



सत्यमेव जयते

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:- 20231264SW000000B226

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/932/2023-APPEAL / 9153 - 52
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-138/2023-24 and 29.11.2023
(ग)	पारित किया गया / Passed By	श्री ग्यानचंद जैन, आयुक्त (अपील्स) 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. KLL DIV/ST/YOGENDRA SINGH RAWAT/156/22-23 dated 30.11.2022 passed by the Assistant Commissioner, CGST, Division -Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Meraji Nathaji Vanzara, Village & Post – Jethlaj, Taluka – Kalol, Gandhinagar, Gujarat-382721

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:-

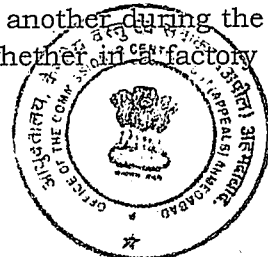
**Revision application to Government of India:**

(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, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में 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 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

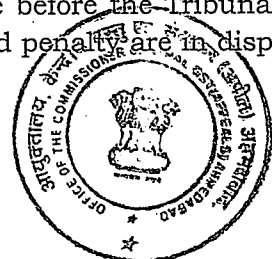
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

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

(6) (i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



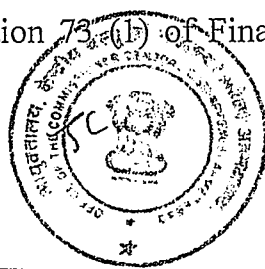
**अपीलिय आदेश/ ORDER-IN-APPEAL**

The present appeal has been filed by M/s Meraji Nathaji Vanzara, Village & Post – Jethlaj, Taluka – Kalol, Gandhinagar, Gujarat-382721 [hereinafter referred to as “the appellant”] against Order in Original No. KLL DIV/ST/YOGENDRA SINGH RAWAT/156/22-23 dated 30.11.2022 [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. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration no. ACMPY6203AST001, were engaged in providing Services under the category of ‘Manpower Recruitment/Supply Agency Service’. As per information received from the Income Tax Department, it was observed that during the period F.Y. 2015-16 & F.Y. 2016-17, the appellant had declared less the gross value of Sale of Services in ST-3 returns than the gross value of Sale of Services in Income Tax Returns / TDS Returns. Accordingly, in order to verify the said discrepancy, email letters dated 12.06.2020 & 16.06.2020 were issued to the appellant for submission of documents viz. Balance Sheet, P&L A/c, ITR, 26AS & Service Ledger for F.Y. 2015-16 & F.Y. 2016-17, but no reply was submitted. However, the jurisdictional officers considered that the services provided by the appellant during the relevant period were taxable under Section 65 B (44) of the Finance Act, 1994 and the Service Tax liability were determined on the differential value of ‘Sales of Services’ under Sales/Gross Receipts from Services (Value from ITR) / Form 26AS & ST-3 as details below :

Sr. No.	Period (F.Y.)	Differential Taxable Value as per ITR & ST-3 (in Rs.)	Rate of Service Tax incl. Cess	Service Tax liability to be demanded (in Rs.)
1.	2015-16	22,84,233/-	15%	3,42,635/-
2.	2016-17	25,36,740/-	15%	3,80,511/-
		Total Service Tax to be paid		7,23,146/-

3. The appellant was issued Show Cause Notice No. GEXCOM/SCN/ST/1277/2020-CGST-DIV-KLL-COMMRTE-GANDHINAGAR dated 21.10.2020 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.7,23,146/- under proviso to Section 73(1) of Finance Act, 1994



along with interest under Section 75 of the Act. The SCN also proposed imposition of penalty under Section 70 and Section 78 of the Finance Act, 1994.

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

- Service Tax demand of Rs.7,23,146/- was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994.
- Penalty of Rs.80,000/- was imposed under Section 70 of the Finance Act, 1994.
- Penalty of Rs.7,23,146/- was imposed under Section 78 (1) of the Finance Act,1994 with option for reduced penalty in terms of clause (ii).

