



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

☎ 26305065-079 : टेलिफैक्स 26305136 - 079 :



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)33/EA2/North/Appeals/2018-19 / 11897 to 11902

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-JC-10-2019-20  
दिनांक Date : 05/08/2019 जारी करने की तारीख Date of Issue 13/08/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. Div-VII/GST-Refund/133/Hi-Tech/2018 दिनांक: 02/07/2018 issued by Assistant, Div-VII, Central Tax, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Hi-Tech Solutions LLP  
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथि 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, 4<sup>th</sup> 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.



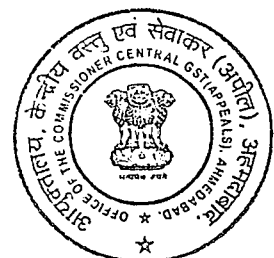
ORDER IN APPEAL

The below mentioned departmental appeal have been filed by Assistant Commissioner, Division VII, CGST & Central Excise, Ahmedabad-North Commissionerate, [for short –'adjudicating authority'] under Section 107 of the Central Goods and Services Tax Act, 2017, the details of which are as follows:

Name of the respondent	OIO No. & date issued under Form GST RFD 06	Review Order No. passed by the Pr. Commissioner, CGST & C.Ex., Ahmedabad North Comm'rate [in terms of Section 107(2) of the CGST Act, 2017]	Appeal No.
M/s. Hi-Tech iSolutions LLP, Hi-Tech House, B/h V-Murti Complex, Gurukul Road, Memnagar, Ahmedabad.	Div-VII/GST-Refund/133/ Hi-Tech/2018 dated 02.07.2018	47/2018-19 dtd 07.01.2019	V2(GST)33/EA-2/ North/ Appeals/18-19

2. Briefly, the facts are that the respondent, filed a refund claim of Rs. 9,61,932/- for IGST, Rs. 6,47,491/- for CGST and Rs. 6,47,491/- for SGST for the month of December, 2017, seeking refund of Input tax credit lying unutilized on account of zero rated supplies made without payment of tax in terms of Section 54 of the Central Goods and Services Tax Act, 2017, read with Rule 89 of the Central Goods and Service Tax Rules, 2017. The adjudicating authority vide his impugned OIO dated 2.7.2018, sanctioned Rs. 9,61,932/- in respect of IGST, Rs. 6,33,942/- in respect of CGST and Rs. 6,33,942/- towards SGST.

3. During the course of post audit, it was observed that the refund claim is inadmissible as the turnover of zero rated supply of service mentioned in their RFD-01A was not correct in terms of details furnished in the refund claim papers viz. statement 3 u/r 89(2) and FIRC certification/documents from their bank regarding payment receipts. It is also observed that in many cases, the respondent has received payments **after the claim period**; that the adjusted turnover should have been calculated in terms of Rule 89(4)(D) of the Central Goods and Service Tax Rules, 2004. Thereafter on the impugned OIO, having been examined for its legality and propriety, the Pr. Commissioner, CGST & C.Ex., Ahmedabad-North Commissionerate vide his aforementioned Review Order, directed the Assistant Commissioner, Division-VII to file the aforementioned appeal, raising the following grounds:



- that the respondent had shown the turnover of zero rated supply of service as Rs.56454840/- in their RFD-01A; that on scrutinizing the documents ie. statement 3 u/r 89(2) and FIRC certification/documents from their bank regarding payment receipts, submitted by the respondent, it was noticed that they were not eligible for the said refund;
- that the respondent has received payments after the relevant period;
- that the impugned OIO be set aside and the erroneous refund of Rs.9,61,932/- in respect of IGST, Rs. 6,33,942/- in respect of CGST and Rs. 6,33,942/- towards SGST be recovered along with interest.

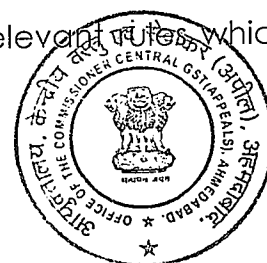
4. The respondent vide his cross objections dated 27.02.2019, submitted the following:

- that they are an 100% EOU engaged in supplying information technology and IT enabled services; that they were making zero rated supply of services without payment of IGST under Letter of Undertaking and hence as per provision of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017, they are eligible to claim a refund of Input Tax Credit(ITC);
- that in terms of clause (D) of Rule 89(4) of the CGST Rules, 2017, the turnover of zero rated supply of services is based on the payment received and not on the basis of amount billed;
- that GST being a new law and highly technical subject, they were not aware about the above determination of turnover of zero rated supply of services and while filing refund claim they have calculated the amount based on total turnover instead of turnover of zero rated supply of services as defined in rule 89(4);
- that as per their annexure 1, submitted with the cross objection, the excess refund is Rs.5,47,242/- and not Rs. 22,29,816/- as stated in review order and department appeal;
- that in review order dated 07.01.2019, entire amount of refund for period December, 2017 granted is sought to be rejected assuming that no amount is received during the period. However, the details of amount received during the year are given in Annexure 1.

5. Personal hearing in respect the appeal was held on 30.07.2019, wherein Shri Punit Prajapati, Chartered Accountant appeared before me and reiterated the submissions dated 27.02.2019.

6. I have gone through the facts of the case, the impugned original orders, the grounds raised in the review orders mentioned *supra* and the cross objections filed by the respondent and the oral averments raised during the course of personal hearing. I find that the only question to be decided is whether the refund granted to the respondent vide the impugned OIO, is erroneous or otherwise.

