



सत्यमेव जयते

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

By SPEED POST

DIN:- 20231064SW000000D82A

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/54/2023-APPEAL / 6666-70
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-106/2023-24 and 25.09.2023
(ग)	पारित किया गया / Passed By	श्री शिव प्रताप सिंह, आयुक्त (अपील) Shri Shiv Pratap Singh, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	04.10.2023
(ङ)	Arising out of Order-In-Original No. 57/ADJ/GNR/PMT/2021-22 dated 25.03.2022 passed by the Deputy Commissioner, CGST, Division-Gandhinagar, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Akash Labour Contractor, Plot No. 999, Shivshakti Society, Sector-27, Gandhinagar, Gujarat-382028.

कोई व्यक्ति इस अपील-आदेश से असंतोष 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:-

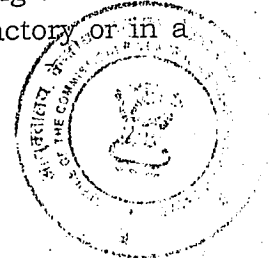
Revision application to Government of India:

(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 प्रक्रिया 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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) 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 :-

(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 / 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 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.

(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 Akash Labour Contractor, Plot No. 999, Shivshakti Society, Sector-27, Gandhinagar, Gujarat-382028 [Old address- Satyam apartment M/34/202, Sector-24, Gandhinagar, Gujarat-382024] (hereinafter referred to as "*the appellant*") against Order in Original No. 57/ADJ/GNR/PMT/2021-22 dated 25.03.2022 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, CGST and Central Excise, Division- Gandhinagar, Commissionerate: Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

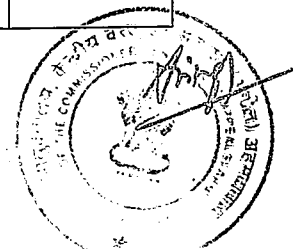
2. Briefly stated, the facts of the case are that the appellant were engaged in providing services classified under 'Manpower recruitment/supply agency service' and registered with Service Tax under registration No.AASPN6313PSD001. On analysis of 'Sales/Gross Receipts from Services (Value from ITR)', the 'total amount paid/credited under 194C, 194H, 194I and 194J' and 'Gross Value of Service Provided' was undertaken by the Central Board of Direct Taxes (CBDT) for the period F.Y. 2014-15 and details of the said analysis was shared by the CBDT with the Central Board of Indirect Taxes (CBIC). Upon perusal of the said analysis it was observed that the appellant have shown less amount of the 'Gross Value of Service Provided' in the Service Tax Return (ST-3) than the 'Sales/Gross Receipts from Services (Value from ITR)', 'total amount paid/credited under 194C, 194H, 194I and 194J' filed with the Income Tax department.

2.1 In order to verify, letters /E-mails were issued to the appellant calling for the details of services provided during the period. They didn't file any reply. It was observed by the jurisdiction officer that that the appellant have misdeclared /suppressed the 'Gross Value of Service Provided' in their ST-3 Returns filed for the F.Y. 2014-15. This had resulted in short payment/non payment of Service Tax and the amount of Service Tax short paid was calculated as per the Table below :

Table-A

(Amount in Rs)

F.Y.	Value of Services declared in ITR	Value of total amount paid/credited under 194C, 194H, 194I, 194J	Value of Services provided as per Service Tax returns	Highest Difference	Total Service Tax along with Cess
2014-15	0	19,49,377/-	2,37,344/-	17,12,033/-	2,11,605/-



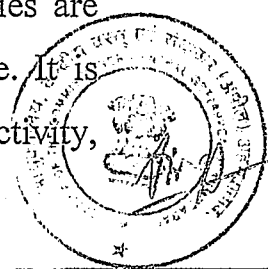
3. Show Cause Notice vide F. No. IV/16-09/TPI/PI/Batch 3B/2018-19/GR-III/3821 dated 25.06.2020 (in short 'SCN') was issued to the appellant wherein it was proposed to:

