



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आजादी का  
अमृत महोत्सव

**By Regd. Post**

DIN No.: 20230164SW000000FAAB

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/141/2022-APPEAL / 7002-05
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-088/2022-23 and 05.01.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	09.01.2023
(ङ)	Arising out of Order-In-Original No. 03/AC/HMT/NRM/2019-20 dt. 20.06.2019 passed by the Assistant Commissioner, CGST & CE, Division-Himmatnagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shubham Infrastructure, Madhuvan Residency, Near Sahyog Petrol Pump, Malpur Road, Modasa, Arvalli, Gujarat

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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 :-

(क) 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 किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

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.

(ख) 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।

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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 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.

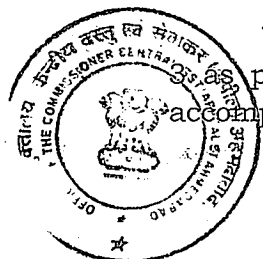
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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।

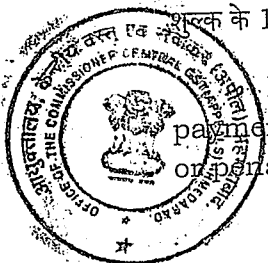
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6)(i) 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."



अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s. Shubham Infrastructure, Madhuvan Residency, Near Sahyog Petrol Pump, Malpur Road, Modasa, Dist. Sabarkantha (hereinafter referred to as the appellant) against Order in Original No. 03/AC/HMT/NRM/2019-20 dated 20.06.2019 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division- Himmatnagar, Gandhinagar Commissionerate [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant are a partnership firm engaged in providing 'Construction services other than residential complex, including commercial/industrial buildings or civil structures, Construction of residential complex service' and were holding Service Tax Registration No. ABXFS8152KSD001 for the same. On the basis of an intelligence that the appellants were not discharging their Service Tax liabilities under the category of 'Construction of Residential Complex at Modasa', an inquiry was initiated and during the course of searches conducted at the site office, it was observed that the appellants were sharing their office with one M/s Fortune Buildcon at the same premises. It was also revealed that the appellant were involved in the activity of Construction of residential complex at Modasa and were also engaged in selling of land/plots.

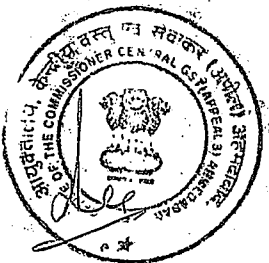
2.1 Investigations revealed that M/s Fortune Buildcon was registered with Service Tax and was engaged by the appellant in the construction activity of a residential scheme. As per the agreement entered between the appellant and M/s Fortune Buildcon, the land was sold by the appellant firm to the ultimate buyer and construction activity was carried out by M/s Fortune Buildcon on the land as per the specification of the appellant. Various summons were issued to the appellants, who did not respond or submitted documents before the investigation. Documents of the appellant i.e Tax Audit Report, Balance Sheet and Profit and Loss Account for the accounting year 2014-15, 2015-16 and 2016-17 were called for from Income Tax Officer, Modasa. The Income Tax department vide letter dated 10.01.2018 furnished copies of Balance Sheet and Profit & Loss Account for the accounting year/F.Y. 2013-14, F.Y. 2014-15 and F.Y.2015-16 of the appellant.

Scrutiny of the records revealed that appellants had provided Construction Service to their prospective buyers for which they had received consideration which



included value of the land/plot as well as the cost of construction. In the absence of details of their Service Tax records, the total sales value shown in their Profit and Loss Account was taken into consideration for working out the Service Tax liability. It was also observed that the appellants had availed legal consultancy services during the period and were liable to pay service tax under Reverse Charge Mechanism (RCM) in terms of Notification No.30/2012-Service Tax dated 20.06.2012. Accordingly, a show cause notice was issued to the appellant vide F.No.V/15-16/CGST-HMT/OA/17-18 dated 16.04.2018, wherein it was proposed :

