



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

DIN:- 20231164SW00006126EE

(क)	फाइल संख्या / File No.	GAPPL/COM/CEXP/70/2023-APPEAL 12187-61
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-115/2023-24 and 31.10.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	07.11.2023
(ङ)	Arising out of Order-In-Original No. KLL DIV/CE/YOGENDRA SINGH RAWAT/138/22-23 dated 16.09.2022 passed by the Assistant Commissioner, CGST, Division-Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Knack Flexipack, Plot No. 58, Shed No. 30 to 38, Khatraj-Kalol Road, Khatraj, Gujarat

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:-

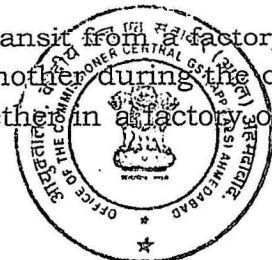
Revision application to Government of India:

(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 मामले 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 डम 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.

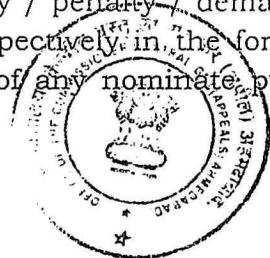
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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।

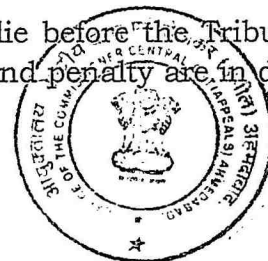
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

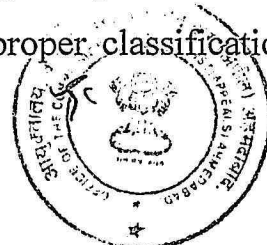


अपीलियआदेश / ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s Knack Flexipack, Plot No. 58, Shed No. 30 to 38, Khatraj-Kalol Road, Khatraj, Gujarat (hereinafter referred to as '*appellant*') against Order in Original No. KLL DIV/CE/YOGENDRA SINGH RAWAT/138/22-23 dated 16.09.2022 (hereinafter referred to as '*the impugned order*') passed by the Assistant Commissioner, CGST, Division - Kalol, Commissionerate: Gandhinagar (hereinafter referred to as '*the adjudicating authority*').

2. The facts of the case, in brief, is that the appellant was having Central Excise Registration No. AANFK5305REM001 for manufacturing of Laminated Printed Roll (CETH-39219099), Printed Laminated Pouch (CETH-39239090) etc. falling under Chapter 39 of the Central Excise Tariff Act, 1985. They were also holding Service Tax registration vide Registration No. AANFK5305RSD001. In the GST Regime they were holding GSTIN-24AANFK530SRIZU. During the course of audit of the Central Excise and Service Tax records of the appellant for the period from October-2015 to June, 2017, it was observed that the appellant were classifying their product 'Printed Laminated Pouch' under CETH- 39239090 and clearing them on payment of Central Excise duty @ 12.5% advalorem, in terms of Notification No. 12/2012-CE dated 17.03.2012. In support of their Classification they contended that they were classifying their product under 'Others', as, no specific heading for the said product was available in the Tariff.

2.1 The officers of audit further observed that the said product i.e 'Printed Laminated Pouch' should merit classification under CETH 39232990 under the description - 'Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures of plastics'. As from the dictionary meanings, it appeared to them that a 'bag' is a synonym of a 'pouch' and is a broader term used to address a pouch and all other containers. As per the observations of Audit, applicable rate of duty on the product after classification under CETH 39232990 was 15% by virtue of Notification No. 12/2016-CE dated 01.03.2016. A query memo F. No. ADT/Cor-X/AP-64/52/Knack/2019-20 dated 08.09.2020 was issued to the appellant. However, the appellant did not file any reply. Hence, Audit concluded vide FAR No. 385/2020-21 (Central Excise & S.Tax) dated 16.10.2020 and regarding the Classification of the product it was concluded that on account of improper classification of their



product 'Printed Laminated Pouch' by the appellant, it has resulted in short payment of Central Excise duty amounting to Rs.13,35,402/-.

2.1 Accordingly, SCN bearing F.No. ADT/Cir-X/AP-64/52/Knack/19-20 SCN No. 44/2020-21 dated 27.10.2020 (SCN for short) was issued to the appellant wherein it was proposed to :

- i. Classify the product 'Printed Laminated Pouch' under CETH 39232990;
- ii. Demand & recover Central Excise duty amounting to Rs. 13,35,402/- under Section 11A (4) of the Central Excise Act, 1944 (calculated for the period March-2016 to June-2017) along with interest under Section 11AA;
- iii. Impose penalty under Section 11AC (1) (c) of the Central Excise Act, 1944.

