



सत्यमेव जयते

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

75
आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20230764SW000001529E

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2672/2022-APPEAL /3422-26
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-054/2023-24 and 14.07.2023
(ग)	पारित किया गया / Passed By	श्री शिव प्रताप सिंह, आयुक्त (अपील) Shri Shiv Pratap Singh, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	20.07.2023
(ङ)	Arising out of Order-In-Original No. 03/D/GNR/PMT/2022-23 dated 24.05.2022 passed by the Deputy Commissioner, CGST, Division-Gandhinagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Esrsa Publications Pvt. Ltd. (PAN-AADCE2448Q), B-223,24,225, Pramukh Arcade, Reliance Chokdi, Kudasani, Gandhinagar, Gujarat-382421

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 जाने 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 इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के 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.

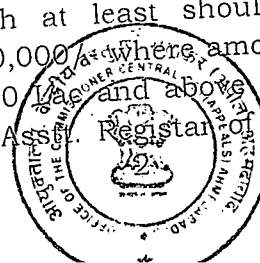
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-ड 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 (मिस्टेट) 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 Asst. 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।

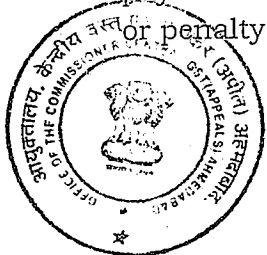
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

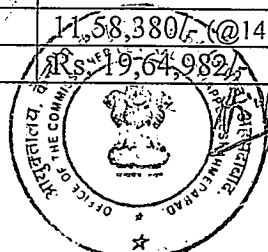
This order arises out of an appeal filed by M/s Esra Publications Pvt.Ltd., B-223, 224 & 225, Pramukh Arcade, Reliance Chokdi, Kudasana, Gandhinagar - 382421 (hereinafter referred to as the "*appellant*") has filed the present appeal against the Order-in-Original No. 03/D/GNR/PMT/2022-23 dated 24.05.2022 (hereinafter referred to as the "*impugned order*") passed by the Deputy Commissioner of CGST & Central Excise, Gandhinagar Division, Gandhinagar Commissionerate (hereinafter referred to as the "*adjudicating authority*").

2. The facts of the case, in brief, are that the appellant is engaged in business activity of Online Information and Data Base, Scientific & Technical Consultancy Services and holding Service Tax registration no. AADCE2448QSD001. As per the data received from Income Tax Department in the form of Income Tax Returns (ITR-5) and Form 26AS (TDS) data of the appellant for the period F.Y.2015-16 and F.Y.2016-17, discrepancies were observed in the total income from services when compared with their Service Tax Returns (ST-3). Accordingly, letters dated 14.05.2020 and 20.05.2020 were issued to the appellant calling for the details of services provided during the period F.Y.2015-16 and F.Y.2016-17. The appellants failed to submit any reply. It was also observed by the jurisdictional officers that the the appellant have filed their Service Tax Returns (ST-3) during the relevant period and nature of service provided by the appellant were covered under the definition of 'Service' as per Section 65 B(44) of the Finance Act, 1994 (FA,1994), and their services were not covered under the 'Negative List' as per Section 66D of the FA,1994. Further, their services were not exempted vide the Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 (as amended).

3. The Service Tax liability of the appellant for the F.Y.-2015-16 and F.Y. 2016-17 was determined on the basis of value of 'Sales of Services' shown in the ITR-5 and Form 26AS for the relevant period provided by the Income Tax department as per details below :

Table

Sr. No	Details	F.Y. 2015-16 (in Rs.)	F.Y. 2016-17 (in Rs.)
1.	Total Income declared as per ITR-5/ 26AS	79,88,827/-	53,77,347/-
2.	Income on which Service Tax paid	0	0
3.	Difference of Value (Sr.No.1-2) [considered as Taxable Value]	79,88,827/-	53,77,347/-
4.	Amount of Service Tax alongwith Cess.	11,58,380/- (@14.5%)	8,06,602/- (@15%)
	Total Service Tax liability	Rs. 11,58,380/-	Rs. 8,06,602/-



3.1 Accordingly, the appellant was issued a Show Cause Notice vide F.No. V/04-120/O&A/SCN/Esrsa/20-21 dated 11.08.2020 (in short 'SCN') wherein it was proposed to:

