



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

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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/52/2023-APPEAL / 9164-68
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-129/2023-24 and 24.11.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	05.12.2023
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-JC-SP-001-22-23 dated 18.10.2022 passed by the Joint Commissioner, CGST & Central Excise, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Johnson Controls-Hitachi Air Conditioning India Limited, [Formerly known as M/s Hitachi Home & Life Solutions (India) Ltd.], Hitachi Complex, Near Tulsī Petrol Pump, Karannagar, Kadi, District Mehsana-382727

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:-

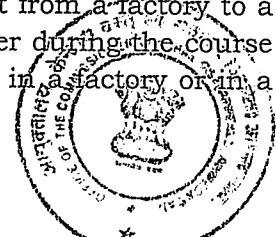
Revision application to Government of India:

(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 इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-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 संलग्न रकम 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 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 और 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।

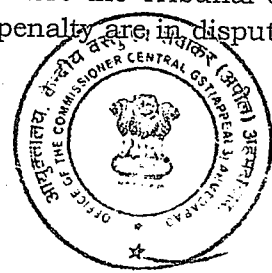
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

M/s JohnsonControls-Hitachi Air Conditioning India Limited, [Formerly known as M/s Hitachi Home & Life Solutions (India) Ltd.], Hitachi Complex, Near Tulsi Petrol Pump, Karannagar, Kadi, District Mehsana-382727 (hereinafter referred to as the 'appellant') has filed the present appeal against Order-in-Original No. AHM-CEX-003-JC-SP-001-22-23 dated 18.10.2022 (hereinafter referred to as 'the impugned order'), issued by the Joint Commissioner, CGST, HQ, Gandhinagar Commissionerate (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the facts of the case are that the Appellant was registered with the Central Excise Department [Registration No. AABCA2392KXM003] for manufacturing of Air conditioners & Trading of Refrigerators falling under Chapter 84 of CETA, 1985 as well as with the Service Tax Department [Registration No. AABCA2392KST001] and availing CENVAT credit facility under Cenvat Credit Rules, 2004.

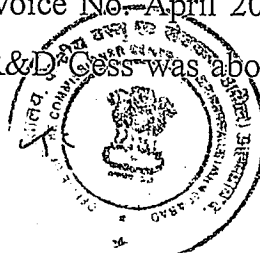
2.1 During the course of audit of the records of the appellant by the officers of CERA Audit, Ahmedabad, it was observed that the appellant had provided and availed various services during 2016-17 and paid service tax thereon. The audit officers also observed that the appellant had paid service tax amounting to Rs.19,44,38,592/- instead of Rs.20,64,78,678/- which resulted into a short payment of Service Tax amounting to Rs.1,20,38,186/- for the year 2016-17. These observations of CERA, Audit were communicated to the jurisdictional Service Tax officers vide para-10 of Local Audit Report No. 508/2018-19 dated 27.09.2018.

2.2 The appellant replied to the queries of CERA Audit and submitted vide that they had filed the ST-3 Returns for the F.Y 2015-16. The service tax Head 'Intellectual Property Rights' included services received for Royalty, Brand Royalty and Technical Know How Fees. R&D Cess was applicable on Royalty & Technical Know How fees which was paid @ 5% to the Reserve Bank of India (RBI). They informed that their company had claimed exemption of R&D Cess amount from the Service Tax payable in terms of Notification No. 14/2012-ST dated 17.03.2012.

3. Show Cause Notice vide F. No. GEXCOM/ADJN/ST/JC/1367/2021-ADJN-O/o COMMR-CGST-GANDHINAGAR, dated 20.10.2021 (SCN for short) was issued to the appellant, wherein it was proposed to:



- I. Demand & recover Service Tax amounting to Rs.1,21,30,632/- under *proviso* to sub-section (1) of Section 73 of the Finance Act, 1994,
 - II. Demand & recover Service Tax amounting to Rs.44,06,203/- paid after availing exemption of R&D Cess paid for the Invoice No. April 2017-07 dated 24-04-2017 for Oct-16 to Mar-17, since R&D Cess was abolished w.e.f. 01-04-2017 under *proviso* to sub-section (1) of Section 73 of the Finance Act, 1994, (This demand of Service Tax is included in demand of Rs.1,21,30,632/- in para (i) above.
 - III. Demand & recover Service Tax amounting to Rs.2,08,062/- paid after availing exemption of excess R&D Cess paid for the Invoice No. April 2017-07 dated 24-04-2017 for Oct-16 to Mar-17 under *proviso* to sub-section (1) of Section 73 of the Finance Act, 1994, (This demand of Service Tax is included in demand of Rs.1,21,30,632/- in para (i) above)
 - IV. Demand & recover Interest on such service tax at the appropriate rate prescribed under the provisions of Section 75 of the Finance Act, 1994,
 - V. Demand & recover Interest on delayed payment of R&D Cess from due date of payment of service tax to the date of payment of R& D Cess at the appropriate rate prescribed under the provisions of Section 75 of the Finance Act, 1994, as amended should not be demanded and recovered from them (Interest demanded here is included in interest demanded in para (iv) above).
 - VI. Impose penalty under section 78 of the Finance Act, 1994.
4. The said SCN was adjudicated vide the impugned order wherein:
- (i) the demand of Service Tax amounting to Rs.1,21,30,632/- was confirmed under *proviso* to sub-section (1) of Section 73 of the Finance Act, 1994 alongwith interest in terms of Section 75 of the Finance Act, 1994.
 - (ii) demand of Service Tax amounting to Rs.44,06,203/- paid after availing exemption of R&D Cess paid for the Invoice No. April 2017-07 dated 24-04-2017 for Oct-16 to Mar-17, since R&D Cess was abolished w.e.f.



