

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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 2023.10645W0000212461

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2438/2023 APPEAL / 7626 - 31

ख अपील आदेश संख्या Order-In-Appeal Nos. AHMI-CGST-002-APP-JC-70/2023-24

दिनांक Date : 16-10-2023 जारी करने की तिथि Date of Issue : 27-10-2023

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. 139/DC/D/VM/2022-23 DT. 13.03.2023 issued by The Deputy Commissioner, CGST & C.Ex., Divison-III, Ahmedabad North Commissionerate.

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

M/s. Samvardhana Mother International Limited,
AV-24, Sanand Industrial Estate, GIDC Sanand, Phase-II,
Sanand GIDC, Ahmedabad, Gujarat - 382170

(A) इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।

Any person aggrieved by this Order in Appeal may file an appeal to the appropriate authority in the following way.

(i) National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.

(ii) State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017

(iii) Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-five Thousand.

(B) Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST AP1-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST AP1-05 online.

(i) Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying
(i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and
(ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order in relation to which the appeal has been filed.

(ii) The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.

(C) उच्च अपीलीय प्राधिकारी को अपील दायर करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट को देख सकते हैं।

For elaborate, detailed and upto date information relating to filing of appeal to the appellate authority, the appellant may refer to the website of the Commissioner Central GST (Appeals) Ahmedabad.



ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Samvardhana Motherson International Limited, AV-24, Sanand Industrial Estate, GIDC Sanand, Phase-II, Sanand GIDC, Ahmedabad, Gujarat – 382170 (hereinafter referred as '*Appellant*') has filed the appeal against Order-in-Original No. 139/DC/D/VM/22-23 dated 13.03.2023 (hereinafter referred as '*Impugned Order*') passed by the Deputy Commissioner, CGST & C.EX., Division – III, Ahmedabad North (hereinafter referred as '*Adjudicating Authority*').

2. The appellant is registered with the Central Excise Department for manufacture of parts and accessories of Motor Vehicles falling under subheading 8708 of CETA 1985 and holding Central Excise Registration No. AAACM0405AEM067 and Service Tax Registration No. AAACM0405ASD066. During course of audit by the office of Commissioner of CGST, Audit, Ahmedabad for the period from Apr-2016 to Jun-2017, it was noticed that the appellant had carried forward closing balance of transactional credit of Education Cess; Sec. Education Cess of Rs.4,73,968/- and Rs.2,36,994/- of central excise respectively and Rs.1,19,400/- and Rs.59,702/- of service tax totaling Rs.8,90,064/- to the TRAN-1. On being pointed out by the audit, the appellant partially agreed with the objection and voluntarily paid/debited the amount of Rs.8,90,074/- vide DRC-3 dated 28.03.2019. However, the appellant has not paid the interest and penalty thereon. As per the directions issued vide by the CBEC (chairman) vide D.O.F. No.267 /67 /2017-CX.8 dated 01.12.2017, TRAN-1 verification in respect of CGST was carried out. During course of TRAN-1 verification, it was noticed that the appellant had carried forward closing balance of transactional credit of Education Cess, Sec. Education Cess of Rs.4,73,968/- and Rs.2,36,994/- of central excise respectively and Rs.1,19,400/- and Rs.59702/- of service tax totaling Rs.8,90,064/- to the TRAN-1 which is not admissible under section 140(1) of transitional provision under GST.

3. A Show Cause Notice dated 15.07.2021 was accordingly issued to the *appellant* and asked to show cause as to why –

- i. *The amount of Rs.8,90,064/- availed as Krishi Kalyan Cess in Trans-1 and subsequently debited vide DRC-1 dated 28.03.2019 should not be*



appropriated under Section 140(1) of the transitional provision under GST.

- ii. Interest amounting to Rs. 2,96,720/- should not be charged and recovered from them on the late reversal of Edu. Cess & KK Gess under the provisions of Sections 50(3) of the Act.
- iii. Penalty should not be imposed under Section 73(1) of CGST Act, 2017 on the assessee on wrongly availed and utilized transitional credit amounting to Rs.8,90,064/- in GST FORM TRAN-1.