- Demand and recover service tax amounting to Rs.19,64,982/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act,1994 ;
- Impose penalty under Sections 76, 77(2) , 77(3)(C) and 78 of the Finance Act, 1994;

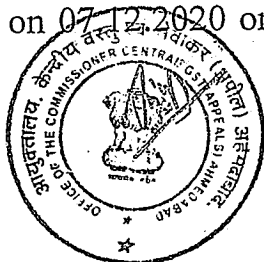
4. The SCN was adjudicated vide the impugned order wherein the demand of service tax amounting to Rs.19, 64, 982/- was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the act. Penalty amounting to Rs. 19,64,982/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty under proviso to clause (ii). Penalty of Rs.200/- per day till the date of compliance or Rs.10,000/- (whichever is higher) was imposed under the provisions of Section 77 of the Finance Act, 1994.

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

(i) the appellants are engaged in the business of pulication of books and journals since 2013 and are also registered with the Registrar of Companies (ROC) with CIN U22219GJ2012PTC073050. They have also obtained Service Tax Registration in 2013 and have filed their Returns regularly. As they have never rendered any Service, hence, they are not liable for payment of Service Tax.;

(ii) They had received First Show Cause Notice for the period F.Y. 2015-16 and F.Y. 2016-17 on 11.08.2020 to which they had filed their reply from e-mail – gst.cathakkar@gmail.com to cgstgmr2@gmail.com. They had also filed another reply from the same e-mail to the e-mail cgstgmr2@gmail.com on 25.03.2022. On the same day i.e 25.03.2022 a physical copy of the reply was also submitted with the CGST, Division Office at Gandhinagar.

(iii) At para 21.1 of the impugned order it is mentioned that "No reply was received on 07.12.2020 on the office e-mail. The adjudicating authority may



not have gone through the reply in detail. They have also submitted print out evidencing e-mail forwarded by them to the adjudicating authority.

(iv) Vide their email dated 07.12.2020 they submitted all documents showing that they have not provided any taxable service during the F.Y. 2015-16 and F.Y. 2016-17. These documents also confirm that there has been sale of goods and not sale of service. They have also submitted copies of ST-3 Returns, Service Tax ledger, IT Return, Form 26AS, Profit & Loss Account and Balance Sheet.

(v) They have submitted copy of their letter dated 24.03.2022. In their previous PH they had submitted sample copy of journals published by them, sample Invoices sent to their Customers, copy of Invoices of India Post, their authorised representative had explained their procedure of carrying out their business activity in order to show that no service were provided by them.

6. Opportunities of Personal Hearing were accorded to the appellant on four different dates as detailed below :

- o Letter F.No. GAPPL/COM/STP/2672/2022-Appeal dated 07.03.2023 was issued informing Personal Hearing at 1240 PM on 15.03.2023, the said letter was also forwarded to e-mail – gst.cathakkar@gmail.com.
- o Letter F.No. GAPPL/COM/STP/2672/2022-Appeal dated 05.04.2023 was issued informing Personal Hearing at 02:30 PM on 17.04.2023, the said letter was also forwarded to e-mail – gst.cathakkar@gmail.com.
- o Letter F.No. GAPPL/COM/STP/2672/2022-Appeal dated 09.05.2023 was issued informing Personal Hearing at 01:20 PM on 18.05.2023, the said letter was also forwarded to e-mail – gst.cathakkar@gmail.com.
- o Letter F.No. GAPPL/COM/STP/2672/2022-Appeal dated 21.06.2023 was issued informing Personal Hearing at 04:10 PM on 26.06.2023, the said letter was also forwarded to e-mail – gst.cathakkar@gmail.com.

However, neither the appellant nor their authorised representative appeared for Personal Hearing. They also failed to communicate any request for Virtual Hearing or adjournment. Therefore, I am left with no other option than to decide the appeal ex-parte on the basis of documents submitted by the appellant.



7. It is observed from the records that the present appeal was filed by the appellant on 24.08.2022 against the impugned order dated 24.05.2022, which was received by the appellant on 04.06.2022.

7.1 It is also observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :

“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter: Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”

7.2 As per the above legal provisions, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 03.08.2022 and further period of one month, within which the Commissioner (Appeals) is empowered to condone the delay upon being satisfied with the sufficient reasons shown by the appellant, ends on 02.08.2022. This appeal was filed on 24.08.2022, i.e after a delay of 20 days from the stipulated date of filing appeal, and is within the period of one month that can be condoned.