- Demand and recover service tax amounting to Rs. 2,11,605/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act, 1994 ;
- Impose penalty under Section 77 and 78 of the Finance Act, 1994;

4. The SCN was adjudicated *ex-parte* vide the impugned order wherein the demand for Rs. 2,11,605/- was confirmed under Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75. Penalty amounting to Rs. 2,11,605/- was imposed under Section 78 of the Finance Act, 1994. Penalty of Rs. 10,000/- was imposed under Section 77(2) of the Finance Act, 1994.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal alongwith application for condonation of delay on following grounds :

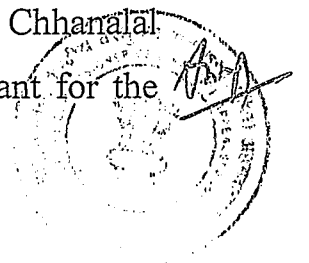
- The impugned order was issued without serving notice or the hearing notices. At least when the notices were not served, the adjudicating authority should have realized that even the notice was not served. In absence of any notice, the demand could not have been adjudicated. The order therefore is clearly contrary to law and not tenable.
- The appellant is a proprietorship firm and involved in providing services in relation to manufacturing activities at the factory of M/s Kalpatru Power Transmissions Ltd, which is engaged in manufacturing parts of transmissions line and on which excise duty was paid by M/s Kalpatrau Power Transmissions Ltd. Appellant used to raise single invoice, showing two different activities. All the services provided during relevant time the manpower service was subject to partial reverse charge liability.
- They submitted that apart from providing manpower service, appellant were also undertaking manufacturing activities in the factory of the registered excise manufacturer, Kalpataru Power Transmissions Ltd. Appellant has attached a statement, bill-wise, with copies of all invoices, showing the fact of having undertaken such activities.
- They further submitted that when the part of manufacturing activities are undertaken with registered excise factory, no service tax is payable. It is settled law that when the activity undertaken is part of manufacturing activity,



service tax is not payable on such activity. Therefore, the demand on such activity is not tenable.

- The appellant was registered with service tax department. Appellant had paid service tax for the period Oct 2014 to March 2015. The copies of challans for tax payments are attached, these payments are required to be adjusted against final tax liability.
- In the impugned order service tax demand is demanded on 100% of receipts from appellant. Appellant is inter alia providing man power service. During relevant time, under notification no 30/2012-ST, tax on 75% of the taxable value was payable by the recipient of services. In present case Kalpataru Power Transmission Ltd was the recipient and they had discharged service tax on said 75% value. A certificate from Kalpataru power Transmission Ltd is attached showing details of tax paid by them. Thus the liability of appellant was only on balance 25% and not on the entire value. The demand quantification is, therefore, incorrect and is required to be recalculated.
- It is submitted that the total value on which appellant is liable to pay service tax is below threshold limit of Rs. 10,00,000/- in both the years i.e 2013-14 and 2014-15. The appellant has enclosed the statement of total value in both years. Therefore, no service tax was payable by appellant and the tax already paid is required to be refunded.
- The demand is for the year 2014-15. The notice is dated 25-6-2020 (though never received). The period covered is more than 5 years. The entire proceedings are barred by limitation.
- The appellant was registered with Service Tax department. Appellant has also filed return and paid Tax. Thus all information was available to Department. The records clearly show that appellant was not liable to tax, There was no requirement to intimate department about income tax statement form 26AS. Therefore there is no suppression. The extended period is not applicable. The demand therefore cannot be sustained.
- It is submitted that since no demand can be sustained, no penalty can be imposed. The demand is barred by limitation and hence no penalty can be imposed.

6. Personal Hearing in the case was held on 18.08.2023. Shri Anilbhai Chhanalal Nayee, Owner of the appellate firm, appeared on behalf of the appellant for the



hearing. He reiterated the submissions made in the appeal memorandum. He also submitted that the appellant had provided manpower supply services to corporate where in the liability to pay service tax only to the extent of 25% and remaining 75% liability was on the recipient on RCM. The recipient company has already given a letter in this regard. Copy of ST-3, 26AS, Profit & Loss A/c, Balance Sheet etc are enclosed with the appeal. The appellant had taken registration and had filed return correctly. However, the adjudicating authority has passed the impugned order *ex-parte* without any verification. He requested to set aside the impugned order.