7. The matter deals with refund of unutilized input tax credit, and therefore before moving forward, let me first reproduce the relevant rules which enables a person to seek refund of tax in such a situation, viz.



**RULE 89. Application for refund of tax, interest, penalty, fees or any other amount. —**

[(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula –

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

Where, -

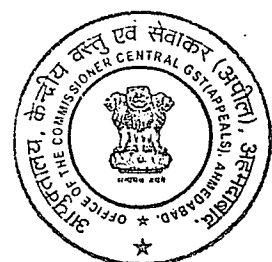
- (A) "Refund amount" means the maximum refund that is admissible;
- (B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;
- (C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;
- (D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely :-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

- [(E) "Adjusted Total Turnover" means the sum total of the value of -
- (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and
- (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding -
- (i) the value of exempt supplies other than zero-rated supplies; and
- (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.]

- (F) "Relevant period" means the period for which the claim has been filed. [emphasis supplied]

8. I have carefully gone through the facts of the case on records, grounds of the appeal in terms of the review order, the cross objection filed by the respondent and oral submission made during the time of personal hearing. The primary ground raised by the department in the review order is that the respondent wrongly arrived at the value of 'turnover of zero rated supply of services'; that the respondent has received the payment for zero rated supply of services after the relevant period of the zero rated supply of services.



9. The respondent, I find in para 5 first admits that this being a new law they were not aware of about the above determination of turnover of zero rated supply of services; that there was inadvertent clerical mistake on their part; that the excess refund is only Rs. 5,47,242/- only.

10. Now, on going through Rule 89 of the Rule, *ibid*, I find that the refund is to be granted based on the formula, which is reproduced above. I find that the dispute is in respect of calculations of *turnover of zero rated supply of services*, which is clearly mentioned in Rule 89(4)(D). I find that *zero rated supply of services* would include

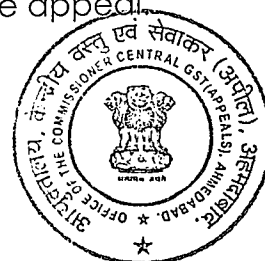
[a] *the aggregate of the payments received during the relevant period for zero-rated supply of services (+)*

[b] *zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period (-)*

[c] *advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period .*

The departmental claim in review order para 9 [page 5] is that the claimant had received the payment of zero rated supply of services **after** the relevant period. Hence, going by the above, it could **not** have formed the part of turnover of zero rated supply of services. However, the respondent has contested the ground by claiming that they had received the payments during the relevant period i.e. December 2017, which is as per Annexure I to the cross objection.

11. Since the arithmetical data on turnover of zero rated supply as mentioned under said annexure-I under cross objection was contrary with the said turnover mentioned under the ground in the appeal, the matter was taken up vide letter dated 17.05.2019 with the Reviewing Authority (Jurisdictional Commissioner) requesting to clarify the exact amount of the payment received by the respondent during relevant period. In response to that, it was clarified by the Additional Commissioner, CGST & C.Ex. Ahmedabad-North under letter F.No.IV/16-18/OIA/Misc/16-17-RA dated 25.06.2019 that turnover of zero rated supply of services/exact amount of payments as per rule 89(4) (D) of the CGST Rules, 2017 received during December 2017 were 4,25,99,672/-. In view of this clarification, the turnover mentioned (though it is contrary to the ground of appeal wherein it is mentioned that the claimant has received the payment for zero rated supply of service after the relevant period) needs to be considered for deciding the appeal.



11.1 Therefore, considering said turn over Rs.4,25,99,672 as turnover of zero rated supply of services during relevant period i.e. December 2017 in the formula, admissible amount of refund is calculated as under:

**Formulae:**

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Refund Amount= 42599672\*2229816/56454840

= 1682574/- (IGST RS. 725854/-, CGST Rs. 478360/- and SGST Rs. 478360/-)

Thus, the eligible amount of refund comes to Rs.16,82,574/- as against refund sanctioned Rs.22,29,816/- and therefore erroneous/excess refund amount sanctioned under impugned order is as detailed below:


**Table A**

	IGST	CGST	SGST	Total
Sanctioned vide the impugned OIO	961932	633942	633942	2229816
Eligible amount	725854	478360	478360	1682574
<b>Erroneous refund</b>	<b>236078</b>	<b>155582</b>	<b>155582</b>	<b>547242</b>

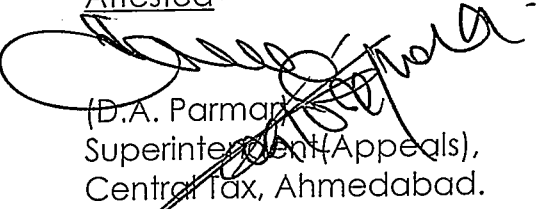
12. In view of the foregoing, the impugned OIO is set aside to the extent it has erroneously sanctioned refund as mentioned in **Table A** above. The prayer of the department for the recovery of the erroneously sanctioned excess refund along with interest is also allowed.

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

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

  
 (सचिन गुप्सिया)  
 संयुक्त आयुक्त (अपील्स)  
 Date: .2019

Attested

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





By RPAD.

To,

M/s. Hi-Tech iSolutions LLP,

Hi-Tech House, B/h V-Murti Complex,

Gurukul Road, Memnagar, Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad- 380 009.
3. The Pri. Commissioner, Central Tax, Ahmedabad- North Commissionerate.
4. Additional Commissioner, Central Tax (System), Ahmedabad-North.
5. The Assistant Commissioner, Central Tax Division- VII(SG Highway East), Ahmedabad- North Commissionerate.
- ✓ 6. Guard File.
7. P.A.