4. Thereafter, the adjudicating authority vide impugned order dated 13.03.2023 has confirmed the said demand and passed order as under :

- i. Order to appropriate the amount of Rs.8,90,064/- availed as Cess in Tran-1 and subsequently debited vide DRC-3 dated 29.03.2019 under Section 140(1) of the transitional provision under GST.
- ii. Confirm the interest amounting to Rs.2,96,720/- for the amount appropriated above at S. No. i for the late reversal of Cess under the provisions of Sections 50(3) of the Act.
- iii. I confirm the imposition of Penalty under section Sections 73(1) of the CGST Act, 2017 for wrongly availing and utilizing transitional credit amounting to Rs.8,90,064/- in GST FORM TRAN-1

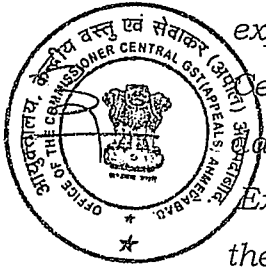
Being aggrieved with the impugned order the appellant has filed the present appeal on 14.12.2022 wherein stated that –

- that the Impugned Order is a replica of SCN and there is no reasoning provided in the Impugned Order as to how the liability of interest and penalty is payable.
- the purpose of a show cause notice is to grant an opportunity to Appellant to deal with the allegations made therein. Unless the allegations are specific and in conformity with the applicable law, Appellant cannot be said to have been afforded a sufficient opportunity of hearing.
- that position of Section 50(3) of the CGST Act is amply clear that in a case where the credit has been wrongly availed and utilized, interest shall be payable. That, to levy interest under Section 50(3) of the CGST Act, it is necessary to show that the wrongly availed credit has also been utilized by the assessee.
- that there is no proposal in SCN or confirmation in the Impugned Order denying the transition of unutilized credit on Cesses. SCN and



Impugned Order merely proposes / demands appropriation of unutilized credit on Cesses reversed by Appellant vide Form GST DRC-03.

- *that even though Appellant has reversed the said credit in Form GST DRC-03 dated 28.3.2019, Appellant seeks to contest the same on merits. This was reversed under instructions of audit department under protest.*
- *that the phrase "of eligible duties" after the words "CENVAT Credit" in Section 140(1) of the CGST Act, was brought into effect retrospectively from 1.7.2017 vide Section 28 of the CGST (Amendment) Act, 2018.*
- *Explanation 1 to Section 140(1) of the CGST Act, which defines the term 'eligible duties', was also amended with retrospective effect from 1.7.2017 and made applicable to Section 140(1) of the CGST Act. Explanation 1 did not include within its scope the Cesses. However, the said amendment has not been enforced till date.*
- *Explanation 2 to Section 140(1) of the CGST Act, which defines the term 'eligible duties and taxes', was also amended with retrospective effect from 1.7.2017 and made applicable to Section 140(1). The said explanation did not include within its scope the Cesses viz KKC, SHE Cess and EC. However, such amendment has also not been enforced till date.*
- *Explanation 3 to Section 140(1) of the CGST Act was inserted thereunder on 1.2.2019 with effect from 1.7.2017, to specifically exclude any cess not specified in Explanation 1 and 2 from the expression "eligible duties and taxes".*
- *Notification No. 2/ 2019 - Central Tax dated 29.1.2019, was issued to bring into force the provisions of the CGST (Amendment) Act, 2018. However, Section 28 of the CGST (Amendment) Act, 2018, to the extent it sought to insert the reference of Section 140(1) to Explanation 1 and Explanation 2, was not notified by the said Notification and was kept in abeyance and the position continues to be the same as on date.*
- *As a result, the definition of the term 'eligible duties' as specified in Explanation 1 would not apply to Section 140(1) of the CGST Act and hence, it can be concluded that CENVAT Credit of eligible duties including Cesses (since not defined for the purpose of the said sub-section), can be transitioned under Section 140(1) of the CGST Act.*
- *It is submitted that Explanation 2 to Section 140 defines the expression "eligible duties and taxes". The said definition is irrelevant for Section 140(1) as Section 140(1) uses the term 'eligible duties'. Nonetheless, the amendment sought to be made under the Amendment Act to extend the*

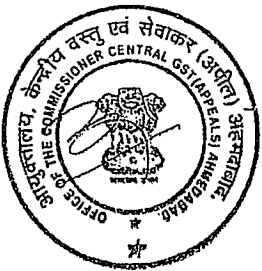


application of the definition to Section 140(1), has also not been notified in respect of this Explanation 2 as well.