01-04-2017 was confirmed under *proviso* to sub-section (1) of Section 73 of the Finance Act, 1994 (This demand of Service Tax was included in demand of Rs.1,21,30,632/- in para (i) above).

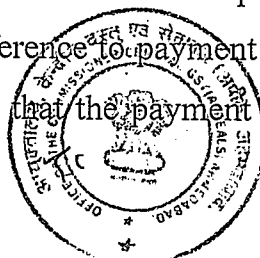
- (iii) the demand of Service Tax amounting to Rs.2,08,062/- paid after availing exemption of excess R&D Cess paid for the Invoice No. April 2017-07 dated 24-04-2017 for Oct-16 to Mar-17 was confirmed under *proviso* to sub-section (1) of Section 73 of the Finance Act, 1994 (This demand of Service Tax was included in demand of Rs.1,21,30,632/- in para (i) above).
- (iv) Confirm the demand of Interest on such service tax at the appropriate rate prescribed under the provisions of Section 75 of the Finance Act, 1994 and order to recover from them from due date of payment Service Tax to the date of recovery;
- (v) Penalty amounting to Rs.1,21,30,632/- was imposed under section 78 of the Finance Act, 1994.

5. Being aggrieved, the appellant filed the present appeal wherein they, *inter alia*, contended that:-

- The Appellant had received services of transfer of technology services from service providers situated outside India. The Appellant paid service tax on such services falling under Intellectual Property Rights Service Other Than Copyright Service received by them under RCM.
- The services received by the Appellant during the disputed period was also subject to payment of R&D Cess @ 5% under the terms of the R&D Cess Act, 1986.
- In terms of Notification No. 14/2012-ST dated 17.03.2012, the Appellant availed exemption from service tax equivalent to the amount of R&D Cess payable under Section 3 of the R&D Cess Act. Thus, the net service tax liability of the Appellant was calculated after the deduction of R&D Cess amount payable by the Appellant.

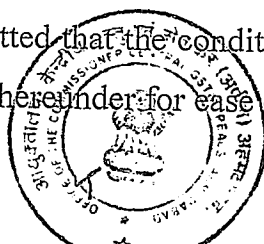


- Notification No. 14/2012-ST dated 17.03.2012 exempts the taxable service involving import of technology from service tax leviable thereon as is equivalent to the amount of Research and Development Cess payable on the said import of technology under Section 3 of the Research and Development Cess Act, 1986. The exemption is subject to the following conditions:
- (i) The amount of R&D Cess is paid within 6 months from the date of invoice or in case of associated enterprises, the date of credit in the books of account, provided that the R&D Cess is paid before or at the time of payment for service
 - (ii) The records of R&D Cess are maintained for establishing the linkage between the invoice or the credit entry, as the case may be, and the Research and Development Cess payment challan
- Both the above conditions were satisfied by the Appellant in the instant case. They have imported the services from their associated enterprise and accordingly made payment of R&D Cess within six months from the date of credit in the books of account.
- According to the condition stated above, it is mentioned that R&D Cess must be paid before or at the time of payment for the service. The Appellant submitted that it is an undisputed fact that the R&D Cess was paid by them before the payment for the service i.e., before the payment of invoice is made to the foreign service provider. Thus, the first condition of the exemption notification was fulfilled by the Appellant.
- Based on perusal of the Notification No.14/2012-ST dated 17.03.2012 ('Exemption Notification'), it appeared that the notification exempts the levy of service tax which is equivalent to the amount of cess payable, which clearly means that in order to claim exemption from service tax, the payment of R&D Cess is not liable to be paid as on the date of claiming the exemption.
- The terms of the Exemption Notification stated that the exemption shall be available only if the R&D Cess is paid at the time or before the payment for the service. Thus, the condition does not make reference to payment of R&D Cess prior to the payment of service tax. It implies that the payment of R&D Cess



must be made prior to the payment for the service is made, which has been fully complied with in the present case.