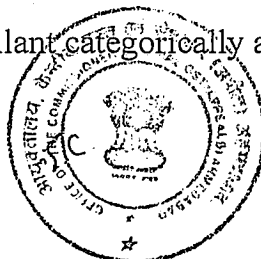
5. Aggrieved by the impugned order, the appellant has preferred this appeal on following grounds:

- The appellant is engaged in supply of send, Kapchi, etc. and transportation of the same. The Appellant is having Service Tax Registration No. ACMPV6203AST001 for their PAN ACMPV6203A.
- The Appellant contended that show cause notice was issued only on the basis of ITR filed by the Appellant and obtained by the department was without any verification with regard to consideration received towards the activities declared in the ITR as to whether the same is taxable service under the provisions of the Finance act,1994 and rules made there under. Such show cause notice has to be considered as *non-est* and void itself. However, in-spite of the categorically explained by the Appellant along with documents, that none of the activities carried out by the Appellant was taxable or not attracts service tax in terms of various provisions of the Finance Act, Rules made there under and various notifications issued in this regard, the adjudicating authority have confirmed such *non-est* show cause notice vide impugned order is not sustainable under the law.
- The Appellant submitted that during the period 2015-16 and 2016-17, they were engaged in the activities of trading of goods falls under Negative lists clause (e) of Section 66D, Transportation of Goods by road on which service tax is exempted as per section 66D(p)(i) of the Finance Act, 1994, and provisions of Labour service which was well below threshold exemption limit

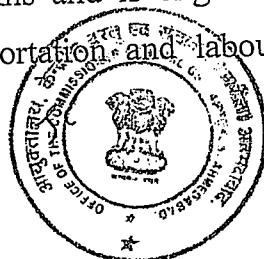


of 10 Lakhs as contemplated in Notification No.33/2012-ST. This being the case the Appellant is not liable to pay service tax as demanded in the impugned show cause notice.

- As against the Appellant's contention, in para 19.1 of the impugned order it is observed by the adjudicating authority that the Appellant has not clubbed their other income received under the head/Section 194C of the Income tax Act, (Contract Income). Had it been clubbed all Income together, they were not eligible to claim the benefit of threshold exemption limit. The Appellant has shown income in three different heads (Trading, Labour & Transport) just to evade payment of service tax. That from the perusal of 26AS for F. Y. 2014-15, it comes on records that their total income was Rs.40,70,010/- which is more than exemption limit of Rs.10 Lakhs as provided under the law and provision. From the submission of the documents, it comes on record that the Appellant had supplied their material/goods to gather with labours to the service recipients and income earned from them was shown in different categories/heads so as to avail benefit of exemption under notification No.33/2012-ST which stipulates what comprises of the aggregate value.
- In para 19.2 it was further noted by the adjudicating authority that *since the service provided under the category of 194C cannot be considered in different heads to the same service recipient and therefore, they are liable to pay service tax as determined and demanded in the show cause notice.*
- In para 19.3 it is further observed by the adjudicating authority that *"it is pertinent to mention that the payment received towards the gross amount charged/received under TDS Section 194C read with Section 69 of the Said Finance Act, for which the person liable for paying service tax as specified under sub section (2) of Section 68 of the said Finance Act read with Service Tax Rules, 1994 shall be taken into account. Thus I find that the noticee is liable to pay service tax which was not paid.*
- Based on the aforesaid observation the adjudicating authority has confirmed show case notice against the Appellant. The aforesaid observations of the adjudicating authority are refuted by the Appellant categorically as under.



- The Appellant contended that the Income of Rs.1,17,995/- and Rs. 6,80,376/- earned towards Trading of Sand/Stone and Brick during the year 2015-16- and 2016-17 is not liable to tax in terms of clause (e) of Section 66D. In support of the same the Appellant have provided specimen Invoices. However, in this regard in para 18.1 of the impugned order the adjudicating authority observed that the Appellant could not submit any valid documents such as VAT Invoice/TIN No.etc. The said findings of the adjudicating authority are not correct. The Appellant have reason to say so as such documents were never been asked from the Appellant. Had the same would have been asked the Appellant would have provided sufficient explanation in this regard.
  - As submitted above the entire demand is no sustainable on merit as well as on the grounds of limitation the confirmation of such demand in the impugned order is not sustainable and liable to be set aside, no interest is payable by the Appellant.
  - From the grounds submitted above it will transpires that non of the Income of the Appellant is liable to service tax, the Appellant have not declared the said Income in their ST-3 returns, and thereby not violated any of the provisions not violated the provision of section 70 of the Finance Act,1994 read with Rule 7 of the Service Tax Rules, 1994; not violated the provision of Section 68 read with Rules 6 of the Service Tax Rules, 1994 as alleged in the show cause notice and uphold in the impugned order.
  - Accordingly, it is contended by the Appellant that penalty of Rs.80,000/- imposed under section 70 and Penalty of Rs. 7,23,146/- imposed under Section 78 of the Finance Act, 1994 in the impugned order is factually incorrect and legally not sustainable under the law.
6. Personal Hearing in the case was held on 11.09.2023. Shri Pravin Dhandharia, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He reiterated submissions made in the appeal memorandum. He submitted that the appellant earned income from sale of bricks, sand, stone, transportation and labour. The income from sales falls under negative list and is under VAT law. The remaining income from supply of labour is less than 10 lakhs and is eligible for threshold exemption. The sale of bricks sand stone transportation and labour were never



disputed by adjudicating authority however, the demand was confirmed on pretext that income under three heads should be considered as single income due to TDS deducted under section 194C of IT-Act. Therefore, he requested to set aside the impugned order.