- Basis the above legal position, it is submitted that the Impugned Order has been passed without correctly understanding the provisions of Section 140 of the CGSTA Act.
- Since Explanation 1 and Explanation 2 of Section 140 of the CGST Act are not attracted, eligible duties in Section 140(1) are to be understood in its normative sense. In the context of CENVAT Credit, it is submitted that it ought to be understood as duties which were eligible for availment as CENVAT Credit.
- that it is an undisputed fact that Appellant is entitled to avail CENVAT Credit on these Cesses under Rule 3 of CCR, 2004. Therefore, denying such credit to Appellant is violative of legal and constitutional rights of Appellant. Explanation 3 to Section 140 of the CGST Act is not applicable.
- It is pertinent to note here that Explanation 3 to Section 140(1) of the CGST Act, which excludes the Cesses not specified under Explanation 1 and 2 from the ambit of the term "eligible duties and taxes", would not apply to Section 140(1), as the term used in the Section 140(1) is 'eligible duties' as against the term 'eligible duties and taxes' referred to in Explanation 3.

Since Explanation 1 and 2 are yet to be notified, it is submitted that they do not apply to Section 140(1) of the CGST Act, and are to be considered as non-existent. Further, Explanation 3 clarified on expression "eligible duties and taxes", which is not used in Section 140(1) of CGST Act. Therefore, CENVAT Credit of Cesses can be transitioned into GST. Hence, it is submitted that Appellant, in accordance with the law, has correctly carried forward the CENVAT Credit of Cesses.

- Reliance is placed on judgment of Hon'ble Bombay High Court in *Godrej & Boyce Mfg. Co. Ltd. vs Union of India*, 2021 (11) TMI 157 – Bombay High Court, Hon'ble Madras High Court in *Sutherland Global Services Private Limited v. Assistant Commissioner CGST and other*, 2019 (11) TM/ 278 - Madras High Court, Hon'ble High Court of Bombay in *Godrej & Boyce Mfg. Co. Ltd. (supra)*, the judgment of Hon'ble Supreme Court in *Eicher Motors Ltd. v. Union of India*, 1999 (1) TM/ 34 - Supreme Court.
- Section 50(3) of the CGST Act covers input tax credit, wrongly availed and utilized, interest cannot be charged on the transitional CENVAT Credit pertaining to Cesses under Section 50(3) of the CGST Act. In any case, to the extent of non utilization of credit, interest is not payable.



- In para 16 of the Impugned Order, the Adjudicating Authority has observed that Appellant has contravened the provisions of Section 39(7) of the CGST Act read with Section 5(1) of the IGST Act and Rule 85(3) of the CGST Rules, without explaining as to how these provisions have been contravened.
- that Notification No. 13/2017-CT dated 28.6.2017, which prescribes the rate of interest to be charged, was amended vide Section 115 of Finance Act, 2022 read with (Eighth Schedule). As a result of this amendment, the rate of interest chargeable under Section 50(3) of CGST Act has been reduced to 18% w.e.f. 1.7.2017.
- that there was no requirement to reverse the transitional credit on Appellant as it was eligible for the transitional credit, as submitted in the above paras. Since Appellant rightly availed transitional credit through Form GST TRAN-1, there can be no penalty imposed on Appellant under Section 73 of the CGST Act.
- that imposition of penalty in the present case under Section 73(1) of the CGST Act alone is not sustainable since there is no corresponding charging provision relied in the Impugned Order.

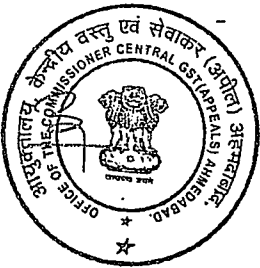
In the view of the forgoing submissions, the appellant prayed that Order-in-Original No. 139/DC/DNM/22-23 dated 13.3.2023 passed by Adjudicating Authority be set aside, to the extent it is prejudicial to interests of Appellant;

Personal Hearing:

6. Personal Hearing in the matter was held on 11.09.2023 and 29.09.2023 wherein Mr. Ambarish Pandey, Advocate appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has submitted compilation and re-iterated the written submissions and requested to allow the appeal.

