

	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय उत्पाद शुल्क भवन सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 th Floor, Central Excise Building Near Polytechnic, Ambavadi, Ahmedabad-380015
☎ 079-26305065		☎ टेलिफैक्स 079 - 26305136

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क फाइल संख्या (File No.): V2(87) 2/EA-2/Ahd-II/Appeals-II / 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 285-16-17

दिनांक (Date): 25.01.2018, जारी करने की तारीख (Date of issue): 16-2-2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No. 35/AC/D/BJM/2016 Dated: 25/01/2017

issued by: Assistant Commissioner., Central Excise (Div-III), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s JBM Auto Ltd.

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

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

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

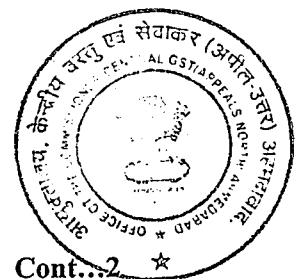
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो।

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

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

C. file



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- (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 Challian 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 :-

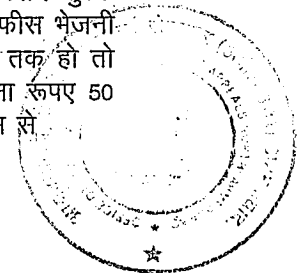
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016.

- (b) 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.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियों सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



- रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 रू.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।

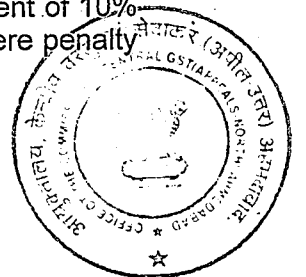
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

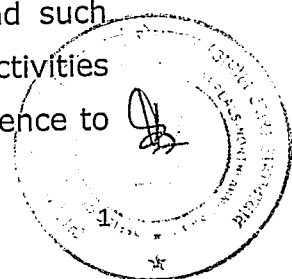
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

M/s. JBM Auto Ltd., Plot No. B-2, (Survey No.1), Tata Motors Vendors Park, Sanand, Ahmedabad – 382170 (*hereinafter referred to as the 'respondent'*) holding Central Excise Registration No. AAACJ9630MEM008 is engaged in the manufacture of parts of motor vehicles falling under Chapter Heading No.8708 of the Central Excise Tariff Act, 1985. The respondent had availed Service tax credit paid on invoices issued by M/s. Tata Motors Ltd., Sanand, Ahmedabad, in respect of Vendor Park maintenance expenses like Road maintenance, Street Light Bill of the Vendor Park, Security Guard Expenses etc.. The Department observed that such expenses could not be considered as input service and therefore a notice to disallow the Cenvat Credit wrongly availed was issued to them. The Adjudicating Authority vide OIO No. 35/AC/D/BJM/2016 dt.25.01.2017 (herein after referred as the impugned order), concluded that the cost of common facilities are a necessity and as such Cenvat credit of Service tax paid for such services was admissible to the appellants. The Adjudicating Authority thereby dropped the proceedings against the respondent vide the impugned order. The Department aggrieved by the said OIO, filed an appeal against the same, before me.

2. The facts of the case, in brief, are that during the audit of the Respondent by the Department, it was observed that the respondent had availed Service tax credit paid on invoices issued by M/s. Tata Motors Ltd., Sanand, Ahmedabad, in respect of Vendor Park Maintenance Expenses. These Vendor Park Maintenance expenses included Road maintenance of the Vendor Park, Street light Bill of the Vendor Park, Main Gate Security Guard Expenses etc.. It was observed that the respondent had wrongly taken Cenvat Credit on Vendor Park maintenance services as the same did not fall under the category of 'Input Services' defined under Rule 2(I) of the Cenvat Credit Rules, 2004, as the said service did not have any nexus with the manufacturing and clearance activities of the final product up to the place of removal. It was observed that expenses incurred on maintenance of Vendor Park i.e. Road maintenance, Street Light Bill payment, main gate Security Guard payment, etc. were common to all the units situated in the Vendor Park. Hence, these services did not have specific nature required for manufacturing or clearing activities up to the place of removal and such services did not have an impact on the manufacturing or clearing activities up to the place of removal. The respondent did not provide any evidence to