2.2. The SCN was adjudicated vide the impugned order wherein :

- I. 'Printed Laminated Pouch' was ordered to be classified under CETH 39232990;
- II. The demand of Central Excise duty amounting to Rs. 13,35,402/- was confirmed under Section 11A (4) of the CEA, 1944;
- III. Interest was ordered to be recovered under Section 11AA of the CEA, 1944;
- IV. Penalty of Rs. 13,35,402/- was imposed under Section 11AC of the CEA, 1944 alongwith option for reduced penalty under proviso to clause (e).

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

- A. The impugned Order-in-Original is illegal, improper and incorrect, therefore the same deserves to be quashed and set aside.
- B. Vide the impugned Order-In-Original, the demand has been confirmed on the basis of dictionary meaning without carrying out any exercise or providing any reason for coming to the conclusion that even in trade parlance sacks or bags or pouches are more or less considered the same.
- C. The impugned order is completely vague. Passed in total absence of mind. The same is evident from the fact that para 7 of the impugned order is a copy paste paragraph from some other matters pertaining to Service Tax. A reading of the same would show that it is mentioned that *a taxable assess is not required to maintain any statutory or separate records under*

the provision of Service Tax Rules.....” It is also mentioned that, *“private records maintained by him for normal business purpose are accepted, partially for all the purpose of Service Tax.....”*. It is also mentioned that *“it appeared that the noticee had not disclosed the proper taxable value of the taxable services for the purpose of payment of service tax and thereby they have kept away themselves from the tax liability.....”* It is further mentioned that, *“rendered them liable for penal action as per provision of Section 78 of Finance Act, for suppression, concealment of taxable invoice/value of taxable service with intent to evade payment of service tax.”* Thus, it is clear that, the entire paragraph 7 of the impugned order is completely out of place. The present matter pertains to the demand of Central Excise Duty.

- D. The impugned order is a non speaking order. It may be observed that, in the “Discussion and Finding” portion of the impugned order, there is neither much discussion, nor much finding. Only half page observation is made in that portion of the judgment.
- E. It is submitted that, there is a huge difference between “pouch” and “bag”. A bag contains handle since the primary utility of the bag is to permit carrying of goods whereas the pouches in question are primarily intended to store the goods safely during transport and to protect from external element to increase the shelf life of the goods contained. Therefore, it would be completely incorrect to say that the term “bag” and “pouch” are synonyms and that the term “bag” could cover all kind of containers including pouches.
- F. There is no head and tail of the findings made in para 17.1 of the impugned order. It is mentioned that, *“I find that Sub Heading Notes of Chapter 392329, as a separate head “other”: which clearly fits the description of the goods manufactured by the noticee. In the context, I find that the said ‘pouches’ are containers made of think/flexible/plastic film used for packing of goods. Hence, it is evident that the noticee has misclassified the product manufactured by them under 39239090 instead of 39232990 with intent to pay less amount of duty”*. Fact remains that 392329 is not “other” but it is “-- of other plastics”. What is important is to see that the same falls under category “- sacks and bags (including cones)”. The question is, whether the ‘pouches’ manufactured by the appellant would fall under the category “- sacks and bags (including cones)” and therein sub category “-



- of other plastics" if it falls under the same, only then it could fall under a further sub category "--- other". In appellant's humble submission, the product 'pouches' would not fall under the main category "- sacks and bags (including cones)" itself.

- G. During the relevant period, in the case of Simplex Packaging Limited reported in 2017 (345) ELT 659 (Tri.- Del) and Packaging India Pvt. Ltd., reported in 2017 (5) TMI 1078 – CESTAT, New Delhi though the Hon'ble Tribunal was deciding the applicability of exemption notification, there classification of printed laminated pouches under CETH 39239090 was not disputed and the same was accepted by the department as well. Thus, there are judgments which would conclude that the product manufactured by the appellant i.e. printed laminated pouches are classified under CETH 39239090.
- H. It is further submitted that, the product in question is commercially treated and traded as 'pouch' only. In the common parlance, nobody calls the product 'bag'. Since it is so, classification under CETH 39239090 cannot be denied. It is a settled preposition of law that, the Schedule/Tariff entry of a taxing statute should be interpreted in the commercial sense or in trade parlance and not as per its scientific or technical meaning alone reliance is placed on:
- (a). Circular No. 972/06/2013-CX issued by the CBIC.
 - (b). A. Nagaraju Bros Versus State of Andhra Pradesh reported in 1994 (72) ELT 801 (SC)
 - (c). Commissioner of C.Ex. Versus Wockhardt Life Sciences Limited reported in 2012 (277) ELT 299 (SC)
 - (d). Westinghouse Saxby Farmer Limited Versus Commissioner of C.Ex., Calcutta reported in 2021 (376) ELT 14 (SC).