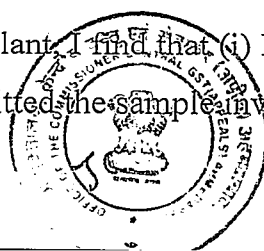
6.1 On account of change in appellate authority personal hearing was again scheduled on 12.10.2023. Shri Pravin Dhandharia, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written submission and requested to allow their appeal. He also submitted additional submission dated 14.09.2023.

7. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, oral submission & additional submission made during personal hearing, the impugned order passed by the adjudicating authority and other case records. The issue before me for decision in the present appeal is whether the demand of service tax amounting to Rs.7,23,146/- confirmed under proviso to Section 73(1) of Finance Act, 1994 alongwith interest, and penalties vide the impugned order passed by the adjudicating authority in the facts and circumstances of the case is legal and proper or otherwise. The demand pertains to the period of F.Y. 2015-16 & F.Y. 2016-17.

8. From the submissions made by the appellant it is observed that the appellant is a Proprietorship firm & registered with the Service Tax department and engaged in providing services by way of 'Transportation of Goods' i.e. Waste/Reti and 'Manpower Supply/ Labour Supply' during the period F.Y. 2015-16 & F.Y. 2016-17. They have claimed that their service income stands exempted from Service Tax as details below :

Particulars of income	2015-16	2016-17	Remarks
Sales of Bricks/Sand/Stone	1,17,995/-	6,80,376/-	VAT law applicable
Labour Income	5,50,000/-	7,50,000/-	Threshold Exemption (SSP)
Transportation Income	19,79,272/-	10,60,900/-	Service Tax is not applicable on the transpiration of Waste/Reti as per Section 66D(p)(i) of the Finance Act, 1994
Total	26,47,267/-	24,91,276/-	

9. On going through the contention of the appellant, I find that (i) In the matter of Sales of Bricks/Sand/Stone, the appellant has submitted the sample invoice of sales of





Bricks to the appellate authority, which does not attract Service Tax in terms of clause (e) of Section 66D of the Finance Act, 1994. (ii) In the matter of Labour Income, the appellant has submitted the invoice issued to the Sal Institute of Technology and the labour income remains under the basic threshold limit exemption under notification No.33/2012-ST. (iii) In the matter of Transportation income, the appellant has submitted sample invoices of transportation of Reti/waste which is exempted under Section 66D(p)(i) of the Finance Act, 1994. In support of their claim, they also submitted CA's Certificate dated 23.11.2023 mentioning that this certificate has been given on the basis of books of accounts of the appellant for the period F.Y. 2014-15 to 2016-17.

10. I find that the CA's Certificate, sample invoices stands as conclusive documentary evidence in support of appellant's contention. In view of above discussions, I am of the considered view that the income of the appellant of Rs. 48,99,743/- during the relevant period is not to be considered as a taxable value under Service Tax. Therefore, the demand of Service Tax amounting to Rs.7,23,146/- confirmed vide the impugned order fails to sustain on merits. As the demand of service tax fails to sustain, question of interest and penalty does not arise.

11. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed.

12. 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.

*[Signature]*  
29.11.23  
जानचंद जैन

आयुक्त (अपील्स)

Dated: 29<sup>th</sup> November, 2023

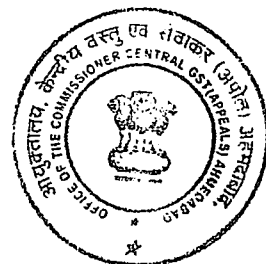
सत्यापित/Attested :

*[Signature]*

रेखा नायर

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद



**By REGD/SPEED POST A/D**

To,  
M/s Meraji Nathaji Vanzara,  
Village & Post – Jethlaj,  
Taluka – Kalol, Gandhinagar,  
Gujarat-382721.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Gandhinagar.
3. The Assistant Commisisoner, CGST & CEX, Kalol Division, Gandhinagar Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
5. Guard file.
6. PA File.

