



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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टेलिफैक्स 07926305136

DATE: 21/08/2020

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)10 to 14/EA-2/North/Appeals/20-21/15468 TO 15473
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-JC-16 to 20/20-21
दिनांक Date : 07-08-2020 जारी करने की तारीख Date of Issue : 07-08-2020

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathor, Joint.Commissioner (Appeals)

ग Arising out of Order-in-Original No 91 to 93 & 112,113/Final/2019-20 दिनांक: 05.09.2019 & 15.10.2019 issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Access Pharmaceuticals Pvt Ltd,

(GSTIN : 24AAGCA3985K1ZD)

**13, 14 Sunspot Row House, Nr, Gurudwara, Row House,
Thaltej, Ahmedabad - 382210.**

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 प्रकिया के दौरान हुई हो।

(iii) 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.

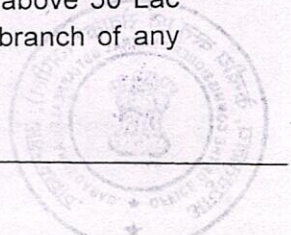
(1) **केन्द्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-**

Under Section 112 of CGST act 2017 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) 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 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 Appellate 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)

- (7) 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."

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 appellate tribunal whenever it is constituted within three months from the president or the state president enter office.



ORDER IN APPEAL

The below mentioned all departmental appeals have been filed by the Assistant Commissioner, CGST & Central Excise, Division-VI, Ahmedabad North, Ahmedabad (hereinafter referred to as the 'appellant') under Section 107 of the Central Goods and Services Tax Act, 2017, against the following Orders-in-Originals (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North (hereinafter referred to as 'adjudicating authority') in the matter of refund, the details of which are as follows:

Sr. No.	Name of the respondent	OIO No. & date issued under Form GST RFD 06	Review Order No. passed by the Commissioner, CGST & C.Ex., Ahmedabad North Comm'rate [in terms of Section 107(2) of the CGST Act, 2017]	Appeal No.	Amount Under Dispute (IGST in Rs.)
1	2	3	4	5	6
1	M/s Access Pharmaceuticals Pvt Ltd, 13, 14 Sunspot Row House, Nr Gurudwara, Row House, Thaltej, Ahmedabad - 382210 24AAGCA3985K1ZD (GSTIN)	91/Final/2019-20 dated 05.09.2019	11/2020-21 dated 25.06.2020	V2(GST)10/EA2/North/Appeals/20-21	116439
2		92/Final/2019-20 dated 05.09.2019	09/2020-21 dated 25.06.2020	V2(GST)11/EA2/North/Appeals/20-21	45227
3		93/Final/2019-20 dated 05.09.2019	10/2020-21 dated 25.06.2020	V2(GST)12/EA2/North/Appeals/20-21	88036
4		112/Final/2019-20 dated 15.10.2019	13/2020-21 dated 25.06.2020	V2(GST)13/EA2/North/Appeals/20-21	237807
5		113/Final/2019-20 dated 15.10.2019	12/2020-21 dated 25.06.2020	V2(GST)14/EA2/North/Appeals/20-21	33027

2. The facts of the cases, in brief, are that the respondent, had filed five refund claims for the month of Nov-18, Jan-19, Feb-19, Apr-18 & Jun-18 on account of input tax credit (ITC) accumulated under Inverted Duty Structure



and the same has been sanctioned by adjudicating authority vide impugned orders in view of the formula given in the Rule 89(5) of the CGST Rules, 2017.

3. On the refund claim being sent for post audit, it was observed that as per the claim papers and copy of purchase invoices as well as summary statement of purchase invoices/GSTR-2A/GSTR-3B available in file, the claimant have received the inward supply of inputs @ 18% and 12% or less and outward supply@ 12% & 18%, whereas their turnover of the **inverted rated supply** of the goods and services as per GST RFD-01A includes the total of taxable value of outward supplies both@ 12% & 18%.

