



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

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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2707/2022-APPEAL / S966 - ४०
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-097/2023-24 and 15.09.2023
(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	18.09.2023
(ङ)	Arising out of Order-In-Original No. AC/S.R./06/REF/KADI/2022-23 dated 21.07.2022 passed by the Assistant Commissioner, CGST, Division-Kadi, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Jayesh C Patel, 2/B, Vrandavan Society, Kadi-Kalol Road, Mehsana, Gujarat.

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग 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 ए-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.

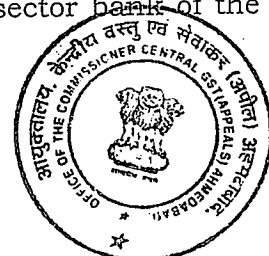
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.



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

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

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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 अपीलों 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 Jayesh C Patel, 2/B, Vrandavan Society, Kadi-Kalol Road, Mehsana, Gujarat [hereinafter referred to as "the appellant"] against AC/S.R./06/REF/KADI/2022-23 dated 21.07.2022 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST & Central Excise, Division: Kadi, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"]].

2. Briefly stated, the facts of the case are that the appellant has filed a refund claim of Rs. 12,00,000/- on the basis of Order No. A/12552-12553/2021 dated 29.11.2021 passed by Hon'ble CESTAT, Ahmedabad arising out of OIA No. 198-199/2010/AHD-III/KCG/COMMR-A/AHD dated 30.12.2010 passed by the Commissioner (Appeals) of Central Excise – Ahmedabad - III. The adjudicating authority vide the impugned order sanctioned the refund claim of Rs. 8,50,000/- and rejected the refund claim of Rs.3,50,000/-. The claim of Interest on the refund claim filed under the provision of Section 11B of Central Excise, Act, 1944 read with provision made under Sub-section 3 of Section 142 of CGST Act, 2017 was also rejected vide the impugned order.

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

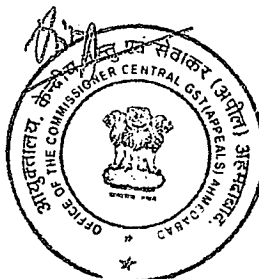
- The appellant vide letter No. Nil, dated 24.01.2022 filed a refund claim of Rs. 12,00,000/- on the basis of Hon'ble CESTAT (Ahmedabad) order No. A/12552-12553/2021 dated 29.11.2021 in the Service Tax Appeal No. 263 of 2011 arising out of OIA-198-199/2010/AHD-III/KCG/COMMR-A/AHD dated 30.12.2010 passed by the Commissioner (Appeals) of Central Excise-Ahmedabad-III.
- The department has considered the refund claim of Rs.8,50,000/- only on the basis that the appellant had informed such amount of pre-deposit at the time of appeal proceedings and the amount of Rs.8,50,000/- was mentioned in the OIO & OIA.
- The appellant stated that there was just procedural mistake on part of the appellant that they had actually made payment of Rs.12,00,000/- as a pre-deposit during the appeal proceedings but informed the payment of



Rs.8,50,000/- to the department. Hence, the department did not consider the refund claim of differential amount of Rs.3,50,000/- in spite of having documentary evidences and rejected the same. The act of the department for rejecting the refund claim of Rs.3,50,000/- without considering the factual details is not justifiable. They requested to allow the refund claim.

- They contended that Section 11B of the Act is not at all attracted to the facts of the present case. They rely on the judgements of the Hon'ble Courts.
- The appellant has made pre deposit on the stay order compliance it has been treated as deposit, so appellant has been rightly eligible for the interest under Section 35FF of CE ACT.
- *Hind Agro Industries Ltd. v. Commissioner of Customs* reported in 2008 (221) E.L.T. 336 (Del.), judgment of Madras High Court in Writ Petition No. 15357/2009
- *Natraj and Venkat Associates v. Asstt. Commissioner of Service Tax, Chennai-II* dated 20-10-2009 [2010 (17) S.T.R. 3 (Mad.) = 2010 (249) E.L.T. 337 (Mad.)]
- *Commissioner of Central Excise, Bangalore-III v. Motorola India Pvt. Ltd.* reported in 2006 (206) E.L.T. 90 (Kar.) = 2008 (11) S.T.R. 555 (Kar.) 2012 (26) S.T.R. 195 (Kar.)
- *IN THE HIGH COURT OF KARNATAKA AT BANGALORE Manjula Chellur and Aravind Kumar, JJ.COMMR. OF C. EX. (APPEALS), BANGALORE Versus KVR CONSTRUCTION* Writ Appeal Nos. 2992-2993 of 2009 (T-TAR), decided on 18-11-2010
- Further, they requested to allow the refund claim of Rs.3,50,000/- and interest on the refund amount Rs. 12,00,000/- on the above grounds.