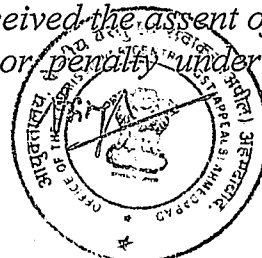
7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the Personal Hearing and the material available on records. It is observed from the records that the present appeal was filed by the appellant on 20.12.2022 against the impugned order passed dated 25.03.2022, reportedly received by the appellant on 10.11.2022. As claimed by the appellant, an unusual delay was observed between the date of issue of impugned order and the date of communication claimed by the appellant. In order to verify the said delay, letters dated 10.03.2023 & 16.08.2023 were forwarded to the jurisdiction office requesting them to confirm from their records. The jurisdictional Office i.e CGST, Division, Gandhinagar replied vide e-mail dated 17.08.2023 from their e-mail gnr.cgstgnr@gov.in, wherein they confirmed that :

"... the date of issuance or order is 25.03.2022 and as per the dispatch records maintained in the office, the date of communication of the same is 30.03.2022 with the dispatch no. 6008 without delivery failure/return."

7.1 Therefore, it was confirmed that the impugned order was received by the appellant on 30.03.2022 with the dispatch no. 6008 and that was not returned by the postal department. Thus, the claim of the appellant regarding the date of communication of order (on 10.11.2022) gets refuted.

8. 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 portion 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."

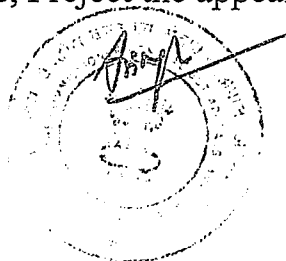
7.1 In terms of Section 85 of the Finance Act, 1994, an appeal before the Commissioner (Appeals) is to be filed within a period of two months from the receipt of the order being appealed. Further, the proviso to Section 85 (3A) of the Finance Act, 1994 allows the Commissioner (Appeals) to condone delay 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.

8. In the instant case, the impugned order dated 25.03.2022 was received by the appellant on 30.03.2022. Therefore, the period of two months for filing the appeal before the Commissioner (Appeals) ended on 29.05.2022. The further period of one month, which the Commissioner (Appeals) is empowered to condone for filing appeal ended on 28.06.2022. Therefore, the present appeal filed by the appellant on 20.12.2022 is, therefore, filed beyond the Condonable period of one month as prescribed in terms of Section 85 of the Finance Act, 1994 and is clearly barred by time limitations.

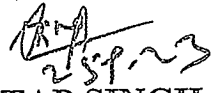
8.1 My above view also finds support from the judgment of the Hon'ble Tribunal, Ahmedabad in the case of Zenith Rubber Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, Ahmedabad – 2014 (12) TMI 1215 – CESTAT, Ahmedabad. In the said case, the Hon'ble Tribunal had held that :

"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."

9. In view of the above discussions and following the judgment of the Hon'ble Tribunal, supra, I do not find this a fit case for exercising the powers conferred vide Section 85 (3A) of the Finance Act, 1994. Therefore, I reject the appeal filed by the appellant on grounds of limitation.




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.


(SHIV PRATAP SINGH)
Commissioner (Appeals)

Dated: 25 Sept, 2023



सत्यापित / Attested:


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

By REGD/SPEED POST A/D

To,
M/s Akash Labour Contractor,
Plot No. 999, Shivshakti Society,
Sector-27, Gandhinagar,
Gujarat-382028.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Gandhinagar.
3. The Deputy /Asstt. Commissioner, Central GST, Division- Gandhinagar, Gandhinagar Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
- ✓ 5. Guard file.
6. PA File.

