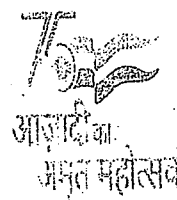




सत्यमेव जयते

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



By SPEED POST

DIN:- 20230864SW000000E565

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1799/2022-APPEAL / 1122 - 06
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-062/2023-24 and 31.07.2023
(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	07.08.2023
(ङ)	Arising out of Order-In-Original No. 36/ADJ/GNR/PMT/2021-22 dated 24.03.2022 passed by The Deputy Commissioner, CGST, Division-Gandhinagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Meghanaben Hitesh Shah, Shop No., Supermall, Annexe, Nr. GH-0 Circle, Gandhinagar- 382010 (Alternate Address - E-102, Infocity Township, Nr. GH-0 Circle, Gandhinagar - 382007).

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 house 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 हों।

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.

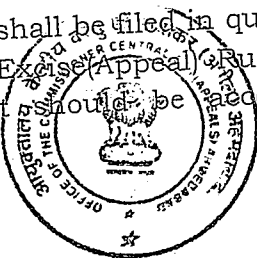
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अमरवा, गिरधरनागर, अहमदाबाद-380004।

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of



Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

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

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

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

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

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

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

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

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

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

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

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

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

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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

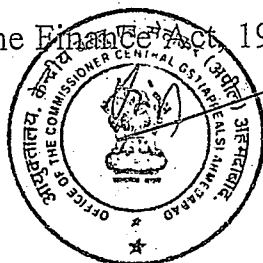
This Order arises out of an appeal filed by M/s. Meghnaben Hitesh Shah, Shop No.17, Supermall Annexe, Nr.GH-0 Circle, Gandhinagar-382010 (alternate address – E-102, Infocity Township, Near Gh-0, Circle, Gandhinagar - 382007 [hereinafter referred to as the appellant] against OIO No. 36/ADJ/GNR/PMT/2021-22 dated 24.03.2022 [hereinafter referred to as the impugned order] passed by Deputy Commissioner, Central GST, Division: Gandhinagar, Commissionerate: Gandhinagar [hereinafter referred to as the adjudicating authority].

2. Briefly stated, the facts of the case are that the appellant are registered with Service Tax under Registration No. BJYPS8268LST001 and are engaged in providing taxable services. As per the information received from the Income Tax department, discrepancies were observed in the total income declared by the appellant in their Income Tax Return (ITR-5) and details of Form 26 AS for the period F.Y. 2015-16 and F.Y. 2016-17. Accordingly, letter dated 04.06.2020 was issued to the appellant calling for the details of services provided during the period F.Y. 2015-16 and F.Y. 2016-17. The appellant did not submit any reply. 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, they have not filed their Service Tax Returns (ST-3) and the Service Tax liability for the F.Y. 2015-16 and F.Y. 2016-17 was determined on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS for the relevant period as per details below :

Table

Sr.No	Details	F.Y. – 2015-16 (in Rs.)	F.Y.–2016-17 (in Rs.)
1	Total Income as per ITR-5/26AS	41,28,180/-	14,55,440/-
2	Income on which Service Tax paid	00	00
3	Differential of Value (S.No-1-2)	41,28,180/-	14,55,440/-
4	Amount of Service Tax including cess	5,98,586/-	2,18,316/-

2.1 Show Cause Notice F.No. V/04-48/O&A/SCN/CHATTERJEE/20-21 dated 24.03.2022 (SCN in short) was issued to the appellant wherein it was proposed to demand and recover service tax amounting to Rs. 8,16,902/- for the period F.Y. 2015-16 and F.Y. 2016-17 under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Imposition of



penalty was proposed under Sections 76, 77(2), 77(3) (C) and 78 of the Finance Act, 1994.