4. Personal Hearing in the case was held on 18.08.2023. Shri Vipul Khandhar, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He handed over an additional written submission. He reiterated the contents thereof and submissions made in the appeal. He submitted that the appellant has paid certain amount during investigation prior to the Show Cause Notice (SCN) and part of the amount after issuance of the Order-in-Original. Subsequently, the Hon'ble Tribunal held that the appellant was not liable to tax. Therefore, the appellant had filed for refund pursuant to the tribunal order. The lower authority has sanctioned refund of the amount paid prior to show cause notice on the ground that the same cannot be correlated to the proceedings before the tribunal. He submitted that since the appellant was not providing any other service, the rejection of refund claim is not

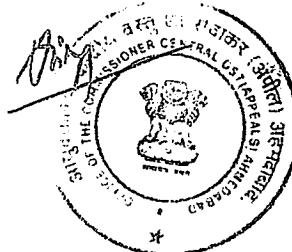


proper. Therefore, the requested to set aside the impugned order and order for refund of the claimed amount in pursuance of the tribunal order.

5. I have carefully gone through the facts of the case, grounds of appeal in the appeal memorandum, additional written submission, oral submissions made during personal hearing and the documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, rejecting the refund claim of Rs. 3,50,000/- and the claim of interest is legal and proper or otherwise.

6. It is observed from the case records that an Investigation was undertaken by the officers of the Preventive Wing, erstwhile Central Excise, Ahmedabad-III Commissionerate. During the course of investigation, it was revealed that the appellant were a proprietorship firm who were providing Manpower Supply Services to M/s N.K. Protiens Limited and M/s Pooja Protiens P. Ltd during the period 01.06.2005 to 31.01.2007. They obtained Service Tax Registration in the month of January-2007. Services provided by them were classifiable under 'Manpower Recruitment and Supply Agency services' (as defined under Section 65(68) of the Finance Act, 1994). As per the Show Cause Notice issued to them vide F.No.V.ST/15-36/OFF/OA/08-09 dated 05.08.2009 (in short SCN) during the period 16.06.2005 to 31.01.2007 they had provided taxable service amounting to the taxable value of Rs. 1,23,58,173/- and had not paid Service Tax amounting to Rs. 13,74,900/. It was also recorded in the SCN that an amount of Rs. 8,50,000/- was paid by them during the course of investigation against their Service Tax liability.

6.1 The SCN was decided vide Order-in-Original No. 25 to 27/ADC(SC)/2010 dated 09.09.2010 (in short OIO) wherein the demand of service tax amounting to Rs. 13,74,900/- was confirmed under section 73(1) of the Finance Act, 1994 alongwith interest and penalties were imposed under Section 76, 77 and 78 of the Finance Act, 1994. Being aggrieved, they filed an appeal before the Commissioner (Appeals) of Central Excise – Ahmedabad – III on who decided the issue vide the OIA. Being aggrieved the appellant filed an appeal against the OIA before the Hon'ble CESTAT, Ahmedabad who decided the matter in favour of the appellant. The appellant filed a claim seeking refund of an amount of Rs. 12,00,000/- paid by them during the course of investigation alongwith interest. The said refund claim was decided by the



impugned order and the adjudicating authority rejected the claim of Refund of Rs. 3,50,000/- as well as claim of Interest.

6.2 The adjudicating authority has rejected the refund of Rs. 3,50,000/- purportedly claimed to have paid by the appellant. The grounds of appeal submitted by the appellant in support of their claim for payment of Rs. 3,50,000/- as a part of the demand raised vide SCN are vague and inconclusive. Hence, I do not find any reason to interfere in the decision of the adjudicating authority regarding rejection of the Refund amounting to Rs. 3,50,000/-.

