



आयुक्त का कार्यालय), अपीलस(

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ : 079-26305065 टेलीफैक्स : 079 -26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)53&54/EA-2/North/Appeals/2018-19 | 11308 to 11313

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-JC-08&09-2019-20
दिनांक Date : 27/06/2019 जारी करने की तारीख Date of Issue _____

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Sachin Gusia, Joint Commissioner (Appeals)

03/07/2019

ग Arising out of Order-in-Original No. Div-VII/GST-Refund/198&148/Radix Soft/2018 दिनांक:
10/09/2018 issued by Deputy, Div-VII, Central GST, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Radixweb Software Services Pvt. Ltd
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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।

(i) 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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।

(ii) 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.

(b) 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।



(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।

(b) 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।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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।

(d) 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.

(1) 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 मुख्यशीर्ष 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो 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.

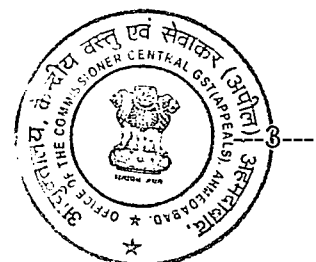
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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 ओ-20, न्यू मैटल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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.

इस 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।

6(I) 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017 Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appropriate authority



ORDER IN APPEAL

The Assistant Commissioner, CGST & Central Excise, Division-VII, Ahmedabad North, Ahmedabad (hereinafter referred to as the 'appellant') has filed the present appeals against the following Orders-in-Originals (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioner, CGST & Central Excise, Division-VII, Ahmedabad North, Ahmedabad (hereinafter referred to as 'the adjudicating authority') in the matter of refund claims filed by M/s. Radix Software Services Pvt Ltd, 401, Anand Mangal 2 B/H Omkar House, C.G. Road, Navrangpura, Ahmedabad-380009 (hereinafter referred to as 'respondent'). Since the issue involved in both the appeals is common, I take up for disposal by a common order.

Sr. No.	Appeal No.	Order No. and Date of Form GST RFD 06	OIO reviewed by	Review Order No. & Date	Period of dispute	Amount under dispute (₹)		
						CGST	SGST	IGST
1	V2(GST)53 /EA2/ NORTH/ APPEALS/ 18-19	Div-VII/GST-Refund/198/Radix Soft/2018 dated 10.09.2018	The Pr. Commissioner, CGST & C. Ex., Ahmedabad North	70/2018-19 dated: 14.03.2019	July 2017	7574	7574	0
2	V2(GST)54 /EA2/ NORTH/ APPEALS/ 18-19	Div-VII/GST-Refund/148/final/Radix Soft/2018 dated 10.09.2018	The Pr. Commissioner, CGST & C. Ex., Ahmedabad North	71/2018-19 dated: 14.03.2019	Sept' 2017	717	717	0

2. The facts of the case, in brief, are that the respondent, holding GSTIN No. 24AAECR9105J1ZC had filed the above refund claims under section 54 of the CGST Act, 2017 for the amount as mentioned in the following table, on account of input tax credit(ITC) accumulated due to Zero rated supply of goods and services, without payment of integrated tax. The claims were filed manually vide Circular No. 17/17/2017-GST dated 15.11.2017. On verification of the refund claims, the adjudicating authority had found some discrepancies and deficiency memo had been issued to the respondent. Later on, Show Cause Notices were also issued to the respondent.

Sr. No.	Appeal No.	Order No. and Date of Form GST RFD 06	Period of dispute	Amount claimed (₹)			Amount Sanctioned (₹)		
				CGST	SGST	IGST	CGST	SGST	IGST
1	V2(GST)53 /EA2/ NORTH/ APPEALS/ 18-19	Div-VII/GST-Refund/198/Radix Soft/2018 dated 10.09.2018	July 2017	1919097	535217	34658	533250	533250	34658
2	V2(GST)54 /EA2/ NORTH/ APPEALS/ 18-19	Div-VII/GST-Refund/148/final/Radix Soft/2018 dated 10.09.2018	Sept' 2017	1374419	1374419	57940	1348227 (1374419 -26192)	1348227 (1374419 -26192)	57940

3. On examination of refund claims and the written submissions of the respondent in response to the notices, the adjudicating authority found that the respondent is engaged in supply of Services outside India and has claimed the refunds of ITC on export of services without payment of Integrated Tax for the months of July 2017 and September 2017.