Discussion and Findings :

7(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum as well as through additional submission. I find that the 'Appellant' had availed the credit of Education Cess and Secondary & Higher Education Cess ("Cesses") of Rs.4,73,968/- and Rs.2,36,994/- of central excise respectively and Rs.1,19,400/- and Rs.59,702/- of service tax totaling Rs.8,90,064/- to the TRAN-1. On being pointed out by the



audit, the appellant partially agreed with the objection and voluntarily paid/debited the amount of Rs.8,90,074/- vide DRC-3 dated 28.03.2019. However, the appellant has not paid the interest and penalty thereon.

7(ii). However, as being pointed out by the audit that the credit of Cesses are not admissible, the *appellant* had reversed the same in the month of May 2019. However, the *appellant* has not paid the applicable interest and penalty on this amount. Accordingly, a SCN dated 15.07.2021 was issued to the *appellant* in this regard. Thereafter, the *adjudicating authority* vide *impugned order* has confirmed the demand of wrongly availed credit of Cesses and appropriated the amount so paid by the appellant. Further, I find that the *adjudicating authority* has confirmed the demand of interest of Rs.2,96,720/- Section 50(3) of the CGST Act, 2017. Further, I find that the *adjudicating authority* has imposed penalty under section Sections 73(1) of the CGST Act, 2017 for wrongly availing and utilizing transitional credit amounting to Rs.8,90,064/- in GST FORM TRAN-1.

8. In the instant matter the present appeal is filed by appellant on 14.07.2023 against the Order-in-Original dated 13.03.2023. Further, informed by appellant in APL-01 that order appealed against is communicated to them on 17.04.2023. Therefore, I find that the present appeal is filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, it has been considered that present appeal is filed in time.

9. On carefully going through the submissions of *appellant* I find that the *appellant* is mainly contending that the Section 140(1) refers to 'CENVAT Credit' carried forward in the return and the explanation to Chapter XX 'Transitional Provisions' states that the term 'CENVAT Credit' used in this chapter shall have same meaning as assigned to them in the Central Excise Act, 1944 or the rules made there under (i.e. CENVAT Credit Rules, 2004) ; that in view of said provisions, a registered person shall be eligible to carry forward the credit into the GST regime. The *appellant* has accordingly contended in this appeal that on a co-joint reading of Section 140(1) and aforesaid Explanation, it is evident that any credit which qualifies as eligible CENVAT Credit under the CENVAT Credit Rules, 2004 and shown in the return filed under erstwhile regime, shall be carried forward into the GST regime.



10. The *appellant* has further contended that vide CGST (Amendment) Act, 2018, explanation 3 was inserted with retrospective effect from 01.07.2017 that *inter-alia* clarified that “*eligible duties and taxes*” will not include Cess, not specified in Explanation 1 and 2 ; that the said amendment has not been notified by the Government and presently, not in operation. They had initially carried forward the CENVAT credit accumulated on account of Cesses through TRAN-1, however, on account of ambiguity and to avoid any adverse implications they reversed it through GSTR-3B.

11. In view of above, the *appellant* has contended that they have correctly carried forward the credit of Cesses into GST regime. They have also referred the judgment passed by Hon’ble High Court of Judicature at Bombay in the matter of Godrej & Boyce Mfg. Co. Ltd. Versus Union of India, 2021 (11) TMI 157. Further, I find that the appellant has contended that they are alternatively eligible to claim refund of Cesses and in support of same they referred case of Hon'ble Madras High Court in Sutherland Global Services Private Limited v. Assistant Commissioner CGST and others, 2019 (11) TM/ 278 - Madras High Court, Hon'ble High Court of Bombay in Godrej & Boyce Mfg. Co. Ltd. (supra), the judgment of Hon'ble Supreme Court in Eicher Motors Ltd. v. Union of India, 1999 (1) TM/ 34 - Supreme Court.

12. Since, the *appellant* has contended that the amendment that excluding Cess in “*eligible duties and taxes*” has not been notified by Government, I refer the relevant Explanation 3. The same is reproduced as under :

Explanation 3.- For removal of doubts, it is hereby clarified that the expression “*eligible duties and taxes*” excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975).]

