



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



By Regd. Post

DIN No.: 20230164SW000000AA4E

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/995/2022-APPEAL / 7563-67
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-095/2022-23 and 23.01.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	23.01.2023
(ङ)	Arising out of Order-In-Original No. 04/ST/Refund/DC/2021-22 dt. 24.02.2022 passed by the Assistant Commissioner, CGST, Division-Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Sintex Industries Ltd., Nr. Seven Garnala, Kalol, Taluka-Kalol, District- Gandhinagar, 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:-

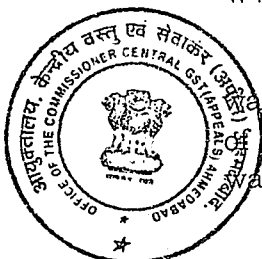
Revision application to Government of India:

(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, 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 :-

(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 या 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 रुपये 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.

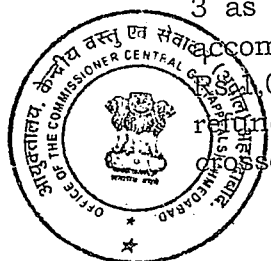
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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 above para.

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 / 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."



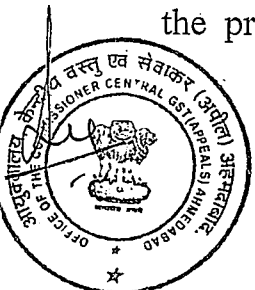
अपीलिय आदेश / ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s. Sintex Industries Limited, Near Seven Garnala, Kalol, Tal-Kalol, Dist. Gandhinagar (hereinafter referred to as '*appellant*') against Order in Original No. 04/ST/Refund/DC/2021-22 dated 24.02.2022 (hereinafter referred to as '*the impugned order*') passed by the Deputy Commissioner, CGST Division - Kalol, Commissionerate: Gandhinagar (hereinafter referred to as '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant is a manufacturer of Plastic Utility products having manufacturing facilities across India. The appellant were also having Service Tax Registration No. SD/KLL/ISD/01/2005 dated 28.11.2005 as Input Service Distributor (hereinafter referred to also as ISD). The appellant had filed a refund claim for an amount of Rs. 4,04,11,541/- on the basis of OIO No. AHM-EXCUS-003-COM-023-20-21 dated 24.08.2020 passed by the Commissioner of Central GST and Central Excise, Gandhinagar Commissionerate. Their application for refund was rejected vide OIO No.04/S-Tax/Refund/DC/2020-21 dated 29.01.2021 passed by the Deputy Commissioner, CGST Division-Kalol, Commissionerate-Gandhinagar. Being aggrieved, the appellant filed an appeal before the Commissioner (Appeals), CGST, Ahmedabad, who decided the issue vide OIA No.AHM-EXCUS-003-APP-50/2021-22 dated 29.10.2021 in favour of the appellant.

2.1 The appellant has thereafter tendered an application dated 29.11.2021 seeking Refund amounting to Rs. 4,04,11,541/- alongwith Interest @ 12% per annum. A Show Cause Notice F.No.GEXCOM/RFD/CE/121/2020-CGST-DIV-KLL-COMMRTE-GANDHINAGAR dated 24.01.2022 (in short 'SCN') was issued, proposing rejection of Interest @ 12% on the Refund amount. The SCN was decided vide the impugned order wherein the refund for an amount of Rs. 4,04,11,541/- was sanctioned under Section 11B of the Central Excise Act, 1944 (CEA,1944) alongwith Interest amounting to Rs.2,44,01,927/- under Section 11BB of the CEA,1944 (@ 6% per annum).

