



सत्यमेव जयते

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

DIN:- 20230864SW0000888DA2

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/51/2023-APPEAL / 11883-88
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-081/2023-24 and 25.08.2023
(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	28.08.2023
(ङ)	Arising out of Order-In-Original No. 04/ADJ/GNR/PMT/2021-22 dated 29.12.2021 passed by the Deputy Commissioner, CGST, Division - Gandhinagar, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Hitendranath Sarkar, 11, Chandramault Society, Mansabazar, Gandhinagar, Gujarat - 382845.

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:-

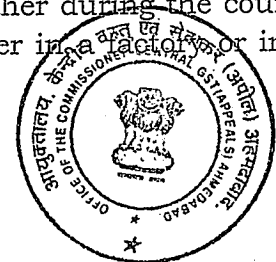
Revision application to Government of India:

(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 प्रकिया 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 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.

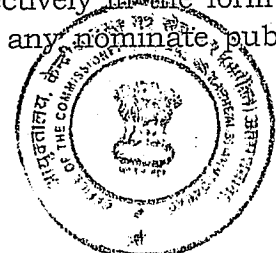
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपीलों 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 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।

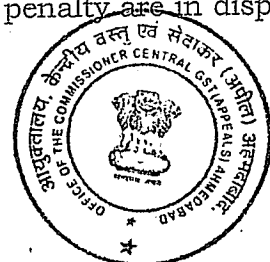
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 Hitendranath Sarkar, 11, Chandramauli Society, Mansabazar, Mansa, Dist. Gandhinagar (hereinafter referred to as the appellant) against Order in Original No. 04/ADJ/GNR/PMT/2021-22 dated 29.12.2021 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, Central GST, Division - Gandhinagar, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

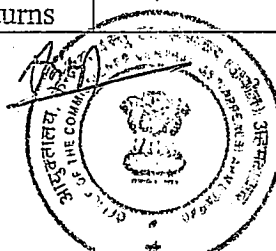
2. Briefly stated, the facts of the case is that the appellant were engaged in providing 'Security/detective agency service' and 'Manpower Recruitment/Supply Agency Service' and were holding Service Tax Registration No. BWAPS5843NST001 for the same. The data pertaining to 'Sales/Gross Receipts from Services (Value from ITR), the Total Amount paid/Credited under section 194C, 194H, 194I, 194J' of the Income Tax Act and 'Gross Value of Services Provided' was provided by the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, and on its analysis, it was noticed that the appellant had shown less amount of the 'Gross Value of Services Provided' in their Service Tax (ST-3) Returns filed with Service Tax Department compared to those filed with the Income Tax Department. To explain the discrepancies, the appellant were requested vide letters/e-mails to provide documents viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns for the F.Y. 2014-15. However, the appellant did not respond.

2.1 Accordingly, the service tax liability of the appellant was determined for the F.Y. 2014-15 based on the maximum amount of difference between (i) Value of Services declared in ITR filed by the appellant & Value of Services provided as per Service Tax Returns and (ii) Value of "Total Amount paid/credited under Sections 194C, 194H, 194I, 194J' of the Income tax Act & Value of Services provided as per Service Tax Returns. The details of quantification of demand are as per the Table below :

Table

(Amount in Rs.)

Financial Year	Value of services declared in ITR	Value of total amount paid/credited under 194C, 194H, 194I, 194J	Value of services provided as per service tax returns	Highest Difference	Total Service Tax payable
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2014-15	1,73,49,391/-	1,78,849/-	84,37,107/-	89,12,284/-	11,01,557/-
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2.1. The appellant was issued a Show Cause Notice No. IV/16-09/TPI/PI/Batch 3B/2018-19/Gr.III dated 25.06.2020 (in short SCN) for demand and recovery of Service Tax amounting to Rs.11,01,557/- under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994 read with relaxation of provisions of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No 2 of 2020) promulgated on 30.03.2020 by invoking extended period of limitation along with interest under Section 75 of the Act. The SCN also proposed imposition of penalty under Sections 77 and 78 of the Finance Act, 1994.