In support of the submission that, the product in question is commercially known as 'printed pouches' the appellant craves liberty to produce copies of purchase orders of the buyers and Central Excise Invoices issued by the appellant during the course of hearing. Thus, it is clear that the product is commercially known and treated as 'pouch' and not a 'bag'. Consequently, there is no merit in the preposition of classifying the product under the description of 'Sacks and bags'.

- I. Your Honour's kind attention is invited to the most recent Order-In-Appeal No. AHM-EXCUS-003-APP-21-22 dated 29/10/2021 being passed by the



Hon'ble Commissioner (Appeals) in the case of M/s. Colourflex Laminators Ltd., Gandhinagar – 382721. Vide the same Order-in-Appeal, the Hon'ble Commissioner (Appeals) was pleased to decide exactly identical matter in favor of the respective assessee. Therefore, the same Order-in-Appeal requires to be followed and the present appeal requires to be allowed.

J. Further, Your Honour's kind attention is invited to the following notifications where the word 'pouch' and the word 'bag' is respectively mentioned in regard to different products. This clearly proves that the interpretation made in the impugned order that 'bag' and 'pouch' is one and the same is completely wrong. Your Honour's kind attention is invited to:

- i. Notification No. 41/2012-ST dtd. 26/09/2012 which provides rebate of service tax paid on services used in export goods. In this notification, a 'Schedule of Rates' is prescribed. In this schedule, different products are mentioned. According to this notification, rebate shall be claimed at the rate mentioned against each of the products respectively whenever they are exported.

In this table, that is 'Schedule of Rates',

- a) Sr. No. 50 talks about saddle bags of tariff item 4201,
- a) Sr. No. 51 talks about following goods falling under tariff item 4201 viz. travelling bags, food or beverages bags, shopping bags, tool bags as well as tobacco pouches. This means even as per this notification bag and pouch are different from each other.
- c) Sr. No. 100 talks about pouches falling under tariff item 4817.
- d) Sr. No. 102 talks about bags falling under tariff item 4819.

Thus, as per this notification, different treatment is given to bag and a different treatment is given to pouches. Both these products have different specific entries in the notification.

- ii. Notification No. 52/2011-ST dtd. 30/12/2011 provides refund of service tax paid on services used for export goods. This refund is provided by way of exemption. Exemption could be claimed to the extent of rate specified in the 'Schedule of Rates' given in tabular form in the said notification which prescribes different rates for different products.

In this table, that is 'Schedule of Rates',

- a) Sr. No. 50 talks about saddle bags of tariff item 4201



- b) Sr. No. 51 talks about following goods falling under tariff item 4201 viz. travelling bags, food or beverages bags, shopping bags, tool bags as well as tobacco pouches. This means even as per this notification bag and pouch are different from each other.
- c) Sr. No. 100 talks about pouches falling under tariff item 4817.
- d) Sr. No. 102 talks about bags falling under tariff item 4819.

Thus, as per this notification, different treatment is given to bag and a different treatment is given to pouches. Both these products have different specific entries in the notification.

iii. Notification No. 89/2017-Cus. (N.T.) dtd. 21/09/2017 - this notification provides all industrial rate of drawback 2017-18. A Schedule of Drawback Rates effective from 01/10/2017 is given in this notification.

It may be seen that:

- a) A drawback rate of 0.7% is prescribed for 'tea bags' of tariff item 090201.
- b) A drawback rate of 20% is prescribed for 'rise packed in plastic bags' of tariff item 100601.
- c) A drawback rate of 15% is prescribed for 'rise packed in plastic bags' of tariff item 100602.
- d) A drawback rate of 10.5% is prescribed for 'rise packed in plastic bags' of tariff item 100603.
- e) A drawback rate of 7.5% is prescribed for 'rise packed in plastic bags' of tariff item 100604.
- f) A drawback rate of 20% is prescribed for 'rise packed in plastic bags' of tariff item 100601
- g) A drawback rate of 0.15% is prescribed for 'common salt in HDPE / LDPE/PP bags' of tariff item 250101.
- h) A drawback rate of 0.15% is prescribed for 'Calcine in HDPE / LDPE/PP bags' of tariff item 250101.
- i) A drawback rate of 1.5% is prescribed for 'HDPE Woven Bags' of tariff item 392301.
- j) A drawback rate of 1.5% is prescribed for 'HDPE Woven Bags' of tariff item 392302.
- k) No drawback rate is mentioned against 'Saddle bags' of tariff item 4201.



- l) No drawback rate is mentioned against 'travelling bags', 'Insulated food and beverages bags', 'tool bags', and 'tobacco pouches' of tariff item 4202.
- m) Drawback @ 1.5% is prescribed for 'hand bag' of tariff item 42020201.
- n) Drawback @ 1.5% is prescribed for 'pouches' of tariff item 4817.
- o) Drawback @ 1.5% is prescribed for 'bags' of tariff item 4819.

Thus, as per this notification, different treatment is given to bag and a different treatment is given to pouches. Both these products have different specific entries in the notification.