4. In case of the refund claim for the period of July-17, it was noticed by the adjudicating authority that the respondent has taken net input tax credit of CGST for the amount of Rs. 1919097/- in RFD-01A, whereas the respondent was eligible for ITC of CGST for the amount of Rs. 535217/- during the said period as per GSTR-3B. Further, the respondent vide their letter dated 08.08.2018 submitted that they are eligible for ITC of CGST for the amount of Rs. 535217/- only instead of Rs. 1919097/- for the period of July-17 and hence the claim amount for ITC of CGST had been reduced from Rs. 1919097/- to Rs. 535217/- for the said period. Further, it was also found by the adjudicating authority that the respondent has availed ITC credit of Capital goods for the amount of Rs. 3934/- (CGST- Rs. 1967/- and SGST- Rs. 1967/-), whereas as per Rule 89, the respondent is not eligible for the same.

5. Further, in case of the refund claim for the period of Sept-17, it was noticed by the adjudicating authority that the respondent had availed ITC credit of Capital goods for the amount of Rs. 37902/- (CGST- Rs. 18951/- and SGST- Rs. 18951/-), which was not recovered/adjusted from the refund claim for the month of Aug-17 due to insufficient balance. It was also noticed that the respondent has availed ITC credit of Capital goods for the amount of Rs. 14482/- (CGST- Rs. 7241/- and SGST- Rs. 7241/-) in the month of Sept-17. Whereas as per Rule 89, the respondent can claim refund of ITC on Inputs and Input services only and therefore the respondent is not eligible for the refund claim amounting to Rs. 52384/- {37902/- (Aug-17) + 14482/- (Sept-17)}, i.e. (CGST- Rs. 26192/- and SGST- Rs. 26192/-).

4. Further, it was observed by the adjudicating authority that the respondent has also submitted all the declarations as mentioned in Form RFD-01 in case of all the refund claims and all the documents and records were found in proper order and correct. Thus, the adjudicating authority sanctioned the refund amounts (as mentioned in the above table under Para 2) vide the impugned orders.

5. Thereafter, all the above mentioned impugned orders were reviewed by the Pr. Commissioner, CGST & C. Ex., Ahmedabad North and Review Orders for filing appeals under sub section (2) of section 107 of the CGST Act, 2017 were issued on the ground that the said refunds sanctioned are not proper and legal as the adjudicating authority has wrongly sanctioned the excess refunds.

6. Being aggrieved with the impugned orders, the appellant has filed the present appeals mainly on the following grounds:

(a) the said refund claims files were sent for the post-audit purpose. The Audit Cell, CGST & C. Ex., Ahmedabad North observed that "it appears that the said claims pertain to refund of IGST paid on export of Goods and Services. The same have been examined and observed that as per the copy of purchase invoices as well as summary statement of purchase invoices, it appears that in some cases, input tax credit are not admissible as per Para 2.4 and 4.1 of Circular No. 59/33/2018".



(b) it is noticed that the respondent had availed the Input Tax Credit for the followings which are not eligible in view of sub-section (5) of Section 17 of the CGST Act, 2017:

(i) in respect of refund claim for the period July 2017- Input Tax Credit availed for Food/Catering services amounting to Rs. 7,425/- for CGST and Rs. 7,425/- for SGST and For Purchase of Gift articles amounting to Rs. 405/- for CGST and Rs. 405/- for SGST.

(ii) in respect of refund claim for the period September 2017- Input Tax Credit for Food/Catering services amounting to Rs. 720/- for CGST and Rs. 720/- for SGST.

(c) the respondent does not satisfy any of the conditions as mentioned in sub-section (5) of Section 17 of the CGST Act, 2017. As such, the said Input Tax Credits have to be deducted from the Net ITC before calculating the maximum refund claim.

(d) the adjudicating authority has sanctioned excess amount of Rs. 7574/- for CGST and Rs. 7574/- for SGST for the month of July, 2017 and excess amount of Rs. 717/- for CGST and Rs. 717/- for SGST for the month of Sept, 2017.

(e) the adjudicating authority has erred by sanctioning the excess refund claims and therefore, the impugned orders are not proper and legal in respect of the above facts.

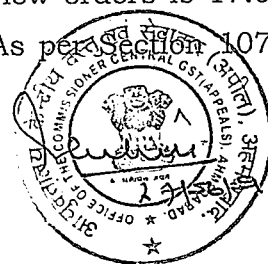
7. Personal hearing was conducted on 01/05/2019, Mr. Bishan R Shah and Miss Priyanka Amin, Chartered Accountant, appeared on behalf of the respondent and submitted a written statement dated 01.05.2019 and reiterated the same.