- As regards the second condition, they submitted that the appellant were maintaining the records of R&D Cess payments made by them so as to establish the link between the invoice or credit entry and the R&D Cess payment challan. The relevant documents were submitted by the Appellant to the Department prior to the issuance of the SCN.
- In light of the above, they submitted that since all the conditions of the Exemption Notification were fulfilled by the Appellant the exemption was correctly availed by them during the disputed period and thus, the impugned order is liable to be set aside on this ground alone.
- Without prejudice to the above, the Appellant submits that, assuming without admitting, that there is a breach of the terms of the Exemption Notification, the substantive benefit of the exemption cannot be denied to the Appellant on account of a mere procedural lapse on part of the Appellant.
- They submitted that the payment of R&D Cess by the Appellant after the payment of service tax cannot be construed as a breach of a substantial condition of the Exemption Notification thereby precluding the Appellant from availing the benefit of the exemption completely.
- They submitted that a provision providing for an exemption has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If an exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be fulfilled exactly, however, at times some latitude can be shown if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.
- At the cost of brevity, the Appellant submitted that the conditions laid down in the Exemption Notification are reproduced hereunder for ease of reference:

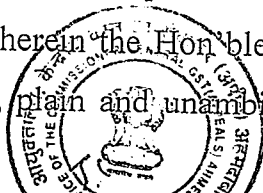


- (i) The amount of R&D Cess is paid within 6 months from the date of invoice or in case of associated enterprises, the date of credit in the books of account, provided that the R&D Cess is paid before or at the time of payment for service
 - (ii) The records of R&D Cess are maintained for establishing the linkage between the invoice or the credit entry, as the case may be, and the Research and Development Cess payment challan.
- Based on perusal of the above, it is submitted that the aforesaid conditions of the Exemption Notification comprise mainly of two requirements viz. the payment of R&D Cess to be made within 6 months from the date of invoice or the date of credit in the books of account, provided the same is paid before or at the time of payment for service and that the records of R&D Cess are maintained by the assessee.
- They submitted that the requirement for making payment of the R&D Cess within six months from date of invoice or date of credit in books of accounts as the case may be, is a mandatory requirement to be fulfilled in order to claim exemption in terms of the Exemption Notification. Further, they submitted that the requirement for maintaining records pertaining to R&D Cess was a mandatory requirement in order to establish linkage between the invoice or credit entry and the R&D Cess payment challan.
- The Appellant submitted that the requirement of making payment of R&D Cess prior to making payment of service tax cannot be construed to be a mandatory requirement for availing the benefit of the Exemption Notification. They submitted that making the payment of R&D Cess after making payment of service tax cannot be the sole basis for denying the benefit of the Exemption Notification to the Appellant. Since the Appellant has made payment of R&D Cess well before the payment for the invoice is made by them throughout the disputed period, there is no substantive breach of the conditions of the Exemption Notification.
- They relied upon the following judgments of Hon'ble Court:

- CCE v. Hari Chand Shri Gopal reported as 2010 (260) ELT 3 (S.C.).

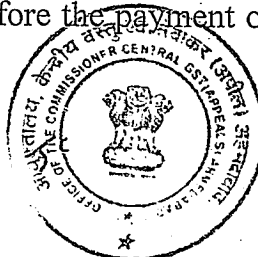


- Associated Cement Companies Ltd. v. State of Bihar reported as (2004) 7 SCC 642.
- Based on the above, they submitted that once an exemption becomes applicable, no rule or principle requires it to be construed strictly. The exemption notification has to be construed strictly when the question is whether a subject falls in the notification or in the exemption clause, but once the ambiguity or doubt about applicability is lifted and the subject falls in the notification, then full play should be given to it and it calls for a wider and liberal construction.
- Applying the ratio of the aforesaid decision to the facts of the present case, the Appellant submits that there is no ambiguity or dispute as to whether the Appellant are eligible to claim exemption from service tax equivalent to the amount of R&D Cess payable by them. Thus, the terms of the Exemption Notification are to be interpreted liberally and the benefit thereof cannot be denied to the Appellant on account of breach of a directory condition.
- In this regard, they relied upon the following decisions of Hon'ble Courts:
 - G.P. Ceramics (P) Ltd. v. CTT (2009) 2 SCC 90
 - Union of India v. Wood Papers Ltd. 1990 (47) ELT 500 (S.C.)
 - Novopan India Ltd. v. CCE 1994 (73) ELT 769 (S.C.)
 - Commissioner of Customs (Preventive) v. M. Ambalal and Co. (2011) 2 SCC 74.
- The Department in the impugned order has placed reliance on the decision of Inox Wind Ltd. v. Commissioner of Service Tax, Noida 2020 (35) GSTL 123 (Tri-All.) wherein the Hon'ble Tribunal while interpreting the Notification No. 18/2002-ST dated 16.12.2002 as amended by Notification No. 46/2011-ST dated 19.09.2011, has held that the language of the notification is unambiguous and clear in as much it is clear that service tax not merely exempted to the extent of R&D Cess payable but said exemption would be available only if R&D Cess paid before payment of Service Tax. The Hon'ble Tribunal has relied on the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company 2018 (361) ELT 577 (SC) in this regard, wherein the Hon'ble Court has held that when the wordings in statute are clear, plain and unambiguous and only