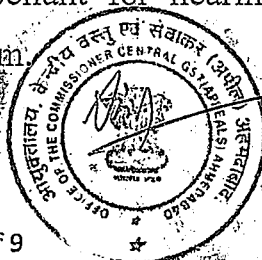
2.2 The SCN was adjudicated ex-parte vide the impugned order wherein the demand for service tax amounting to Rs. 8,16,902/- was confirmed along with interest under Section 75 of the Finance Act, 1994. Penalty amounting to Rs. 8,16,902/- was imposed under Section 78 of the Finance Act, 1994. Penalty amounting to Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994.

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

(i) They are a Proprietorship firm (in the name of M/s Kavya Infocom) engaged in providing Telecommunication Installation and maintenance services and were registered under Service Tax. As they have changed their premises from earlier address : Shop No.17, Supermall Annexe, Nr.GH-0 Circle, Gandhinagar-382010 to the new address : E-102, Infocity Township, Near Gh-0, Circle, Gandhinagar – 382007, the appellant did not receive the SCN and hence, could not file any reply. The proprietor had relied on a tax consultant in taxation matters and presumed that the necessary compliances were taken care of from time-to-time. However, she realized that the compliances were skipped due to her genuine ignorance of the provisions of the Finance Act, 1994. Hence, the service provider pleaded to consider the failures of non-filing of returns and payment of service tax as genuine unawareness and not due to fraud , collusion , willful misstatement or suppression of facts to evade payment of service tax.

(ii) The adjudicating authority has erred in not considering the above facts and circumstances and confirmed the demand of Rs. 8,16,902/- alongwith interest and penalties invoking the extended period of limitation

4. Personal hearing in the case was held on 15.03.2023. Shri Hardik Vora, Advocate, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal memorandum



5 It is observed from the records that the present appeal was filed by the appellant on 21.06.2022 against the impugned order dated 24.03.2022, which was reportedly received by the appellant on 24.03.2022.

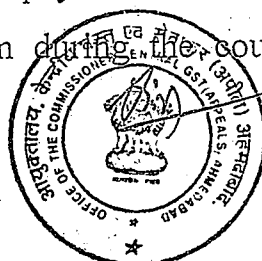
5.1 It is also observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :

“(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.”

5.2 As per the above legal provisions, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 23.05.2022 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 22.06.2022. This appeal was filed on 21.06.2022, i.e after a delay of 29 days from the stipulated date of filing appeal, and is within the period of one month that can be condoned.

5.3 In their application for Condonation of delay in filing the appeal, they submitted that the demand pertained to the period F.Y. 2015-16 and F.Y. 2016-17. They attributed the delay to the reason that they have changed their premises from earlier address : Shop No.17, Supermall Annexe, Nr.GH-0 Circle, Gandhinagar-382010 to the new address : E-102, Infocity Township, Near Gh-0, Circle, Gandhinagar – 382007. As they did not receive the SCN and hence, could not file any reply. The proprietor had relied on a tax consultant in taxation matters and presumed that necessary compliances were being taken care of from time-to-time. However, she realized that the compliances were skipped due to her genuine ignorance of the provisions of the Finance Act, 1994. Hence, the lady service provider pleaded to consider the failures of non-filing of returns and payment of service tax as genuine unawareness and not due to fraud, collusion, willful misstatement or suppression of facts to evade payment of service tax. These reasons of delay were also explained by them during the course of personal



hearing, the grounds of delay cited and explained by the appellant appeared to be genuine, cogent and convincing. Considering the submissions and explanations made during personal hearing, the delay in filing appeal is condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.

6. On account of change in the appellate authority, personal hearing was again held on 31.07.2023, Shri.Tidarsh A. Prajapati, Advocate appeared for personal hearing on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He also submitted that they have paid the requisite amount of pre-deposit, although the amount was debited from their bank account, however they were not able generate the copy of payment challan. He also submitted that the impugned order was passed ex-parte without observing principles of natural justice, merely on the basis of ITR data without any further investigation by the department. Therefore he requested to remand the matter for denovo adjudication.