- iv. Notification No. 189/2009-Cus (N.T.) dtd. 31/12/2009 - this notification pertains to Tariff [Determination of Origin of goods under Preferential Trade Agreement between Governments of member states of South Asian Nations (ASEAN) and Republic of India] Rules, 2009.

Even in this rules, bags of different product and pouches of different products are mentioned separately. Thus, even this Rule distinguishes between 'bags' and 'pouches'.

It is important to note that in this Rule, a difference is carved out amongst 'plastic bag' and 'plastic pouch' of Chapter 3921.90.

On perusing point 'C' of this Rules, which pertains to Tariff Item 3921.90-others, it may be found that it talks of "woven, knitted or non-knitted fabric coated, covered or laminated with plastic".

Here, the description of the goods is mentioned as 'travelling bags', 'insulated food or beverages bags', 'toilet bags', 'shopping bags', 'tool bags', 'sports bags' and 'tobacco pouches'.

Thus, in this Rule a difference in 'plastic bags' and 'plastic pouches' of Chapter 39 of the Central Excise Tariff is clearly carved out.

- J. They were classifying the goods under heading 39239090 for long. Right from the date of commencement of manufacturing and clearance of pouch in the factory of the appellant, the product is classified under 39239090. Same is declared in the statutory periodical returns filed by the appellant with the department. A reading of the impugned order as well as the show cause notice would show that, the same has culminated out of audit. The audit party had perused the monthly ER-1 returns filed by the appellant herein. From the same, they have found that the product is classified by the appellant under 39239090. In that view of the matter, it is ample clear



that there is no fraud, suppression of facts, willful intent to evade payment of duty. Since it is so, longer period of limitation for the purpose of issuing show cause notice could not have been invoked, in any view of the matter. Therefore, even otherwise, the impugned order deserves to be quashed and set aside.

- K. The period in dispute is from March, 2016 to June, 2017. The show cause notice proposing demand is dated 27/10/2020. This means the same is issued invoking longer period of limitation. It is most respectfully submitted that, without prejudice to the merits, even otherwise, the demand fails as the same is time barred.
- L. The very fact that department itself never objected to appellant's classifying the product in question as 'pouch' itself means that it is a matter of interpretation. It is a settled law that in classification disputes, there cannot be any ill intension. The mistake if any is always bona-fide. It is a question of interpretation and therefore, no longer period of limitation for the purpose of demand could be invoked. The submission that in classification disputes, longer period of limitation is not invocable finds support from following judgments:
- a. GULAB GUNDHI TOBACCO CO. Versus COMMISSIONER OF C. EX., DELHI-I reported in 2018 (8) G.S.T.L. 284 (Tri. - Del.)
 - b. Gulab Gundhi Tobacco Co. v. Commissioner - reported in 2018 (12) G.S.T.L. J88 (S.C.)
 - c. GODREJ & BOYCE MANUFACTURING CO. LTD. Versus COMM. OF C.EX., MUMBAI reported at- 2017 (358) E.L.T. 317 (Tri. - Mumbai)
- M. Likewise, it deserves appreciation that, in any view of the matter, this is a case of interpretation of the most complex provisions of law. The submission that in the cases which involve interpretation of the provisions of the statute, etc, longer period of limitation is not invocable finds support from the following judgments:
- a. GOYAL M.G. GASES PVT. LTD. Versus COMMISSIONER OF C. EX., GHAZIABAD reported at 2004 (168) ELT 369.
 - b. C.C.E., TIRUNELVELI Versus TUTICORIN ALKALI CHEM & FERTILIZERS LTD. reported at 2011 (23) STR 372
- N. They have regularly filed ER-1 returns. Appellant has given all the information required as per the format of ER-1 return. It is a settled law



that in such situation, it cannot be alleged that appellant has suppressed any facts from the department. Therefore, no longer period of limitation could be invoked. Said submissions find support from following judgements:

- a. 2011(24) STR 572 (Tri. Delhi) in the case of CCE, Indore Vs. Mediacaps Limited.
- b. 2012(25) STR 46 (Tri. Ahd.) in the case of Parekh Plast (I) Pvt. Ltd., Vs. CCE, Vapi.
- c. 2011(22) STR 299 (Tri. Delhi) in the case of CCE, Jaipur Vs. Pushp Enterprises.

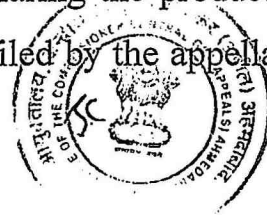
O. It is nobodies case that the appellant was required to provide a particular information separately and specifically to the department as per the statute, which he has failed to provide. It is a settled law that not providing any information which otherwise an assessee is not required to provide could not be equated with suppression. These submissions find support from following judgements:

- a. Continental Foundation JT. Venture Vs. Commissioner of Central Excise, Chandigarh-I reported at 2007 (216) ELT 177 (SC).
- b. Collector of Central Excise Vs. Chemphar drugs and Liniments reported at 1989 (40) ELT 276 (S.C.)