- to consider Sales Income amounting to Rs.6,73,89,906/- and Rs.67,50,022/- as consideration received from Prospective buyers towards providing construction of residential complex service to their prospective buyers, on which service tax liability was not discharged.
  - demand and recover Service Tax amounting to Rs.24,47,154/- under the proviso to Section 73(1) of the Finance Act,1994 by invoking the extended period of five years alongwith interest under section 75 of the Finance Act,1994.
  - demand and recover service tax amounting to Rs.14,880/- under proviso to Section 73(1) of the Finance Act,1994 by invoking the extended period of five years alongwith interest under section 75 of the Finance Act,1994;
  - Penalties were proposed under Section 76, Section 77 (1) (c) (i) , Section 77 (1) (c) (ii) , Section 77 (1) (c) (iii) , Section 77 (2) and Section 78 of the Finance Act,1994.
  - appropriation of Service Tax amounting to Rs.3,22,583/- paid by the appellants .
3. The show cause notice was adjudicated by the impugned order wherein :
- Amounts of Rs.6,73,89,906/- and Rs.67,50,022/- shown as Sales Income was considered as consideration received from prospective buyers towards providing construction of residential complex service to their prospective buyers, on which service tax liability was not discharged.



- Service Tax amounting to Rs.24,47,154/- and Rs.14,880/- was confirmed under proviso to Section 73(1) of the Finance Act,1994 alongwith interest and Service Tax amounting to Rs.3,22,583/- paid by the appellant was appropriated.
- Penalty amounting to Rs.24,62,034/- was imposed under Section 78 of the Finance Act,1994;
- Penalty amounting to Rs.10,000/- each was imposed under Section 77(1)(c) (i) ,Section 77(1)(c)(ii) ,Section 77(1)(c)(iii) and Section 77(2) of the Finance Act,1994;

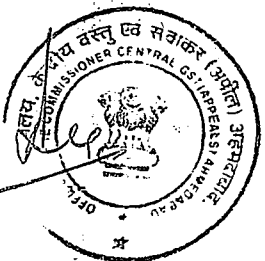
4. Being aggrieved with the impugned order, the appellant have filed the present appeal on merits alongwith application for condonation of delay.

5. Personal Hearing in the case was fixed on 24.11.2022, 08.12.2022 and 15.12.2022. However, no one appeared for the hearing. No request for adjournment was received from the appellant.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the application for condonation of delay. In their application for condonation of delay the applicant have attributed the delay on Convid-19. It is observed from the records that the present appeal was filed by the appellant on 11.01.2022 against the impugned order dated 20.06.2019, which the appellant have claimed to have received on 15.12.2019. It is observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below

*“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:*

*Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”*



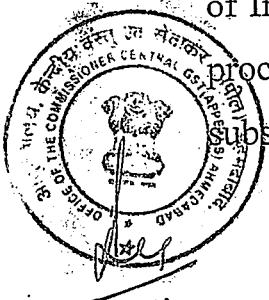
7.1 In the instant case, the impugned order is dated 20.06.2019 and the appellant have admittedly received it on 15.12.2019. Looking to the exceptional delay in the date of impugned order and the date of communication, letters were issued to the appellant and the adjudicating authority on 24.01.2022 and 24.02.2022 requesting them to inform the date of communication (date of receipt of the impugned order by the appellant) of the impugned order. No reply was received from the appellant. The adjudicating authority has replied vide letter dated 04.03.2022, wherein he informed that the impugned order was dispatched to the appellant firm as well as one of the partner – Smt.Archanaben Rajnikant Upadhyay on 25.06.2019 vide Registered Post (RPAD) bearing Nos. RG164038046IN and RG164038088IN. Upon confirming the delivery status of these registered posts, the server responded as :

*“This number can't be found at this moment. It's not available in the carrier's system yet ...”.*

Further reference was made with the Sr. Postmaster to provide date of delivery of the said two RPAD letters, who replied that *“no record is available for the said RPAD as preservation period is over”*.

7.2 Accordingly, a letter dated 22.03.2022 was issued to the appellant communicating the above facts and requesting them to submit proof of confirmation of the date of receipt of the impugned order as stated by them in the appeal memorandum. As no reply was received from the appellant, reminder letters were issued on 24.02.2022 and 29.06.2022, informing them to submit their reply latest by 08.07.2022. The appellant did not reply. On 16.09.2022, an email was forwarded to the representative of the appellant at their email – [caritesh.thaker@gmail.com](mailto:caritesh.thaker@gmail.com) from this office email – [exciseappeals@gmail.com](mailto:exciseappeals@gmail.com) enclosing copies of all the previous letters issued to the appellant referred above, and requesting to furnish the clarification sought. However, no reply was received. Thereafter, the case was posted for Personal Hearing on three occasions as discussed supra.

