144/IA/C-VIII/AP-51/19-20 wherein it was proposed to :

- Demand and recover the central excise duty amounting to Rs.1,375/- under Section 11A (4) of the Central Excise Act, 1944 along with interest under Section 11AA.
- Impose penalty under Section 11AC(1) (c) of the Central Excise Act, 1944.
- Demand and recover service tax totally amounting to Rs.33,058/- (Rs.32,232/- + Rs.826/-) under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75.
- Impose penalty under Section 69 read with Rule 4 of the Service Tax Rules, 1994 and Section 78 (1) of the Finance Act, 1994.
- Late Fee amounting to Rs.1,20,000/- should not be demanded and recovered from them under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

4. The said SCN was adjudicated vide the impugned order wherein the demand for Central Excise duty and Service Tax was confirmed along with interest. Penalty equal to the confirmed demands were also imposed under Section 11AC of Central Excise Act, 1944 and Section 78 (1) of the Finance Act, 1994. Penalty of Rs.10,000/- was also imposed under Section 77(1) (a) of the Finance Act, 1994. The late fee amounting to Rs.1,20,000/- was ordered to be recovered under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

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

The Hon'ble Gujarat High Court had in the case of RemankhanBelin Vs. State of Gujarat – (2020) 117 taxmann.com 175 (Gujarat) quashed



- an order passed during the period of lockdown due to the ongoing pandemic as order was passed without giving an opportunity of being heard.
- ii) They had already paid the central excise duty amounting to Rs.1,375/- along with interest and penalty totally amounting to Rs.2,604/- vide Challan dated 03/03/2020. However, the same was not considered in the Audit Report dated 20.03.2020, the SCN dated 23.03.2020 and in the impugned order.
 - iii) Reverse Charge is applicable only in case of service provided by a person as a Director of the company to the company in the capacity of Director and is not applicable in case of Renting of Immovable Property Service. Renting of Immovable Property provided by the Director is not service provided in the capacity of Director. Therefore, they are not liable to pay service tax under reverse charge.
 - iv) They rely upon OIA No. AHM-EXCUS-003-APP-0257-17-18 dated 23.03.2018 passed in the case of Jay Pumps Pvt. Ltd. and OIA No. AHM-EXCUS-001-APP-61/2020-21 dated 13.01.2021 passed by the Commissioner (Appeals), Ahmedabad.
 - v) Assuming, without admitting, the payments to the Director and the Transporters are liable to Service Tax, the same would have been claimed as cenvat credit. As they had not paid the service tax and not claimed cenvat credit, the case is revenue neutral.
 - vi) They rely upon the decision in the case of Commissioner Vs. Bhuwalka Pipes Pvt. Ltd. – 2014 (310) ELT 23 (Kar.); Lafarge India Pvt. Ltd. Vs. CST, Mumbai – 215-TIOL-81-CESTAT-MUM; Chaudhry Hammer Work Ltd. V. CCE, Ghaziabad – 2012 (280) ELT 461 (Tri.-Del.); Matrix Telecom P. Ltd. Vs. CCE, Vadodara-II – 2013 (32) STR 423 (Tri.-Ahmd.).
 - vii) The SCN has been issued on 23.03.2020 demanding service tax for the period from January, 2015 to June, 2017 invoking the proviso to Section 73 (1) of the Finance Act, 1994. The same is time barred.
 - viii) The SCN fails to substantiate the intention to evade payment of tax at their end, so extended period cannot be invoked. The SCN also fails to prove the allegation of suppression of facts or malafide intention on their part. The SCN has failed to justify the invocation of extended period.