P. Further, even if it is assumed that two views were possible and that the product manufactured and cleared by appellant is 'plastic bag', even though it is a 'plastic pouch', even in that case simply because appellant has taken a particular view and as per that view, appellant has paid less duty which is applicable to 'plastic pouch', it cannot be said that appellant has mala-fidely done the same. Said submissions find support from following judgements:

- a. Chansma Taluka Sarvoday Majdoor Kamdar Sang Limited Vs. CCE, Ahmedabad reported in 2012(25) STR 444 (Tri. Ahd.).
- b. Lanxess ABS Limited Vs. Commissioner of Central Excise, Vadodara reported in 2011(22) STR 587 (Tri. Ahd.).

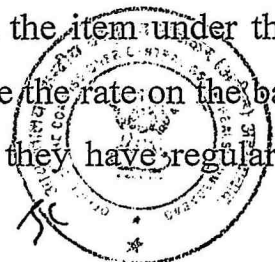
Q. The unit of the appellant was established in w.e.f. 10/10/2013. Since then the appellant is manufacturing "Printed Laminated Pouches" since day one, the said product is classified under Tariff Item 39239090 only. Since day one, the statutory periodical returns declaring the product as being classifiable under Tariff Item 39239090 are filed by the appellant. These



facts are within knowledge of the department from day one. A perusal of the impugned Show-cause Notice as well as audit report from which the Show-cause Notice is culminated would show that the audit party has perused the ER-1 returns of the appellant and on that basis the objection was raised and the Show-cause Notice was issued. The fact that no-body has ever issued any objection through out all these years itself shows that even the officers of the department were of the view that the product is correctly classified under Tariff Item 39239090. Further the very fact that the Show-cause Notice is culminated out of the perusal of ER-1 returns itself shows that there is no fraud, suppression of facts, willful mis-statement, etc. Therefore, in any view of the matter longer period of limitation could not have been invoked.

- R. The demand of duty deserves to be quashed and set aside as the same is not maintainable, for the same reason the demand of interest and penalty imposed on the appellant herein also deserves to be quashed and set aside. Needless to mention that when there is no demand of duty, there cannot be any demand of interest or penalty. Therefore, not only the demand of duty, but also the demand of interest and penalty being imposed on appellant deserves to be set aside.
- S. The impugned Order-in-Original is received by the appellant on 28.11.2022. Therefore, this appeal is filed within the prescribed limitation of 60 days from the date of the receipt of the said Order-in-Original in accordance with Section 35-B of the Central Excise Act, 1944.

4. Personal Hearing in the case was held on 08.09.2023. Shri Devashish K. Trivedi, Advocate, appeared on behalf of the appellant for the hearing. He submitted an additional submissions dated 08.09.2023 along with supporting documents and case law during the course of hearing and reiterated the submissions made in the appeal memorandum. He also submitted that the dispute in the matter, relates to classification of the item Pouch used for packing of wafers, chips etc. The department's contention is that the same should be classified as bags in a different heading, where the Central Excise duty rate was 15% during the period 2016 to 2017 (upto June-2017), instead of 12.5% under the classification claimed by the appellant. He submitted that the appellant had all along classified the item under the same heading and the department has made a case only because the rate on the bags was increased after March, 2016. He further submitted that they have regularly filed



returns under the same classification and were subjected to audit by the department from time to time and no objection on classification was ever raised earlier. He referred to the Order-in-Appeal in a similar cases issued earlier by this office, wherein the classification as Pouch was accepted. He further referred to certain case law, where it has been held that the classification should be based on the terms used in commercial parlance. He strongly contended that there was no suppression on part of the appellant, since, the appellant filed regular returns and was subjected to audit. Even if, there is any difference in interpretation of the classification that cannot be termed as suppression, in view of catena of judgements in this regard. Therefore, he requested to set aside the impugned order on merits as well as on limitation.

4.1 On account of change in appellate authority personal hearing was again held on 17.10.2023. Shri Devashish K. Trivedi, Advocate, appeared on behalf of the appellant for the hearing. He re-iterated the contents of the written submission and requested to allow their appeal.

5. I have gone through the facts of the case, submissions made in the Appeal Memorandum, additional submission and oral submissions made during the course of personal hearing as well as evidences available on record. The issue is before me to be decided whether 'Printed Laminated Pouch' manufactured by the appellant is classifiable under CETH 39239090 as claimed by the appellant or under CETH 39232990 as proposed by the department. The demand pertains to the period March, 2016 to June, 2017.