one meaning can be inferred, court is bound to give effect to the said meaning irrespective of the consequences.

- They submitted that the Hon'ble Supreme Court in the case of Govt. of Kerela v. Mother Superior Adoration Convent reported in 2021 (376) ELT 242 (SC) while dealing with the issue of interpretation of exemption notifications has observed that the decision of Commissioner of Customs v. Dilip Kumar and Co. (cited supra) did not refer to the line of authority which made a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose. The Hon'ble Court further observed that it does not agree with the contention that sub-silentio the line of judgments qua beneficial exemptions has been done away with by the 5-judge bench decision. It is well settled that a decision is only an authority for what it decides and not what may logically follow from it.
- Based on the above decision of the Hon'ble Supreme Court, the Appellant submits that the reliance placed by the Department on the decision of Commissioner of Customs, Mumbai v. Dilip Kumar and Co. (supra) is not applicable to the facts of the present case.
- They also submitted that in the case of Inox Wind Ltd. (supra), the assessee had not maintained the relevant records so as to establish linkage between the invoices or the credit entry and the R&D Cess payment challans (Para 10 of the order). In the present case of the appellant, such records have been duly maintained and submitted as well to the Department during the course of investigation. Thus, the decision of Inox Wind Ltd. (supra) is factually distinguishable from the present case in this regard as well.
- In light of the submissions and decisions relied upon above, it is submitted that the impugned order is liable to be set aside on this ground alone.
- The department has vehemently relied on the judgement delivered by Hon'ble Tribunal in case of Inox Wind Ltd (supra). The Hon'ble court while analysing the conditions mentioned in the Notification 46/2011 – ST dated 19.09.2011, held that R&D Cess was required to be paid before the payment of Service tax in order to claim exemption.



- The adjudicating authority has observed that since the Notification No. 14/2012 – ST dated 17.03.2012 replaced the Notification No. 46/2011-ST dated 19.09.2022 and is identical, the ration delivered in the case of Inox Wind Ltd (supra) is squarely applicable in the instant case.
- In this regard, they submitted that the Notification 14/2012 (Supra) was preceded by Notification 46/2011-ST, which was in turn preceded Notification No. 17/2004 – ST dated 10.09.2004 and Notification No. 18/2002 – ST dated 16.12.2002.
- Notification 18/2002 (supra) was amended vide Notification 46/2011 (supra). Relevant excerpts of the Notification No. 46/2011 are reproduced below.

"G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 18/2002-Service Tax, dated the 16th December, 2002, which was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 823 (E), dated the 16th December, 2002, namely:-

In the said notification, for the words, figures and brackets "amount of cess paid on the said transfer of technology under the provisions of Section 3 of the Research and Development Cess Act, 1986 (32 of 1986).", the following words, figures and brackets shall be substituted, namely: -

"amount of cess payable on the said transfer of technology under the provisions of section 3 of the Research and Development Cess Act, 1986 (32 of 1986), subject to the following conditions, namely: -

(A) the said amount of Research and Development Cess is paid within six months from the date of invoice or in case of associated enterprises the date of credit in the books of account: Provided that the exemption shall be available only if the Research and Development Cess is paid at the time or before the payment for the service;



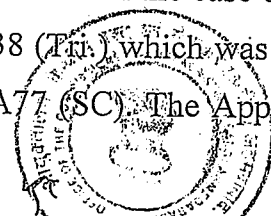
(B) records of Research and Development Cess are maintained for establishing the linkage between the invoice or the credit entry, as the case may be, and the Research and Development Cess payment challan.