3. The SCN was adjudicated by the adjudicating authority ex-parte vide the impugned order wherein :

- (i) The demand of service tax amounting to Rs.11,01,557/- was confirmed under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.
- (ii) Penalty amounting to Rs.11,01,557/- was imposed under Section 78 of the Finance Act, 1994
- (iii) Penalty amounting to Rs.10,000/- was imposed under Section 77 of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant have filed the present appeal on following grounds :

- They have already paid Service Tax on the taxable services provided by them.
- On account of problem arising in the Service Tax portal of the department, Form ST-3 for third and fourth quarter were not appearing on the said portal, therefore the demand was confirmed by the adjudicating authority.

5. Personal Hearing in the case was held on 18.08.2023, Shri Bharat B. Patel, Chartered Accountant, appeared on behalf of the appellant for the hearing and handed over an additional written submission. He submitted that the appellant has already paid full tax and also filed their Service Tax Returns (ST-3). However, due to system glitch the returns are not appearing in the portal. He submitted that the



appellant owing to his personal compulsions could not file the appeal within the stipulated period. He requested to condone the delay in filing of the appeal since the appellant had not defaulted in any respect. Therefore, requested to set aside the impugned order and allow the appeal.

5.1 Vide their additional written submission, the appellant submitted that :

- They submitted a reconciliation chart showing quarter wise value of services provided and Service Tax paid and declared as per their ST-3 Returns. The tabulated data is as per table below :

Table

(amount in Rs.)

Quarter in F.Y. 2014-15	Value of Services provided	Abatement Claimed	Nett Taxable value of Service	Service Tax paid including others
April-June	43,25,762/-	32,44,322/-	10,81,440/-	1,65,541/-
July to Sept.	41,11,345/-	30,83,509/-	10,27,836/-	1,53,700/-
Total of First Half Year	84,37,107/-	63,27,831/-	21,09,276/-	3,19,241/-
Oct. to Dec.	35,74,154/-	26,80,616/-	8,93,537/-	1,28,150/-
Jan. to March	53,52,330/-	40,14,248/-	13,38,082/-	1,85,840/-
Total of 2 nd Half Year	89,12,284/-	66,94,864/-	22,31,620/-	3,13,990/-
Grand Total	1,73,63,591/-	1,30,22,695/-	43,40,896/-	6,33,231/-
Value of Services declared in ITR as per SCN	1,73,49,391/-			

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, submissions made during personal hearing, additional submissions and material available on records. The dispute involved in the present appeal relates to the confirmation of demand in the impugned order for service tax along with interest and penalty. The demand pertains to the period F.Y. 2014-15. It is further observed that the appellants are registered with the Service Tax department and have filed their ST-3 Returns regularly. The demand They have assessed and paid leviable Service Tax and reflected in their ST-3 returns. The SCN was issued to them entirely of the on the basis of data received from the Income Tax department without causing any verification, hence the SCN was issued in violation of the specific instructions issued by CBIC dated 21.10.2021. It is further observed that the impugned order was passed ex-parte by the adjudicating authority in violation of the principles of natural justice.

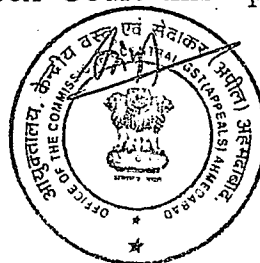
7. It is also observed from the records that the present appeal was filed by the appellant on 07.12.2022 against the impugned order dated 29.12.2021, which the



appellant have claimed to have received on 29.12.2021. Therefore, the period of two months for filing the appeal before the Commissioner (Appeals) ended on 28.02.2022 and this appeal was filed on 07.12.2022. The appeals filed before the Commissioner (Appeals) are governed vide Section 85 of the Finance Act, 1994. In terms of Section 85 of the Finance Act, 1994, an appeal before the Commissioner (Appeals) is to be filed within a period of two months from the receipt of the order being appealed. Further, the proviso to Section 85 (3A) of the Finance Act, 1994 allows the Commissioner (Appeals) to condone delay and allow a further period of one month, beyond the two month allowed for filing of appeal in terms of Section 85 (3A) of the Finance Act, 1994.