7.3 In their application for Condonation of delay in filing the appeal, they submitted that the appellant was suffering from weakness, Aneamia, Hypotension and giddiness and was advised to take rest for two months. On account of these health problems the delay in filing of the appeal had occurred. Reasons cited by the appellant was supported with Medical Certificates. The grounds of delay cited appeared to be genuine and convincing. Considering the submissions the delay in filing appeal is condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.

8. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum, and materials available on records. The issue before me for decision is whether the demand of Service Tax amounting to Rs. 19,64,982/- confirmed alongwith interest and penalty vide the impugned order, in the facts and



circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 and F.Y. 2016-17.

9. The facts of the case reveal that the appellant were granted personal hearing by the adjudicating authority alongwith request for filing written submission on 23.02.2022, 07.03.2022 and 14.03.2022 which were not availed by them. Vide their letter/email dated 25.03.2022 they informed that they had submitted reply vide letter/email dated 03.09.2020 and 07.12.2020. The adjudicating authority further found that vide their letter/e-mail dated 03.09.2020 they submitted a letter of authorization and a request seeking further time for submission of documents/reply. Vide their e-mail dated 07.12.2020 they stated that their firm was engaged in the work of publication of books and journals and they had not provided any Service during the financial year. They also stated that the SCN was issued since the appellant have mentioned Sales figures in their Income Tax Return as ale of service. Thereafter, the adjudicating authority decided the matter vide the impugned order ex-parte. Even before this authority, the appellants did not avail any of the 04 opportunities of personal hearing granted to them nor did they seek any adjournment.

10. It is observed from the case records that during the period F.Y. 2015-16 and F.Y. 2016-17 the appellant were registered under Service Tax, filed their ST-3 Returns classifying their services under 'Online Information and Data Base, Scieticific & Technical Consultancy Services'. The SCN was issued on the basis of data received from Income Tax department and considering the difference of the figures shown in their Income Tax Returns and Service Ta Returns. The appellants have assessed and declared 'NIL' taxable income in their ST-3 Returns. Consequently they have paid NIL Service Tax. They have contended that during the period they have not provided any taxable service and the demand has arised due to their misreporting in their Income Tax Returns. However, these contentions of the appellant are not supported by any documents. They have also failed to produce any reconciliation statement, copy of Invoices issued etc. in support neither before the adjudicating authority nor before this authority.

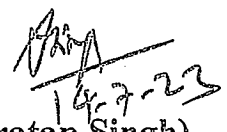
11. In the self assessment regime, the burden of assessment and true/appropriate disclosure lies on the appellant in respect of their tax liability. It is also their duty and responsibility to carry out the Service Tax liability diligently. I find that the Appellant have failed to carry out their responsibilities and prove their diligence, in



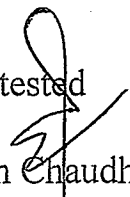
as much as that they have not produced appropriate supporting documents in support of their contentions. Further, they have neither produced proper arguments or documents in support of their contentions nor have they presented their case in person either before the adjudicating authority or this authority.

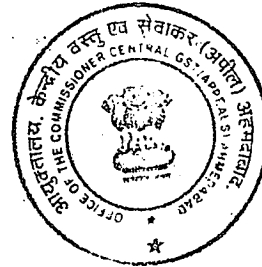
12. In view of the above discussions, I am of the considered view that, I do not find any reasonable ground to find infirmity in the impugned order. Therefore, the demand of Service Tax amounting to Rs. 19,64,982/- confirmed alongwith interest and penalties vide the impugned order is upheld.

13. 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.


(Shiv Pratap Singh)
Commissioner (Appeals)
Date: 14.07.2023

Attested


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



BY R.P.A.D. / SPEED-POST TO :

M/s Esra Publications Pvt.Ltd.,
B-223, 224 & 225,
Pramukh Arcade, Reliance Chokdi,
Kudasan, Gandhinagar - 382421

Copy to :-

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Principal Commissioner/Commissioner, CGST & Central Excise, Gandhinagar Commissionerate.
3. The Deputy/ Assistant Commissioner, System, CGST & Central Excise, Gandhinagar Comm'rate.
4. The Deputy/ Assistant Commissioner, CGST, Gandhinagar Division, Gandhinagar Commissionerate.
5. Guard File.
6. P.A. File.