- ix) They rely upon the decision in the case of Span Commercial Co. Vs. CCE, Ahmedabad-I – Final Order No. A/10185/2020 dated 14.01.2020; Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur – 2013 (288) ELT 161 (SC); Concept Motors Pvt. Ltd. V. CST, Ahmedabad – Final Order No. A/11717/2018 dated 07.08.2018; Oriental Insurance Company Limited – 2021 (5) TMI 869; Om Sai Professional Detectives and Securities Service Pvt. Ltd. Vs. CCE – 2008-12-STR-79 (Tri.-Bang.); Rolex Logistic Private Limited Vs. CST – 2009-2013-STR-147 (Tri.-Bang.); Continental Foundation Jt. Venture V. CCE, Chandigarh-I – 2007 (216) ELT 177 (SC).
- x) The non payment of service tax was on account of bona fide belief and involved interpretation of law. They rely upon the decision in the case of CCE, Bangalore Vs. ITC Limited – 2010(257) ELT 514; CCE, Jaipur Vs. Rajasthan Renewable Energy Corporation Limited – 2018 (15) GSTL 661 (Rajasthan); New Allenberry Works Vs. Commissioner of Central Excise, Delhi-IV – 2014 (35) STR 544 (Tri.-Del.); Bedmutha Industries Ltd. Vs. Commissioner of CST, Nashik – 2019 –TIOL-445-CESTAT-MUM.
- xi) The SCN is vague and incoherent and has failed to establish wilful suppression on their part. It has been issued on the basis of Third Party information without any investigation.
- xii) SCN has been issued under Section 73 (1) of the Finance Act, 1994 which has been omitted vide Section 173 of the CGST Act, 2017. They rely upon the decision in the case of Mahadev Trading Company V. UOI – 2020-TIOL-1683-AHM-GST; Sahibabad Printers Vs. Additional Commissioner, CGST (Appeals) and 2 others – 2020-TIOL-2164-HC-ALL-GST; Principal Commissioner Vs. Shubham Electricals – 2016 (42) STR J312 (Del.); Commissioner of C.Ex, Bangalore Vs. Brindavan Beverages (P) Ltd. – 2007 (213) ELT 487 (SC); Commissioner Vs. Interchrome Pvt. Ltd.- 2004 (164) ELT A128 (SC).
- xiii) Since they are not required to obtain service tax registration, the question of filing of ST-3 returns does not arise.
- xiv) As tax itself is not payable, interest and penalty cannot be demanded from them. They rely upon the decision in the case of Jain Kalar Samaj – 2015 (38) STR 995 (Tri.-Mumbai); Sundaram Textiles Ltd. –



2014 (36) STR 30 (Mad.); Tebma Shipyards Ltd. Vs. Commissioner of Central Excise – 2006 (Tri.-Chennai); Pratibha Processors Vs. UOI (1996) (SC).

- xv) Penalty cannot be imposed mechanically since the essential ingredients for levy of penalty are missing. They rely upon the decision in the case of Hindustan Steel Vs. State of Orissa – 1978 (2) ELT (J159); Mahadev Logistics Vs. Cus. & C.Ex., Settlement Commission, New Delhi – 2017 (3) GSTL 56 (Chhatisgarh).
- xvi) Penalty under Section 77 of the Finance Act, 1994 is not applicable in the present case. They rely upon the decision in the case of Neon News Pvt. Ltd. – 2018 (9) TMI 1516.
- xvii) No penalty under Section 78 (1) of the Finance Act, 1994 is imposable upon them as there is no suppression of facts. They rely upon the various judicial pronouncements in this regard.
- xviii) CERA Audit is ultra vires the provisions of the Finance Act, 1994. They rely upon the decision in the case of Mega Cabs Pvt. Ltd. Vs. UOI & Others – 2016-TIOL-1061-HC-DEL-ST as well as various other judicial pronouncements.
- xix) Repeal and saving do not permit issue of notice by one authority and adjudication by another authority. They rely upon the various judicial pronouncement in this regard.

6. Personal Hearing in the case was held on 02.08.2022 through virtual mode. Ms. Labdhi Shah, Chartered Accountant, appeared on behalf of the appellant for the hearing. She 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. The dispute involved in the present appeal relates to the confirmation of demand of Central Excise duty on account of reconciliation of amounts mentioned in Profit and Loss Account of F.Y. 2014-15 vis-à-vis amounts shown in ER-3 Returns, Service Tax on the Rent paid to Director, Freight Charges paid to Transporter and not obtaining service tax registration as well as non filing of ST-3 returns. The demand pertains to the period F.Y.2014-15 to F.Y. 2017-18 (upto June).



justice that the matter is remanded back to the adjudicating authority to consider the submissions of the appellant, made in the course of the present appeal, and, thereafter, adjudicate the matter.

12. 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. The appeal filed by the appellant is allowed by way of remand.

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

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

Akhilesh Kumar
 26 August, 2022
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: .08.2022.

Attested:

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



BY RPAD / SPEED POST

To

M/s. Jayshree Instruments Pvt. Ltd.,
 B-122, Sector-25,
 GIDC Electronic Estate,
 Gandhinagar – 382 044

Appellant

The Assistant Commissioner,
 CGST & Central Excise,
 Division : Gandhinagar,
 Commissionerate : Gandhinagar

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.
 (for uploading the OIA)

4. Guard File.
5. P.A. File.