7. Further, regarding the appellants claim for refund of interest I find that the issue was dealt in detail during the adjudication as well as pre-audit of the refund claim. The appellant have contended that they are eligible for refund of interest in terms of CBEC Circular No. 984/08/2014-CX dated 16.09.2014 issued from F.No. 390/Budget/1/2012-JC. I find it relevant to refer to the said Circular and relevant portions are reproduced below:

Circular No 984/08/2014-CX

F. No. 390/Budget/1/2012-JC

Government of India

Ministry of Finance

Department of Revenue

(Central Board of Excise & Customs)

New Delhi, dated the 16 th September, 2014

To,

1. All Chief Commissioners, Central Excise and Service Tax/ Customs.

2. All Commissioners of Central Excise, Service Tax/ Customs.

3. Chief Commissioner (AR), CESTAT, New Delhi.

5. All Commissioners of Central Excise, Service Tax and Customs

6. All Commissioners (AR), New Delhi, Mumbai, Chennai, Kolkata, Bangalore & Ahmadabad

7. Webmaster

Sub: Amendments to the Appeal provisions in Customs, Central Excise and Service Tax made by Finance Act, 2014- Issue of clarifications - reg.

...

1.2 The amended provisions apply to appeals filed after 6 th August, 2014. Sections 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 contain specific saving clause to state that all pending appeals/stay applications filed till the enactment of the Finance Bill shall be governed by the erstwhile provisions.

3. Payment made during investigation:

3.1 Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10%, subject to the limit of Rs 10 crores, can be considered to be deposit made towards fulfillment of stipulation under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962. Any shortfall from the amount stipulated under these sections shall have to be paid before filing of appeal before the appellate authority. As a corollary, amounts paid over and above the amounts stipulated under Section 35 F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, shall not be treated as deposit under the said sections.



3.2 Since the amount paid during investigation/audit takes the colour of deposit under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962 only when the appeal is filed, the date of filing of appeal shall be deemed to be the date of deposit made in terms of the said sections.

3.3 In case of any short-payment or non-payment of the amount stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed by the appellant is liable for rejection.

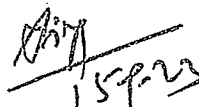
...

8. Examining the above legal provisions with the facts of the case I find that the amount paid by the appellant can be taken in terms of para-3.2 of the said Circular the amount paid by the appellant during the investigation did take the colour of 'Deposit under Section 35F of the Central Excise Act, 1944' on the date filing the appeal against the Order-in-Original No. 25 to 27/ADC(SC)/2010 dated 09.09.2010 i.e. ____ 2010. Further as per para 1.2 of the said Circular it is categorically mentioned that these amended provisions would apply to the appeals filed after 06.08.2014. However, since the appeal was filed by the appellant prior to the relevant date i.e. 06.08.2014, the provisions of this Circular would not apply to this case. As this issue has also been discussed in detail vide the impugned order, I do not find any ground to interfere with the decision of the adjudicating authority in rejecting the Refund of Interest in terms of Section 35FF of the Central Excise Act, 1994 vide the impugned order.

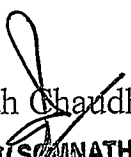
9. In view of the above discussions, I am of the considered view that the grounds of appeal filed by the appellant are devoid of merits and no infirmity is observed in the impugned order as the same is legal and proper and liable to be upheld.

10. Accordingly, the appeal filed by the appellants is rejected and the impugned order is upheld.

11. 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.


(SHIV PRATAP SINGH)
Commissioner (Appeals)
Dated: 15 September, 2023

सत्यापित /Attested:


(Somnath Chaudhary)
सोमनाथ चौधरी / SOMNATH CHAUDHARY
अधीक्षक / SUPERINTENDENT
केन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद.
CENTRAL GST(APPEALS), AHMEDABAD.



By REGD/SPEED POST A/D

To,
M/s Jayesh C Patel,
2/B, Vrandavan Society, Kadi-Kalol Road,
Mehsana, Gujarat

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Gandhinagar.
3. The Deputy /Asstt. Commissioner, Central GST, Division- Kadi, Gandhinagar Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
- ✓ 5. Guard file.
6. PA File.