6. I find that the appellant were registered with Central Excise since the period F.Y. 2013-14 and have filed their statutory Central Excise Returns (ER-1) since inception and in their ER-1 Returns they have classified their Product 'Printed Laminated Pouch' under CETH-39239090, these facts are undisputed. It is also observed that the effective rate of Central Excise duty for goods classifiable under CETH - 39239090 is 12.5%, while the effective rate of Central Excise duty for goods classified under CETH 39232990 was 18%, which was reduced to 15% w.e.f 01.03.2016, in terms of Serial Number 148AA of Notification No. 12/2016- CE dated 01.03.2016. The appellant have contended that they right from their inception, they have classified the said product under CETH 39239090 in their ER- 1 Returns. Hence, the appellant have disclosed this aspect of Classification before the



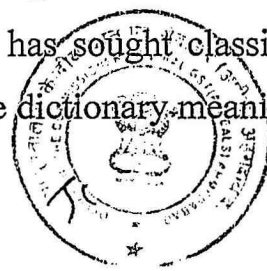
department since the period F.Y. 2013-14, however, department have never raised any objection to the same even after being aware of the facts.

6.1 Despite their records being audited during January, 2015 and January, 2016, no objection was raised by the audit officers as regards the classification. It is the contention of the department that as per the dictionary meaning, terms bags and pouches are synonymous and, hence, are classifiable under CETH 39232990 attracting duty @ 15% w.e.f 01.03.2016 in terms of Notification No. 12/2016-CE dated 01.03.2016.

6.2 I find it relevant to refer to the Central Excise Tariff classification for CETH-3923. It is observed that CETH 3923 pertains to goods of the description ARTICLES FOR THE CONVEYANCE OR PACKING OF GOODS, OF PLASTICS; STOPPERS, LIDS, CAPS AND OTHER CLOSURES, OF PLASTICS'. The relevant entries under CETH 3923 is reproduced below :

Tariff Item (1)	Description of goods (2)	Unit (3)	Rate of duty (4)
3923 10	- Boxes, cases, crates and similar articles:		
3923 10 10	--- Plastic containers for audio or video cassettes, cassette tapes, floppy disk and similar articles	kg.	12.5%
3923 10 20	--- Watch-box, jewellery box and similar containers of plastics	kg.	12.5%
3923 10 30	--- Insulated ware	kg.	12.5%
3923 10 40	--- Packing for accommodating connectors	kg.	12.5%
3923 10 90	--- Other	kg.	12.5%
	- Sacks and bags (including cones)		
3923 21 00	-- Of polymers of ethylene	kg.	18%
3923 29	-- Of other plastics:		
3923 29 10	--- Of poly (vinyl chloride)	kg.	18%
3923 29 90	--- Other	kg.	18%
3923 30	- Carboys, bottles, flasks and similar articles:		
3923 30 10	--- Insulated ware	kg.	12.5%
3923 30 90	--- Other	kg.	12.5%
3923 40 00	- Spools, cops, bobbins and similar supports	kg.	12.5%
3923 50	- Stoppers, lids, caps and other closures :		
3923 50 10	--- Caps and closures for bottles	kg.	12.5%
3923 50 90	--- Other	kg.	12.5%
3923 90	- Other :		
3923 90 10	--- Insulated ware	kg.	12.5%
3923 90 20	--- Aseptic bags	kg.	12.5%
3923 90 90	--- Other	kg.	12.5%

6.3 I find that CETH 39232990 is in respect of 'Others' for goods of the description "Sacks and bags (including cones)" and the department has sought classification under this heading primarily on the grounds that as per the dictionary meanings bag

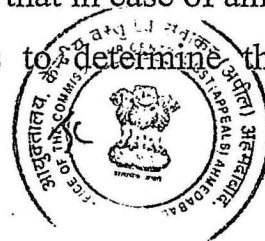


is a synonym of pouch and is a broader term to address a pouch and all other containers. I find that the expression "Sacks and bags (including cones)" is restrictive as regards the scope of the goods covered. Even a plain reading indicates that only Sacks, Bags and Cones are covered under this description. By referring to the dictionary meaning, the Audit has sought to expand the scope of description of the product to cover 'pouch' within its ambit which is not legally permissible.

6.4 It is further observed that CETH 392390, is in respect of the residuary heading Others'. This heading also covers Aseptic bags' under CETH - 39239020. Factually, Aseptic bags are a kind of packaging material generally used in the packaging of edible products. If the contention of the department is to be accepted, even the product 'Aseptic bags' would merit classification under the heading covering 'Sacks and bags (including cones)' which would lead to heading 39239020 being rendered redundant. Consequently, the only conclusion which can be drawn is that not all goods which are in the nature of bags, pouch, packets or packaging material are covered within the description of 'Sacks and bags (including cones)'. Resultantly, pouch, being a product distinct from a bag, would not merit classification under the category of sacks and bags.