Further, as per para 2.3 of Circular No. 59/33/2018-GST dated 04/09/2018, it has been clarified regarding refund of unutilized Input Tax Credit (ITC) that *"the refund claim shall be accompanied by a print-out of FORM GSTR-2A of the claimant for the relevant period for which the refund is claimed. The proper officer shall rely upon FORM GSTR-2A as an evidence of the accountal of the supply by the corresponding supplier in relation to which the input tax credit has been availed by the claimant..."* Thus, refund of unutilized ITC is admissible as per details of the inward supplies invoices furnished in the GSTR-2A. This aspect has been reiterated vide Circular No.135/05/2020- GST dtd.31/03/2020 as, *"the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant."*

Hence, audit observed that the adjudicating authority had sanctioned the refund claims, in excess. Thereafter on the impugned orders, having been examined for their legality and propriety, the Commissioner, CGST &C.Ex., Ahmedabad North Commissionerate, vide above mentioned Review Orders authorized the appellant to file appeals against the impugned orders raising the following grounds:

- That the impugned orders belongs to refund of unutilized ITC accumulated on account of inverted duty structure. It has been examined and observed that as per the claim papers and copy of purchase invoices as well as summary statement of purchase invoices/GSTR-2A/GSTR-3B available in file, the claimant have received the inward supply of inputs @ 18% and 12% or less and outward supply@ 12% & 18%, whereas their turnover of the **inverted rated supply** of the goods and services as per GST RFD-01A includes the total of taxable value of outward supplies both@ 12% & 18%.



- That the refund of accumulated ITC in terms of clause (ii) of sub-section (3) of section 54 of the CGST Act is available **where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.** In the present case, it is observed that in RFD-01A, the turnover of the inverted rated supply also included the turnover of the outward supplies wherein rate of tax on inputs are equal i.e. 18% or less and tax rate in their outward supply is 18%, whereas such cases do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act.
 - That as per para 2.3 of Circular No. 59/33/2018-GST dated 04/09/2018, it has been clarified regarding refund of unutilized Input Tax Credit (ITC) that *"the refund claim shall be accompanied by a print-out of FORM GSTR-2A of the claimant for the relevant period for which the refund is claimed. The proper officer shall rely upon FORM GSTR-2A as an evidence of the accountal of the supply by the corresponding supplier in relation to which the input tax credit has been availed by the claimant..."* Thus, refund of unutilized ITC is admissible as per details of the inward supplies invoices furnished in the GSTR-2A. This aspect has been reiterated vide Circular No.135/05/2020 - GST dtd.31/03/2020 as, *"the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant."*
 - That the Adjudicating Authority has erred by sanctioning the excess refund and the same is required to be recovered along with interest.
4. Personal hearing in respect of above mentioned all appeals was held on 10.07.2020, wherein Shri Rushabh Prajapati, Advocate appeared before me on behalf of respondent and requested that he will submit written submission within 7 days.
5. The respondent vide his written submission dated 20.03.2020, submitted the following
- That, *"The claimant had received refund on account of application filed on portal. Thereafter, the file of the claimant was sent to pre-audit. The pre-audit authority determined that the claimant had filed return and submitted*



outward supply @ 12% and 18%. The inverted rated supply attracts the rate 12% only and not 18%. The claimant sells commodity which is taxable @12%. The claimant accepts the calculation of refund on outward supply @12%".

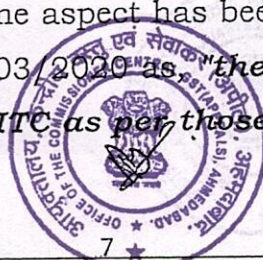
- That, "the authority also citing the circular relating to value of ITC in GSTR-3B must be matching with the GSTR-2A. The department will calculate the refund on the basis of GSTR-2A figures available on portal and issue the refund as per the figures. As per the latest circular, the values of GSTR-2A matches with our GSTR-3B and there is a nominal mis-match of GSTR-3B VS GSTR-2A. We are attaching herewith the copy of our purchase register and in which month the invoices are reflecting in GSTR-2A".

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 oral averments raised during the course of personal hearing and the written submission filed by the respondent. I find that the only question to be decided is whether the refund granted to the respondent vide the impugned OIOs, is excess or otherwise.