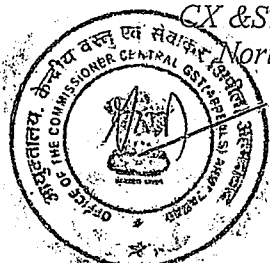
7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the personal hearing, and materials available on records. The issue before me for decision is whether the demand of Service Tax amounting to Rs. 8,16,902/- confirmed alongwith interest 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.

8. It is observed from the case records that the appellant are registered under Service Tax. However, the SCN was issued entirely on the basis of data received from Income Tax department and without classifying the Services rendered by the appellant and the impugned order was issued without causing any further verifications in this regard.

8.1 I find it relevant here, to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3 it is instructed that:

Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes & Customs)
CX & ST Wing Room No.263E,
North Block, New Delhi,

Dated- 21st October, 2021



To,
All the Pr. Chief Commissioners/Chief Commissioners of CGST & CX Zone, Pr.
Director General DGGI

Subject:-Indiscreet Show-Cause Notices (SCNs) issued by Service Tax Authorities-
reg.

Madam/ Sir,

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee

Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN issued without causing any verification entirely on the basis of data received from Income Tax department is vague, issued in clear violation of the instructions of the CBIC discussed above.

9. It is further observed that the appellant are Proprietorship firm engaged in engaged in providing Telecommunication Installation and maintenance services and were registered under Service Tax. The impugned order was passed ex-parte. The appellants have contended that they have neither received the SCN nor any other communication in this regard. There is no evidence of delivery of the SCN or the impugned order on record. The appellants have also contended that they had shifted their premises from Shop No.17, Supermall Annexe, Nr.GH-0 Circle, Gandhinagar-382010 to the new address - E-102, Infocity Township, Near Gh-0, Circle, Gandhinagar - 382007 and due to the said reason communications addressed to their old address were not received at their new premises. It is further contended that they had received a call from the jurisdictional office on 09.04.2022 regarding recovery of pending dues against them vide impugned order. At this stage they were apprised of the happenings related to the passing of impugned order. Upon their request the jurisdictional office had forwarded a copy of the impugned order to them on 09.04.2022.

9.1 The have also contended that due to non-receipt of the SCN they were unable to present their case before the adjudicating authority. Further the impugned order was passed ex-parte in violation of the principles of justice and the appellants could not defend their case in person as well.



10. In view of the above, I am of the considered view that since the appellants have contested the SCN for the first time before this authority and the matter requires verification from the documents of the appellant, it would be in the interest of justice that the matter is remanded back to the adjudicating authority to examine the contentions of the appellant vis-à-vis their taxation documents. Therefore, the matter is required to be remanded back for denovo adjudication after following the principles of natural justice.

11. Accordingly, the impugned order is set aside and the matter is remanded back to the adjudicating authority for adjudication afresh: The appellant is directed to submit their written submission to the adjudicating authority within 15 days of the receipt of this order. The appellant is further directed to attend the personal hearing as and when fixed by the adjudicating authority. The appeal filed by the appellant is allowed by way of remand.

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

The appeals filed by the appellant stands disposed of in above terms.

(Shiv Pratap Singh)
Commissioner (Appeals)

Dated: 31st July, 2023

Attested:

(Somnath Chaudhary)
Superintendent, CGST,
Appeals, Ahmedabad



BY RPAD / SPEED POST

To

M/s. Meghnaben Hitesh Shah,
Shop No.17, Supermall Annexe,
Nr.GH-0 Circle, Gandhinagar-382010

E-102, Infocity Township
Near Gh-0, Circle,
Gandhinagar - 382007

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner, CGST & Central Excise, Division :
Gandhinagar, Commissionerate : Gandhinagar
4. The Dy/Assistant Commissioner (Systems), CGST Appeals, Ahmedabad.
(for uploading the OIA)
5. Guard File.
6. P.A. File.