6.5 I find that the appellant have submitted various documents in support of their contention. From the Invoice issued by the appellant it is apparent that their product Printed Laminated Pouch' are printed as per the Purchase Order of the consignee and are therefore tailor made products to be used for storage/sale of various food/edible products as well as non-edible products. I also find that one of the prominent characteristic of the pouch is that the same is not a product which is designed for use as such for carrying of goods or articles (synonymous for sacks). Therefore, I find that the product under dispute is of the kind which is generally used for packaging of different kind of products viz. spices, pulses, cereals, confectionery, fertilisers etc.

7. It is further observed that, as contended by Audit, the dictionary meaning of 'bag or sack' may cover or include pouch, that cannot be the sole test or criteria for determining the classification of the product under the Central Excise Tariff Act, 1985. Further, the department has not adduced any evidence or material for treating Bags and Pouches to be synonymous and that commercially also both the products are one and the same. It is a settled law of classification that in case of ambiguity in the classification of a product, one of the methods to determine the correct



classification is the common parlance test. I find that the Hon'ble Supreme Court had in the case of *A. Nagaraju Bros Vs. State of Andhra Pradesh* reported in 1994 (72) ELT 801 (SC) held that :

"4. In its order in T.A. No. 566 of 1984, followed in the present case, the Tribunal has given more importance to the respective values of the plastic and the other materials (like steel including locks and other fixtures) and opined that since the value of other components is more than the value of plastics used therein, they cannot be called 'plastic articles'. It gave certain illustrations to emphasise that value is the determining factor. The Tribunal pointed out that in the case of a diamond ring, the major component may be gold or silver and the diamond may represent a small portion of it, yet no body would call it gold or silver ring; it would be called a diamond ring. It is undoubtedly so. **But this only shows that there is no one single universal test in these matters. The several decided cases drive home this truth quite eloquently. It is for this reason probably that the common parlance test or commercial usage test, as it is called, is treated as the more appropriate test, though not the only one.** There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight or value or on some other basis may have to be applied. It is indeed not possible, nor desirable, to lay down any hard and fast rules of universal application." [Emphasis supplied]

7.1 In the case of *Commissioner of C.Ex., Vs., Wockhardt Life Sciences Ltd* reported in 2012 (277) ELT 299 (SC), the Hon'ble Apex Court had held that :

"30. There is no fixed test for classification of a taxable commodity. This is probably the reason why the 'common parlance test' or the commercial usage test' are the most common [see *A. Nagaraju Bros. v. State of A.P.*, 1994 Supp (3) SCC 122 = 1994 (72) E.L.T. 801 (S.C.)]. Whether a particular article will fall within a particular Tariff heading or not has to be decided on the bases of the tangible material or evidence to determine how such as article is understood in 'common parlance' or in 'commercial world' or in 'trade circle' or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intension, when the statute was enacted [see *D.C.M. v. State of Rajasthan*, 1980 (4) SCC 71 = 1980 (6) E.L.T. 383 (S.C.)]. One of the essential factors for determining whether a product falls Chapter 30 or not is whether the product is understood as a pharmaceutical product in common parlance [see *C.C.E. v. Shree Baidyanath Ayurved*, 2009 (12) SCC 413 = 2009 (237) E.L.T. 225 (S.C.)]; *Commissioner of Central Excise, Delhi v. Ishaan Research Lab (P) Ltd.* - 2008 (13) SCC 349 = 2008 (230) E.L.T. 7 (S.C.)...."

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32. Moreover, the functional utility and predominant or primary usage of the commodity which is being classified must be taken into account, apart from the understanding in common parlance [see *O.K. Play (India) Ltd. v. C.C.E.*, - 2005 (2) SCC 460 = 2005 (180) E.L.T. 300 (S.C.); *Alpine Industries v. C.C.E., New Delhi* - 1995 Supp. (3) SCC 1; *Sujanil Chemo Industries v. C.C.E. & Customs* - 2005 (4) SCC 189 = 2005 (181) E.L.T. 206 (S.C.); *ICPA Health Products (P) Ltd. v. C.C.E.* - 2004 (4) SCC 481 = 2004 (167) E.L.T. 20 (S.C.); *Puma Ayurvedic Herbal* (supra); *Ishaan Research Lab (P) Ltd.* (supra); *C.C.E. v. Uni Products India Ltd.*, 2009 (9) SCC 295 = 2009 (241) E.L.T. 491 (S.C.)]."



7.2 I find that the Hon'ble Supreme Court in the case of Westinghouse Saxby Farmer Ltd Vs. Commissioner of C.Ex, Calcutta reported in 2021 (376) ELT 14 (SC) relied upon the judgement in the case of A. Nagaraju Bros Vs. State of Andhra Pradesh (*supra*) and held that case of Commissioner of C.Ex., Vs., Wockhardt Life Sciences Ltd reported in 2012 (277) ELT 299 (SC) the Hon'ble Supreme Court had held at para 38 of their judgement that "*Therefore, the respondents ought not to have overlooked the 'predominant use' or 'sole/principal use' test acknowledged by the General Rules for the Interpretation of the Schedule*".