- It is evident that the words 'cess paid' were replaced by 'cess payable' in the Notification 46/2011 (supra). Accordingly, it can easily be comprehended that earlier the intent of the legislator was to grant exemption once the R&D Cess is paid, which was later amended, and the exemption was granted to the extent of R&D Cess payable subject to fulfillment of prescribed conditions.
- On the contrary, the Adjudicating authority has absurdly noted that amendment in earlier Notification 18/2002 (supra) vide which the two conditions (as mentioned in para 33) introduced, reflects upon the legislative intent and makes it clear that service tax is not merely exempted to the extent of R&D Cess payable but the said exemption would be available only if R&D Cess is paid before the payment of the service tax. The Adjudicating authority has further gone into this absurdity to mention that the expression used in the conditions was introduced as paid and not payable, thus leading to the inevitable conclusion that R&D Cess is required to be paid before the payment of service tax.
- Here it is pertinent to mention that the Adjudicating authority has read the pre-condition of payment of R&D cess which in fact is nowhere written in the Notification 46/2011 (supra) and even in Notification 14/2012 (supra). The Adjudicating authority has also derived the conclusion based on the fact that the expression used in the conditions was introduced as paid but fails to recognize a simple amendment brought vide Notification 46/2011 (supra) in which the word 'paid' was replaced with 'payable'.
- In view of the above submission, it can be clearly elucidated that the earlier the intention of the legislation was to grant exemption of service tax subject to pre-payment of R&D Cess, which was later changed and amended to the effect that service tax exemption was granted to R&D Cess payable (i.e. on accrual basis, and not on payment basis) subject to fulfillment of prescribed conditions, which the Appellant has fulfilled. Further it is relevant to note that the condition of payment of R&D Cess before the payment of services, (and not the service tax).



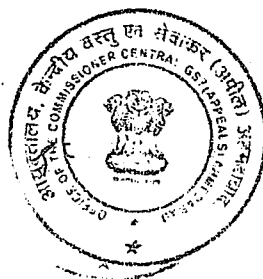
also remains fulfilled. In light of the above, it is submitted that the impugned order is liable to be set aside.

- Even if the exemption was wrongly availed in the present case, the Appellant would have discharged service tax on the amount of R&D Cess paid by them during the disputed period and Cenvat credit of such tax paid would be available to them in terms of Cenvat Credit Rules, 2004.
- They submitted that it is an undisputed fact that the Appellant has imported transfer of technology services from their associated enterprise and such services fall under the scope of 'input service' in terms of Rule 2(1) of Cenvat Credit Rules, 2004. Further, it is not disputed that the Appellant has made payment of service tax under RCM on such services imported from outside India during the disputed period. Therefore, even if the Appellant has wrongly claimed the exemption under the Exemption Notification, the amount equivalent to the R&D Cess would have been subject to payment of service tax under RCM and Cenvat credit thereof would be available to the Appellant.
- They submitted that the entire situation is revenue neutral. Reliance in this regard was placed upon the decision of the Hon'ble High Court of Gujarat in the case of CCE, Vadodara – II Vs. Indeos ABS Limited – 2010 (254) ELT 628 (Guj.) wherein the Hon'ble High Court was concerned with an appeal by the Department against an order of the Hon'ble CESTAT where the demands were set aside on the ground of revenue neutrality. The Hon'ble High Court while dismissing the appeal of the Department has observed that if the exercise ultimately does not lead to any benefit accruing to the exchequer, then there is no legal infirmity if the Hon'ble CESTAT does not determine an academic issue. In view of the above judgment of the jurisdictional High Court, the impugned order is liable to be set aside on the ground of revenue neutrality as there is no benefit ultimately accruing to the exchequer.
- They further relied upon decisions of the Hon'ble Tribunal wherein a similar view was upheld by relying upon various decisions passed by the Hon'ble High Court and Supreme Court. They relied upon the decision in the case of Mafatlal Industries Ltd v. CCE Daman - 2009 (90) RLT 238 (Trib.) which was upheld by the Hon'ble Supreme Court in 2010 (255) ELT A77 (SC). The Appellant also



rely upon the decision of the Hon'ble CESTAT in CCE v. Special Steel Limited – 2010-TIOL-1176- CESTAT-MUM = 2015 (329) ELT 449 (Tri.) wherein the Hon'ble CESTAT dismissed Revenue's appeal on the ground that demand is not maintainable when it is a revenue neutral situation. This judgment of the Hon'ble Tribunal has been affirmed by the Hon'ble Supreme Court reported as Commissioner v. Special Steel Ltd. – 2016 (334) ELT A123 (SC).