8. The grounds raised in the written statement dated 01.05.2019 submitted by the respondent, are as follows:

(a) As per Section 17(5) of the CGST Act, 2017, they have rightly claimed the credit of Restaurant Service. Restaurant service is not included in the list of ineligible credit under Section 17(5) of the CGST Act, 2017. Food and beverages falling under Chapter head 1 to 23 as goods are not eligible. But, restaurant services falling under SAC 9963 is eligible.

(b) As per eligibility and conditions for taking input tax credit under Section 16(1) of the CGST Act, 2017, the purchase of decoration items and photo frame have been used for their business purpose and sales promotion i.e. for furtherance of their business, therefore they are eligible for credit for the same.

9. I have carefully gone through the facts of the appeals, the department's grounds of appeal in the Review Orders, the written and oral submission made by the representatives of the respondent and the impugned orders. I find that the date of receipt of all the impugned orders as mentioned in the review orders is 17.09.2018 and all the above appeals have been filed on 15.03.2019. As per Section 107 of the



CGST Act 2017, the review of the order and the consequent filing of appeal by the subordinate has to be done within a period of six months from the date of communication of the order. I find that all the above appeals have been filled within time limit.

10. In the present case, I find that the appellant has filed the appeals on the ground that the excess refund has been sanctioned erroneously to the respondent, whereas the respondent was not eligible to avail the Input Tax Credit under sub-section (5) of Section 17 of the CGST Act, 2017 for the following-

1. Food/Catering Services amounting to Rs. 7425/- for CGST and Rs. 7425/- for SGST (for the period July 2017),
2. Gift articles amounting to Rs. 405/- for CGST and Rs. 405/- for SGST (for the period July 2017) and
3. Food/Catering Services amounting to Rs. 720/- for CGST and Rs. 720/- for SGST (for the period September 2017).

The appellant has argued that the respondent does not satisfy any of the conditions as mentioned in sub-section (5) of Section 17 of the CGST Act, 2017 and therefore, the above mentioned Input Tax Credit should be deducted from the Net ITC before calculating the maximum refund claim.

11. It shall be apt to reproduce the relevant part of sub-section (5) of Section 17 of the CGST Act, 2017 which reads thus :-

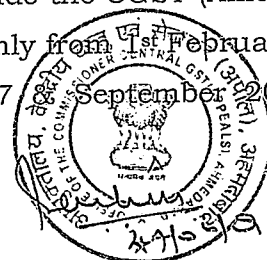
“(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, **input tax credit shall not be available in respect of the following, namely:—**

(b) **the following supply of goods or services or both—**

- (i) **food and beverages, outdoor catering,** beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;.” **[Emphasis supplied]**

It is evident from the above that input tax credit shall not be available on **food and beverages, outdoor catering** subject to the exceptions given therein. I also find that the respondent did not satisfy any of the conditions for exemption as mentioned under Section 17(5)(a) of the CGST Act, 2017 and it is also evident that input tax credit shall not be available in respect of the food and beverages/ outdoor catering services. Further, I find that input tax credit shall not be available on gift articles i.e. goods or services or both used for personal consumption.

I find that the CGST Act, 2017 has been amended vide the CGST (Amendment) Act, 2018 and the amendments have been made effective only from 1st February 2019. The present appeals pertain to the period for July 2017, September 2017 and



therefore it would not be legitimate to discuss these amendments and its applicability in the pretext of this case. Hence, I find that this would not help the respondent in any manner.

12. In view of the foregoing, I find that adjudicating authority has erroneously sanctioned the excess refund to the respondent and therefore the excess refund amount should be recovered with appropriate interest. Hence, the appeals filed by the appellant are allowed.

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

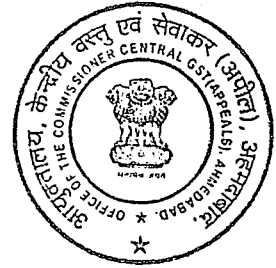
13. The appeals filed by the appellants stand disposed of in above terms.

(Handwritten Signature)
29/06/19
(सचिन गुप्तिया)
संयुक्त आयुक्त (अपील्स)

Date : .06.2019

Attested

(Handwritten Signature)
(D.A. Parmar)
Superintendent (Appeals),
Central Tax, Ahmedabad



To,

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Copy to:

- (1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- (2) The Pr. Commissioner, Central GST, Ahmedabad North.
- (3) The Assistant Commissioner, Central GST, Division-VII, Ahmedabad North.
- (4) The Assistant Commissioner(RRA), Central GST, Ahmedabad North.
- (5) The Asstt. Commissioner(System), Central GST HQ, Ahmedabad.
(for uploading the OIA on website)
- ✓(6) Guard file
- (7) P.A. file.