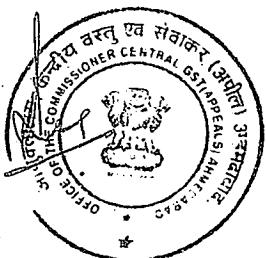
8. Considering the prevailing Covid-19 pandemic, the Hon'ble Supreme Court of India vide Order dated 23.03.2020 had extended the period of limitation in all proceedings w.e.f. 15.03.2020. The relaxation of the period of limitation was subsequently extended till 02.10.2021 vide Order dated 23.09.2021. Subsequently,



the Hon'ble Supreme Court of India vide Order dated 10.01.2022 directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation. It was further directed by the Hon'ble Supreme Court that where the limitation would have expired during the period from 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

8.1 I find that in the instant case, the impugned order dated 20.06.2019 was dispatched to the appellant on 25.06.2019. This fact was also confirmed by the Postal authorities. Hence, the claim of the appellant of receiving the impugned order after a period of 168 days on 15.12.2019 is not correct and misleading. Further, the appellant have shown complete non-cooperation towards the government procedure by not replying to various requests of this authority as well as not attending the opportunity of personal hearing, hence their contentions are held to be factually incorrect. Considering the date of receipt as 15.07.2019, the period of limitation for filing of appeal by the appellant expired on 15.09.2019 and the further condonable period of one month also expired on 15.10.2019. Further, in terms of the Order of the Hon'ble Supreme Court, the condonable period which would stand excluded for the purposes of limitation was "from 15.03.2020 till 28.02.2022". Therefore, the time limit of filing appeal has expired prior to the period of limitation allowed in terms of the Order dated 10.01.2022 of the Hon'ble Supreme Court of India.

9. In terms of Section 85 of the Finance Act, 1994, an appeal before the Commissioner (Appeals) is to be filed within a period of two months from the receipt of the order being appealed. Further, the proviso to Section 85 (3A) of the Finance Act, 1994 allows the Commissioner (Appeals) to condone delay and allow a further period of one month, beyond the two month allowed for filing of appeal in terms of Section 85 (3A) of the Finance Act, 1994. Since the appeal in the instant case has been filed beyond this further period of one month, this authority is not empowered to condone delay in filing of appeal beyond the period of one months as per the proviso to Section 85 (3A) of the Finance Act, 1994.





10. My above view also finds support from the judgment of the Hon'ble Tribunal, Ahmedabad in the case of Zenith Rubber Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, Ahmedabad – 2014 (12) TMI 1215 – CESTAT, Ahmedabad. In the said case, the Hon'ble Tribunal had held that :

“5. It is clear from the above provisions of Section 85(3A) of the Finance Act, 1994 that Commissioner (Appeals) is empowered to condone the delay for a further period of one month. The Hon'ble Supreme Court in the case of Singh Enterprises (supra) held that Commissioner (Appeals) has no power, to condone the delay beyond the prescribed period. In our considered view, Commissioner (Appeals) rightly rejected the appeal following the statutory provisions of the Act. So, we do not find any reasons to interfere in the impugned order. Accordingly, we reject the appeal filed by the appellant.”

11. In view of the facts discussed herein above and considering the order dated 10.01.2022 of the Hon'ble Supreme Court and the judgment of the Hon'ble Tribunal, supra, I reject the appeal filed by the appellant on the grounds of limitation.

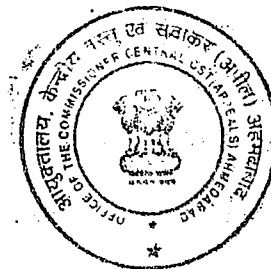
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed of in above terms.

*Akhil Kumar*  
(Akhil Kumar)  
Commissioner (Appeals)

Date: 05<sup>th</sup> January, 2023.

Attested:

*(Signature)*  
(Somnath Chaudhary)  
Superintendent (Appeals),  
CGST, Ahmedabad.



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1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Assistant Commissioner, Central GST Division - Mehsana, Commissionerate : Gandhinagar.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for uploading the OIA)

✓ 5. Guard File.

6. P.A. File.