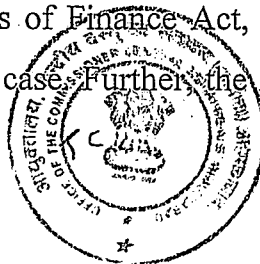
- In view of the above, they submitted that they have correctly availed the exemption from service tax in terms of the Exemption Notification and even if it is assumed without admitting that the exemption was wrongly availed by the Appellant, the entire situation would be revenue neutral as the total amount has been paid by the Appellant (i.e. one portion as a service tax and remaining portion as an R&D Cess). Thus, the impugned order is liable to be set aside on this ground alone.
- As per Section 73(1) of the Finance Act, 1994, a show cause notice can be issued at any time within eighteen months from the relevant date. The proviso to Section 73(1) of the Finance Act, 1994 provides that show cause notice can be issued at any time, within 5 years from the relevant date, if service tax was not paid or levied by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or Rules, with intent to evade payment of service tax. Thus, the extended period of limitation is applicable only if any of the ingredients specified above exist.
- They have filed returns from time to time and maintained books of accounts as required under the provisions of Finance Act, 1994. Therefore, suppression cannot be alleged by the Department.
- They have never suppressed any fact relating to the activities carried on by them with an intention to evade payment of service tax. The allegation that there was suppression and non-disclosure of information on part of the Appellant is completely baseless. They always co-operated with the Department in their proceedings and have always provided the details asked for by the Department. Hence, the demand of service tax is completely time-barred and the impugned order is liable to be set aside.



- The Department sought for various documents from the Appellant and the same was provided to the Department as and when asked for.
- Without any deliberate intention to withhold/suppress information from the Department, invocation of extended period of limitation cannot be justified. In the present case, the Appellant has not committed any positive act to suppress information from the Department with the intention to evade payment of service tax. In this regard, they relied on the following decisions of Hon'ble Courts:
- M/s Anand Nishikawa Co Ltd Vs Commissioner of Central Excise, Meerut reported at 2005-TIOL-118-SC-CX.
 - Padmini Products Limited v CCE reported at 1989 (43) ELT 195 (SC)
 - CCE v. Chemphar Drugs & Liniments 1989 (40) ELT 276 (SC)
 - GopalZardaUdyog v. CCE 2005 (188) ELT 251 (SC) and Lubri-Chem Industries Ltd. v. CCE 1994 (73) ELT 257 (SC)
- They submitted that the payment of R&D Cess by the Appellant was a cost and is non-creditable. With regard to the invoices raised by the Appellant after April 2017, they submitted that R&D Cess was not required to be paid by the Appellant. However, even if the exemption was not eligible to the Appellant, the Appellant would have made payment of service tax under RCM and Cenvat credit thereof would be available to the Appellant. Thus, there is no mala fide intention to evade payment of tax in the present case. Further, as submitted above, the entire situation is revenue neutral, and hence, the extended period is not invocable in the present case.
- In addition to the foregoing submission, it is submitted that since R&D Cess was a non-creditable tax, whatever payment had been made by the Appellant towards R&D Cess, was recorded as a cost / expense in the books of accounts. Booking of an expense has an impact of reduction of profitability of the Appellant. Rationally, a taxpayer with malafide intention would attempt to generate some gain / profits through some actions. The taxpayer with a malafide intention would never reduce the profits by charging off the R&D Cess. Considering the same, it is contended that the extended period is not invocable in the present case.



- Thus, the basic requirement for the invocation of the extended period is not fulfilled in the present case and hence impugned order is liable to be set aside.
- The Appellant submits that for imposing penalty under Section 78 of the Finance Act, 1994, there should be an intention to evade payment of service tax, or there should be suppression or concealment of material facts. The Appellant has provided all the details as and when desired by the Department vide the letters to the Department and the Appellant at no point of time had the intention to evade service tax or suppressed any fact wilfully from the knowledge of the Department.
- The Appellant *inter alia* placed reliance upon the following decisions to submit the information is available on record, no suppression can be alleged on the assessee;
- *Suvikram Plastex Pvt. Ltd. v. CCE, Bangalore – III 2008 (225) ELT 282 (T)*
 - *Rallis India Ltd. v. CCE, Surat 2006 (201) ELT 429 (T)*
 - *Patton Ltd. v. CCE, Kolkata – V 2006 (206) ELT 496 (T)*
 - *CCE, Tirupati v. Satguru Engineering & Consultants Pvt. Ltd. 2006 (203) ELT 492 (T)*
 - *Indian Hume Pipes Co. Ltd. v. CCE, Coimbatore 2004 (163) ELT 273 (T)*
- That penalty under Section 78 of the Act can be imposed only if the assessee suppresses any information from the Department. However, the Appellant has not suppressed any fact with an intention to evade payment of service tax. Therefore, penalty under Section 78 of the Finance Act, 1994 cannot be imposed in the present case. In this regard, they relied upon the judgment of the Hon'ble Supreme Court in the case of *Akbar Badruddin Jiwani v. Collector of Customs* reported at 1990 (047) ELT 0161 SC.
- They submitted that, there being no suppression, penalty under Section 78 is not applicable as none of the five conditions for imposition of penalty under Section 78 are applicable. There is no fraud; collusion; wilful mis-statement; suppression; or contravention of the provisions of Finance Act, 1994 with an intent to evade payment of duty in the present case. Further, the Appellant has



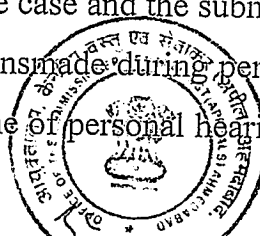
clearly stated that there is no suppression in the present case and also that there is no contravention of the provisions of Finance Act, 1994, with an intent to evade payment of duty and crave leave to rely on the submissions made herein above to that effect. It is therefore submitted that the penalty imposed under Section 78 is without legal basis and is liable to be dropped.