The Explanation 3 is inserted w.e.f. 01.07.2017 by s.28 of ‘*The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018)*’. And the Government of India vide Notification No. 02/2019 – Central Tax dated 29.01.2019 appoints the 01.02.2019, as the date on which the provisions of the *Central Goods and Services Tax (Amendment) Act,*

2018 (31 of 2018), except clause (b) of section 8, section17, section18, clause (a) of section 20,sub-clause (i) of clause (b) and sub-clause (i) of clause (c) of section28, shall come into force. In the present matter the SCN vide which demanded the wrongly availed Transitional Credit is issued on 01.12.2021. Accordingly, I do not find any force in the contention of the *appellant*. In view of foregoing, I am of the considerate view that in the present matter, as per Section 140 of the CGST Act, 2017 it is very much clear that transitional credit of Education Cess, Secondary & Higher Education Cess under TRAN-1 is not admissible.

13. Further, I find that the *appellant* has contended that alternatively they are eligible to claim refund of Cesses and in support of their claim they referred case laws as mentioned above. In the present appeal proceedings the issue involved is rejection of transitional credit claimed by *appellant* by filing TRAN-1 in terms of Section 140 of the CGST Act, therefore, facts and circumstances of present case is different from the aforesaid case laws and thus ratio of said case laws are not applicable in the present matter.

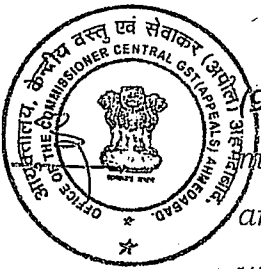
Further *appellant* has contended that they have reversed the credit in under instructions of audit department under protest. However I find that on being pointed out by the audit the appellant has voluntarily paid/debited the amount of Rs. 8,90,074/- vide DRC-03 dated 28.3.2019 and not under protest.

15. Further, as regards to order for demand & recovery of interest the appellant has contended that since, there was no dispute on eligibility of credit at the time of availment and the only dispute was for transferring the credit, hence, levy of interest is incorrect. However, I find that according to the Section 50(3) of the CGST Act, 2017 the registered person is liable to pay interest on such input tax credit wrongly availed and utilized, as in the instant case the appellant had not submitted any documents on record that justify that the appellant had a required balance in his CGST account as compared to the wrongly availed credit of Rs. 8,90,064/- in his CGST account. Accordingly, the adjudicating authority has held that the appellant has completely utilized the wrongly availed transitional credit by March 2019 and therefore ordered for recovery of interest under Section 50(3) of the CGST Act, 2017. Accordingly, I do not find any force in the contentions of the appellant in this regard.



16. Further, as regards to imposition of penalty I find that the appellant has contended that penalty under Section 73(1) of the CGST Act is imposable in the matter of wrong availment of input tax credit. Whereas, in the present case they had carried forward CENVAT credit lying in balance as on 30.06.2017 in electronic credit ledger pursuant to rollout of GST w.e.f. 01.07.2017 which is permissible as per Section 140(1) of the CGST Act. Accordingly, the appellant has contended that there was no such deliberate and *mala-fide* intention to avail excess input tax credit and therefore, charging interest and penalty in the instant case is not tenable. Accordingly, I hereby refer the relevant provisions.

Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.-



(1) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

Section 122. Penalty for certain offences.-

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the **input tax credit has been wrongly availed or utilised,-**

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

In the present matter, as discussed in foregoing paras I find that the appellant has wrongly availed and utilized the input tax credit of Cesses amounting to Rs.8,90,064/- and therefore there is nothing wrong in penalty imposed upon appellant under Section 73(1) of the CGST Act, 2017 by the adjudicating authority vide impugned order. Therefore, I do not find any force in the contention of the appellant.

17. In view of the above discussions, I do not find any force in the contentions of the *Appellant*. Accordingly, I find that the *impugned order* passed by the *Adjudicating Authority* is legal and proper. Therefore, I do

not find any reasons to interfere with the decision taken by the *Adjudicating Authority* vide "*impugned order*" and accordingly, I reject the appeal filed by the *Appellant*.

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

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

Asawer
 (Adesh Kumar Jain) 16/10/2023
 Joint Commissioner (Appeals)
 Date: 16.10.2023

Attested

(Signature)

(Sandheer Kumar)
 Superintendent (Appeals)



By R.P.A.D.

To,
 M/s. Samvardhana Motherson International Limited,
 AV-24, Sanand Industrial Estate,
 GIDC Sanand, Phase-II, Sanand GIDC,
 Ahmedabad, Gujarat - 382170.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Deputy Commissioner, CGST, Division-III, Ahmedabad North.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File