7. I find that the whole dispute of amount of refund, for which appeal has been preferred, arose on account of para 2.3 of Circular No. 59/33/2018-GST dated 04/09/2018, which is reproduced below:

"2.3 In view of the difficulties being faced by the claimants of refund, it has been decided that the refund claim shall be accompanied by a print-out of FORM GSTR-2A of the claimant for the relevant period for which the refund is claimed. The proper officer shall rely upon FORM GSTR-2A as an evidence of the accountal of the supply by the corresponding supplier in relation to which the input tax credit has been availed by the claimant. It may be noted that there may be situations in which FORM GSTR-2A may not contain the details of all the invoices relating to the input tax credit availed, possibly because the supplier's FORM GSTR-1 was delayed or not filed. In such situations, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are present in FORM GSTR-2A of the relevant period submitted by the claimant."

8. Further I find that the same aspect has been reiterated vide Circular No.135/05/2020 - GST dtd.31/03/2020 as *"the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of*



which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant." Further, I find that the respondent nowhere mentioned that the grounds of appeal in respect of ITC details as per GSTR-2A are not proper. Accordingly, considering the clarifications of circular 59/33/2018-GST dated 04/09/2018, I find that the Maximum refund amount shall be as shown in column 13 and hence excess amount sanctioned shall be as shown in column 16 of the table below:

Table-I

Month	ITC Details as per			Outward supply & rate of tax paid			
	GSTR 3B	Statement 1A	GSTR-2A	Taxable value @18% (higher rated)	Tax paid on higher rated value	Taxable value @12% (inverted rated)	Tax paid on inverted rated value
1	2	3	4	5	6	7	8
Nov-18	496612	497684	390276	62878	11318	1082527	129902
Jan-19	971094	971094	923560	41888	7540	7350237	882028
Feb-19	452662	453910	366834	137445	24740	1913390	229607
Apr-18	1075248	1015246	835840	35863	6456	6138310	736598
Jun-18	960592	960592	928162	38225	6880	4706596	564792
Turnover of inverted rated supply of goods	Tax payable on such inverted rated supply of goods (12%)	Adjusted total turnover	Net Input Tax Credit	Maximum refund amount to be claimed [(9x12/11)-10]	Claim amount Sanctioned	RFD-06 Order No.	Excess amount sanctioned
9	10	11	12	13	14	15	16
1082527	129902	1145405	390276	238949	355388	91/Final/2019-20 dated 05.09.2019	116439
7350237	882028	7392125	923560	36299	81526	92/Final/2019-20 dated 05.09.2019	45227
1913390	229607	2050837	366834	112642	200678	93/Final/2019-20 dated 05.09.2019	88036
6138310	736598	6174173	835840	94387	332194	112/Final/2019-20 dated 15.10.2019	237807
4706596	564792	4744821	928162	355893	388920	113/Final/2019-20 dated 15.10.2019	33027



In view of the above, I find that adjudicating authority has erroneously sanctioned the refund in excess to the respondent as shown in column 16 of Table-I above.

9. In view of the foregoing, the departmental appeals are allowed and the impugned orders are set aside to the extent it has erroneously sanctioned the excess refund as mentioned in column 16 of above Table-I. The prayer of the department for recovery of erroneously sanctioned refund along with interest is also allowed.

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

10. All the five appeals filed by the appellant stands disposed of in above terms.

(मुकेश राठौर)

संयुक्त आयुक्त(अपील्स)

Date : .08.2020

Attested

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

By R.P.A.D.

To,

M/s Access Pharmaceuticals Pvt Ltd,
(GSTIN : 24AAGCA3985K1ZD)

13, 14 Sunspot Row House, Nr, Gurudwara, Row House,
Thaltej, Ahmedabad - 382210,

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner(Appeals), CGST, Ahmedabad
3. The Commissioner, Central Tax, Ahmedabad North Commissionerate.
4. The Assistant Commissioner, Central Tax Division- VI, Ahmedabad North Commissionerate.
5. The Assistant Commissioner, System, Central Tax, Ahmedabad North Commissionerate.
6. Guard File.
7. P.A.



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