- It is a settled principle of law that, in cases where the original demand is not sustainable, interest cannot be levied. In view of the aforesaid submissions, it is clear that the demand itself is not sustainable, and hence, the question of imposing interest does not arise. Hence, the impugned order is liable to be dropped.

6. Personal hearing in the case was held on 07.07.2023. Shri Jenish Kothiwala, Manager, of the appellant company appeared for hearing as authorized representative of the appellant. He reiterated the submissions made in appeal memorandum and those in the additional written submissions dated 07.07.2023. He submitted that the Notification No. 14/2012-ST provided exemption on the service tax to the extent of Cess payable subject to condition that the exemption shall be available only if R&D Cess is paid at the time or before the payment for the service. However, the adjudicating authority has misinterpreted the same as payment of service tax. There was no such requirement in the notification. In their case, since R&D Cess was paid before payment for the services they are eligible for the exemption. He further, submitted that as the appellant had no malafide intention, extended period cannot be invoked. Also, in case if contrary interpretation is possible, the substantive benefit cannot be denied merely for procedural lapse. Therefore, he requested to set aside the impugned order and to allow the appeal.

6.1 On account of change in appellate authority personal hearing was again held on 13.10.2023. Shri Jenish Kothiwala, Manager, appeared on behalf of the appellant for the hearing. He re-iterated the contents of the written submission and requested to allow their appeal.

7. I have carefully gone through the facts of the case and the submissions made in the grounds of appeal as well as oral submissions made during personal hearing and additional written submissions made at the time of personal hearing. The issue



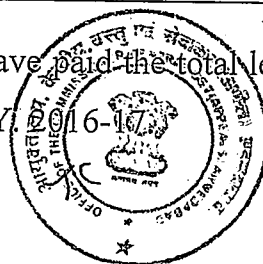
before me for decision is as to whether the demand of Service Tax amounting to Rs.1,21,30,632/- confirmed vide the impugned order along with interest and penalty, is legal and proper or otherwise. The demand pertains to the period F. Y. 2016-17.

8. It is observed from the case records that the appellant are engaged in manufacturing of Air-Conditioners and trading of Refrigerators falling under CETH-84 of the Central Excise Tariff Act, 1985 (CETA, 1985). They were holding valid Central Excise registration as well as Service Tax registration and were availing the facility of Cenvat Credit under Cenvat Credit Rules, 2004. From the documents submitted by the appellant, it is also observed that, the appellant have imported taxable services involving import of technology, they have made payment of leviable R&D Cess (Research & Development Cess), they have maintained proper documents/records as well as books of accounts, they have filed their statutory returns without any delay, these facts are undisputed.

9. It is also observed that the appellant have paid an amount of Rs.1,21,30,633/- towards R&D Cess during the period F.Y. 2016-17. A worksheet of R&D Cess calculation submitted by the appellant is as below :

Nature of Service	Month (F.Y. – 2016-17)	Date of Provision	Amount of R&D Cess paid (in Rs.)	Date of payment of R&D Cess	Date of payment of Service Tax
R&D Cess on Royalty	April-2016	30.04.2016	24,94,416/-	10.05.2016	06.05.2016
	May-2016	30.05.2016	15,67,016/-	07.06.2016	04.06.2016
	June-2016	29.06.2016	10,24,739/-	11.07.2016	05.07.2016
	July-2016	28.07.2016	4,55,371/-	10.08.2016	04.08.2016
	August-2016	29.08.2016	2,54,394/-	07.09.2016	05.09.2016
	September-2016	29.09.2016	1,07,044/-	10.10.2016	04.10.2016
	October-2016	26.10.2016	4,23,976/-	03.11.2016	28.10.2016
	November-2016	28.11.2016	3,48,369/-	17.12.2016	05.12.2016
	December-2016	28.12.2016	3,37,934/-	11.01.2017	05.01.2017
	January-2017	30.01.2017	5,66,906/-	07.02.2017	04.02.2017
	February-2017	27.02.2017	10,73,262/-	09.03.2017	06.03.2017
	March-2017	20.03.2017	25,14,206/-	30.03.2017	27.03.2017 & 06.04.2017
		TOTAL			

From the above table it is confirmed that the appellant have paid the total leviable R&D Cess amount from time to time during the period F.Y. 2016-17.