7.1 Considering the Covid-19 pandemic, the Hon'ble Supreme Court of India vide Order dated 23.03.2020 extended the period of limitation in all proceedings w.e.f. 15.03.2020. The relaxation of the period of limitation was subsequently extended till 02.10.2021 vide Order dated 23.09.2021. Subsequently, the Hon'ble Supreme Court of India vide Order dated 10.01.2022 directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation. It was further directed by the Hon'ble Supreme Court that where the limitation would have expired during the period from 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

8. In the instant case the impugned order was issued on 29.12.2021 and reportedly received by the appellant on the same date. Therefore, in terms of the relaxation granted by the Hon'ble Apex Court, the period of limitation starts on 01.03.2022. Further, in terms of Section 85 of the Finance Act, 1994 the period of two months stipulated for filing Appeals before Commissioner (Appeals) completes on 30.04.2022. The further period of one month in terms of Section 85 (3A) of the Finance Act, 1994 completes on 30.05.2022. However, the instant appeal was filed by the appellant on 07.12.2022, hence, even after considering the period of relaxation in terms of orders of the Hon'ble Apex Court this appeal was filed beyond the period condonation.



9. It is observed that the appellant, who is registered with Service Tax department, have in the instant case not submitted any application for Condonation of delay. However, they requested to condone the delay during the course of personal hearing. Since the appeal in the instant case has been filed beyond this further condonable period of one month, this authority is not empowered to condone delay in filing of appeal beyond the period of one month as per the proviso to Section 85 (3A) of the Finance Act, 1994.

10. My above view also finds support from the following judgments:-

(i) The *Hon'ble Supreme Court* in the case of *Singh Enterprises* reported at 2008 (221) E.L.T.163 (S.C.) has held as under:-

"8. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

(ii) The decision of the Apex Court Judgment has also been relied upon by the Hon'ble Tribunal, Ahmedabad in the case of Zenith Rubber Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, Ahmedabad – 2014 (12) TMI 1215 – CESTAT, Ahmedabad. In the said case, the Hon'ble Tribunal has held that:-

"5. It is clear from the above provisions of Section 85(3A) of the Finance Act, 1994 that Commissioner (Appeals) is empowered to condone the delay for a further period of one month. The Hon'ble Supreme Court in the case of Singh Enterprises (supra) held that Commissioner (Appeals) has no power to condone the delay beyond the prescribed period. In our considered view, Commissioner (Appeals) rightly rejected the appeal following the statutory provisions of the Act. So, we do not find any reasons to interfere in the impugned order. Accordingly, we reject the appeal filed by the appellant."

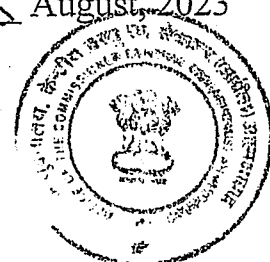
11. In view of the above, without delving into the merits of the case, I reject the appeal filed by the appellant on the grounds of limitation.

12. अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Attested:
सोमनाथ चौधरी/SOMNATH CHAUDHARY
अधीक्षक/SUPERINTENDENT
मन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद,
CENTRAL GST (APPEALS), AHMEDABAD,

(Shiv Pratap Singh)
Commissioner (Appeals)
Date: 24 August, 2023



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3. The Assistant Commissioner, Central GST Division - Gandhinagar,
Commissionerate : Gandhinagar.
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