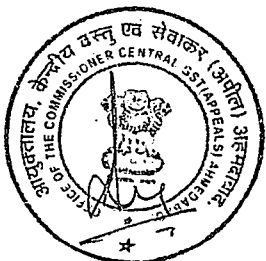
2.2 Being aggrieved with the impugned order, the appellant have preferred the present appeal on following grounds :



- The amount refunded to them was paid as a deposit and not as tax. Therefore, interest should have been granted to them @ 12 % on the refund amount and not @ 6% as granted by the adjudicating authority.
- A person should only be taxed in accordance with law and hence where excess amounts of tax are collected from an assessee or any amounts are wrongfully withheld from an assessee without the authority of law the revenue must compensate the assessee.

They relied on the following decisions in support of their claim :

- Decision of the Hon'ble High Court of Gujarat in the case of Jyoti Limited, Baroda Vs. UOI and another [1979 (6) TMI 33 (GUJ)].
- Decision of the Hon'ble Supreme Court of India in the case of CCE, Hyderabad Vs ITC Ltd. [2004-TIOL-112-SC-CX-LB]
- Hon'ble CESTAT, Chandigarh in the case of Marshall Foundry Works Pvt.Ltd. and Others Vs Commissioner of CE & ST, Faridabad [2002 (3) TMI 801]
- Hon'ble CESTAT, Chandigarh in the case of Gutam Industries Vs Commissioner of C.E. & S.T., Faridabad [2002-VIL-38-CESTAT-CHD-CE]
- Hon'ble CESTAT, New Delhi in the case of Batra Henlay Cables Vs Commissioner of GST & Cen.Ex., New Delhi [2022 (1) TMI 201]
- Hon'ble CESTAT, New Delhi in the case of Hitesh Industries and Others Vs Commissioner, CGST, Delhi [2020 (12) TMI 502]
- Hon'ble CESTAT, Allahabad in the case of Parle Agro Pvt.Ltd Vs Commissioner, CGST, Noida [2021 (5) TMI 870]
- Hon'ble CESTAT, Allahabad in the case of Dwarkesh Sugar Industries Ltd. Vs Commissioner, CGST, Greater Noida [2022 (1) TMI 314]
- The adjudicating authority has failed to follow the guidelines provided by various citations of higher judicial authorities submitted by the appellants



and this amounts to breach of judicial discipline. In support they relied on the following decisions :

- Decision of Hon'ble Supreme Court of India in the case of UOI Vs Kalakshmi Finance Corporation Ltd. [1991 (55) ELT 433 (S.C.)]
- Decision of the Hon'ble Gujarat High Court in the case of Topland Engines Pvt.Ltd Vs UOI [2008 (9) STR 331(Guj)]
- Decision of Gujarat High Court in the case of Lubi Industries LLP Vs UOI [2016 (337) ELT 179 (Guj.)]
- Decision of the Hon'ble Tribunal, Ahmedabad in the case of Lubi Electricals Ltd Vs Commisisoner of ServiceTax, Ahmedabad [2010 (17) STR 217]
- Decision of CESTAT Ahmedabad in the case of MAAN Pharmaceuticals Ltd. Vs Commissioner of C.Ex., Ahmedabad-III [2009 (248 ELT 504]

3. The appellant was granted opportunity for personal hearing on 09.01.2023. Shri Chintan Vasa, Chartered Accountant, appeared for personal hearing as authorised representative of the appellant. He re-iterated the submissions made in Appeal Memorandum. He also submitted two case laws viz. M/s Parle Agro Pvt.Ltd and M/s Omega Elevators during hearing and requested for consideration.

4. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant during personal hearing. The issue to be decided in the case is, whether the impugned order passed by the adjudicating authority, sanctioning interest on refund @ 6% per annum, in the facts and circumstances of the case is legal and proper or otherwise.

5 I find that the issue is related to refund of an amount deposited by the appellant during the course of an investigation by the department. Further, since the said amount was not paid against any specific demand of duty raised by the department, the same cannot be considered as a duty or tax but as a deposit. The impugned order was issued in pursuance of Order-In-Appeal No. AHM-



EXCUS-003-APP-50/2021-22 dated 29.10.2021 wherein it was ordered :

7. ... Accordingly, I find that the appellants are entitled to refund of the amounts deposited by them along with interest in terms of Section 11BB of the Central Excise Act, 1944.