9.2 They have claimed exemption from payment of Service Tax equivalent to the amount of R&D Cess paid by them in terms of Notification No. 14/25012-ST dated 17.03.2012. Relevant portion of the notification is reproduced below :

Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 14/2012 - Service Tax

New Delhi, the 17 th March 2012

G.S.R. (E). - In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service involving import of technology, from so much of the service tax leviable thereon under section 66B of the said Act, as is equivalent to the amount of cess payable on the said import of technology under the provisions of section 3 of the Research and Development Cess Act, 1986 (32 of 1986), subject to the following conditions, namely:-

(a) that the said amount of Research and Development Cess is paid within six months from the date of invoice or in case of associated enterprises, the date of credit in the books of account:

Provided that the exemption shall be available only if the Research and Development Cess is paid at the time or before the payment for the service;

(b) that the records of Research and Development Cess are maintained for establishing the linkage between the invoice or the credit entry, as the case may be, and the Research and Development Cess payment challan.

...

10. In view of the above discussions, I am of the considered view that the entire event of payment of R&D Cess equivalent to an amount of Service Tax was completed. Further, since, the appellant have paid the amount of R&D Cess during the period F.Y.2016-17, the revenue stands protected, except for the delay in payment.

11. However, considering that the payment of R&D Cess has been made after the date of payment of Service Tax, I find that the appellants are liable for payment of Interest for the period of delay.

11.1 In the above context, the period of delay in payment of R&D Cess is calculated as per table below :

Month (F.Y. - 2016-17)	Date of Provision	Amount of R&D Cess paid (in Rs.)	Date of payment of R&D Cess	Date of payment of Service Tax	Period of delay
1	2	3	4	5	6
April-2016	30.04.2016	24,94,416/-	10.05.2016	06.05.2016	05 days
May-2016	30.05.2016	15,67,016/-	07.06.2016	04.06.2016	04 days
June-2016	29.06.2016	10,24,739/-	11.07.2016	05.07.2016	07 days

July-2016	28.07.2016	4,55,371/-	10.08.2016	04.08.2016	07 days
August-2016	29.08.2016	2,54,394/-	07.09.2016	05.09.2016	03 days
September-2016	29.09.2016	1,07,044/-	10.10.2016	04.10.2016	07 days
October-2016	26.10.2016	4,23,976/-	03.11.2016	28.10.2016	07 days
November-2016	28.11.2016	3,48,369/-	17.12.2016	05.12.2016	13 days
December-2016	28.12.2016	3,37,934/-	11.01.2017	05.01.2017	07 days
January-2017	30.01.2017	5,66,906/-	07.02.2017	04.02.2017	04 days
February-2017	27.02.2017	10,73,262/-	09.03.2017	06.03.2017	04 days
March-2017	20.03.2017	25,14,206/-	30.03.2017	27.03.2017 & 06.04.2017	04 days

The period of delay is calculated as per column 6 of the above table. Interest is leviable @ 18% per annum of the amount of R&D Cess paid after the date of payment of service tax.

12. In view of the above I am of the considered view that the appellants are eligible for benefit of exemption from Service Tax in terms of Notification No. 14/25012-ST dated 17.03.2012 subject to the payment of Interest on the delayed payment of R&D Cess. The impugned order confirming the demand of Service Tax amounting to Rs. 1,21,30,632/- is liable to be set aside being unsustainable legally as well as on merits. As the demand fails to sustain the demand of interest and penalty falls.

13. Accordingly the impugned order is set aside subject to payment of interest @ 18% (simple interest) on the delayed payment of R&D Cess (calculated at para 11.1 supra) by the appellants. The appeal filed by the appellant is allowed.

14. 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.

G.C.J.
24.11.23
ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 24th November, 2023

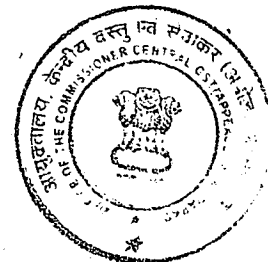
सत्यापित/Attested :

रेखा

रेखा नायर

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद



BY RPAD / SPEED POST

To,

M/s Johnson Controls-Hitachi Air Conditioning India Limited,
[Formerly known as M/s Hitachi Home & Life Solutions (India) Ltd.],
Hitachi Complex, Near Tulsi Petrol Pump, Karannagar, Kadi,
Distt. Mehsana, Gujarat-382727.

Copy to: -

1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Principal Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
3. The Joint Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
4. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA).
5. ~~Guard File.~~
6. P.A. File.