7.3 I also find that in an identical matter in appeal filed by M/s. Colourflex Laminators Ltd., decided by the Commissioner (Appeals), CGST, Ahmedabad vide Order-In-Appeal No. AHM-EXCUS-003-APP-51/2021-22 dated 29/10/2021, wherein it was ordered that :

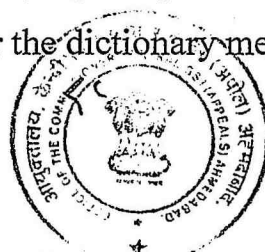
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10. *In view of the facts and discussions in the foregoing paragraphs, I am of the considered view that the proposal of the department to change the classification of Laminated Plastic Pouch without adducing any substantial material except relying upon some dictionary meanings is not legally tenable, particularly in view of the fact that the proposed change in classification has been ostensibly prompted by the higher rate of duty under CETH 39232990. I am, therefore, of the view that the adjudicating authority has erred in ordering change in classification from CETH 39239090 to CETH 39232990. Consequently, the demand for Central Excise duty, Interest and Penalty also do not survive.*

11. *In view of the above discussions, I set aside the impugned order for being not legal and proper and allow the appeal filed by the appellant.*

.....

8. From the above Judicial pronouncements of the Apex Court, it emerges that in case of an ambiguity, for conclusively determining the classification of a product the common parlance test and the predominant/principle use test has to be applied, when other methods do not help. In the present case, I find that the appellant have submitted copies of sample Central Excise invoices issued by them. I find that the Central Excise Invoice the product is described as 'Laminated Printed Pouch' alongwith the details of the printed matter (on the pouch). Therefore, it is clear that the product is commercially known and traded as 'Pouch' and not as bag. Consequently, there is no merit in the proposition of classifying the product under the description of 'Sacks and bags' on the ground that as per the dictionary meanings

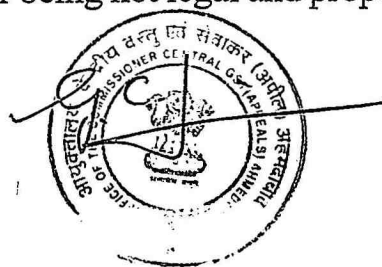


bag is a synonym of pouch and is a broader term to address a pouch and all other containers.

9. The appellant have in support of their stand also relied upon the decisions in the case of Simplex Packaging Ltd reported in 2017 (345) ELT 659 (Tri.-Del) and Packaging India Pvt Ltd reported in 2017 (5) TMI 1078- CESTAT, New Delhi. I find that in the case of Simplex Packaging Ltd, though the dispute was with regards to Cenvat Credit, one of the product involved was Laminated Plastic Pouch and the classification of the product under CETH 39239090 was not disputed by the department. Similarly, in the case of Packaging India Pvt Ltd, the issue was regarding the admissibility of area based exemption. In this case too, one of the products involved was Laminated Pouch of CETH 39239090 and the classification of the same was not disputed by the department. While these case laws do not have any direct relation to the issue involved in the present appeal, the fact that the classification of Laminated Plastic Pouch under CETH 39239090 was accepted by the department is implicit from the said cases. Moreover, considering the facts of the case and the decision of Commissioner (Appeals) in the case of appeal filed by M/s. Colourflex Laminators Ltd., I do not find any plausible reason to divert from the decision arrived at by my predecessor in an identical case.

10. In view of the above discussions, I am of the considered view that the proposal of the department to change the classification of Laminated Plastic Pouch without adducing any substantial evidence except relying upon some dictionary meanings is not legally tenable, particularly in view of the fact that the proposed change in classification seems to be guided by the aspect of higher rate of duty under CETH 39232990. I am, therefore, of the considered view that the adjudicating authority has erred in ordering change in classification from CETH 39239090 to CETH 39232990. Consequently, the demand for Central Excise duty amounting to Rs. 13,35,402/- fails to survive being legally untenable. As the demand of central excise duty fails, consequent Interest and Penalty also do not survive.

11. Accordingly, I set aside the impugned order for being not legal and proper and allow the appeal filed by the appellant.



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

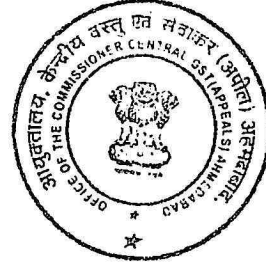
The appeal filed by the appellant stands disposed off in above terms.

G.C.J.
31.10.23

(Gyan Chand Jain)
Commissioner (Appeals)
Date: 31st Oct, 2023

Attested:

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



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Khatraj-Kalol Road, Khatraj, Gujarat

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