In compliance of the above OIA, the adjudicating authority had granted refund to the appellant alongwith interest @ 6% from the date of payment/deposit of the amount.

6. Section 11 BB of the Central Excise Act, 1944 deals with interest on delayed refunds which is reproduced below for ease of reference:

“Section 11BB. Interest on delayed refunds. ---

If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.”

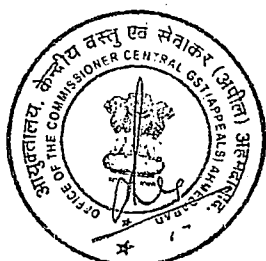
Explanation provided under said section stipulates that;

“Explanation. - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.”

From the legal provisions above, it is observed that Section 11 BB of the Central Excise Act, 1944 do not specify any rate of interest in case of delayed refund.

7. I find that the issue of interest and its interpretation has already been settled by the Hon'ble Apex court in case of Ranbaxy Laboratories Ltd v/s Union of India [2012 (027)ELT 193 SC] wherein it is held that :

(9) *“ It is manifest from the a fore-extracted provisions that Section 11 BB of the Act comes in to play only after an order for refund has been made under Section 11BB of the Act. Section 11BB of the Act lays down that in case*



any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of an application to be submitted under sub-section (1) of Section 11BB of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of an application. The explanation appearing below the proviso to Section 11BB introduced a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise but by the court shall be deemed to be an order made under sub-section (2) of Section 11BB of the Act. It is clear that the explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act.

Manifestly, interest under Section 11BB of the Act becomes payable, if on expiry of a period three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said section becomes payable on the expiry of a period of three months from the date of receipt of the application under sub-section (1) of Section 11B of the Act and that the said explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable."

It is observed that the Hon'ble Apex court has made it clear that the rate of interest should be in terms of the fixation by the Central Government.

8. It is also observed that the adjudicating authority while deciding the issue of rate of interest on the delayed refund, have relied on CBEC Notification No.67/2003-CE (N.T) dated 12.09.2003 and sanctioned the interest @ 6% per annum from the date of deposit. I find that the above decision of the adjudicating authority is in affirmation of the order of the Hon'ble Apex court cited above. Further, the claim of the appellant in terms of judgements of various judicial authorities do not fetch merit as, the Hon'ble High Court of Gujarat in case of Kamakshi Tradexim (India) Pvt. Ltd. Vs Union of India reported in 2017 (351) ELT 102 (Guj) has categorically stated that department can't take stand contrary to the decision given by the Apex court. Further, the adjudicating authority is bound by the Notification issued by the government. Hence, I do not find any reason to interfere with the decision of the adjudicating authority in respect of the rate of interest on delayed refund granted/sanctioned

the appellant and hence the same is liable to be upheld.



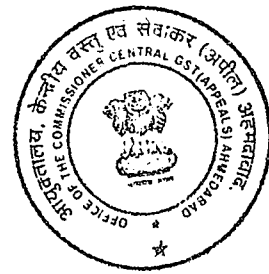
9. In light of the above discussions, I upheld the impugned order passed by the adjudicating authority and the appeal filed by the appellant for increase in rate of interest on delayed refund from @ 6% per annum to @ 12% per annum is, therefore, rejected.

10. 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
23rd January, 2023
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 23rd January, 2023

Attested:

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



By Regd. Post A. D

M/s. Sintex Industries Limited,
Near Seven Garnala, Kalol,
Tal- Kalol, Dist. Gandhinagar

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Commissionerate:
Gandhinagar.
3. The Deputy /Asstt. Commissioner, Central GST, Division-Kalol,
Commissionerate : Gandhinagar.
4. The Deputy/Asstt. Commissioner (Systems), CGST, Appeals,
Ahmedabad.
5. Guard file
6. PA File