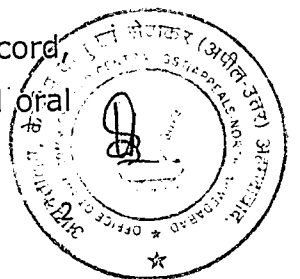


justify that the services proposed for denial of cenvat credit were used directly or indirectly in manufacturing of their final product or for clearance of such final products up to the place of removal. As such, the said services namely Vendor Park Maintenance Services did not qualify to be called as input service in as much as the services received by the Respondent did not fall within the purview of the main or inclusive part of the definition of 'input service' as laid down in Rule 2(i) of the Cenvat Credit Rules, 2004, and hence the input service credit availed on such services was found to be incorrect. Therefore, a Show Cause Notice was issued to the respondent as to why Cenvat credit amounting to Rs.3,71,928/-, for the period July'12 to October'15, availed for Vendor Park Maintenance service should not be disallowed and recovered from them. The Adjudicating Authority relying on the judgement of CESTAT, New Delhi in the case of M/s. KPMG v/s. CCE New Delhi, found that the Cenvat credit of Vendor Maintenance Services was admissible to the respondent and so dropped the proceedings against the respondent in this case.

3. Being aggrieved by the impugned order dt. 25.01.2017, the Department has filed this appeal before me on the grounds that (i) the Adjudicating Authority was convinced that the Vendor Park Maintenance Services did not have a direct nexus with the manufacturing activity but only played an important role in relation to the business, but still allowed the Cenvat credit on such services; (ii) the definition of input service is clear that Cenvat credit of Road maintenance of the Vendor Park, Street Light Bill of the Vendor Park, Main Gate Security Guard Expenses etc. is neither falling under main part or inclusive part of the definition; and (iii) these services are used beyond the place of removal and after 1.3.2011, the services used in relation to business has been omitted from the definition of input services vide Noti. No. 3/2011-CE(NT) dt.2.03.2011.

4. During the personal hearing, Shri Alpesh Kothari, C.A. of the respondent appeared before me and reiterated the written submission made on 11.07.2017. He also submitted additional written submission dt. 20.12.2017.

5. I have carefully gone through the facts of the case on record, grounds of appeal in the Appeal Memorandum, written submissions and oral submissions made by the respondent.



6. The question to be decided is as to whether (i) the Hon'ble CESTAT Delhi's judgement in M/s. KPMG case has been correctly relied upon by the Adjudicating Authority; (ii) whether the Cenvat credit on Vendor Maintenance expenses is admissible to the respondent in the light of Notification No. 3/2011-CE(NT) dt.2.03.2011.

7. During the period under dispute, the definition of Input Service under Rule 2(I) of the Cenvat Credit Rules, 2004, states that -

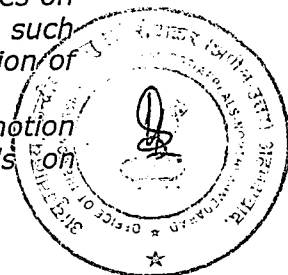
(I) "input service" means any service,-

- (i) used by a provider of taxable service for providing an output service; or
- (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

but excludes -

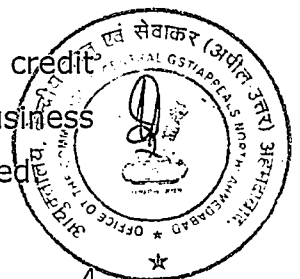
- (A) Service portion in the execution of a works contract and construction services including services listed under clause (b) of Section 66E of the Finance Act, in so far as they are used for -
 - (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
 - (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or
 - (B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or
 - (BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -
 - (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or
 - (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or
 - (C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Travel Concession, when such services are used primarily for personal use or consumption of any employee;
- Explanation - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.'



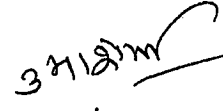
The basic definition of 'input service' covers **any service** which is **used** by the manufacturer, whether **directly or indirectly, in or in relation** to the manufacture and clearance of final products, up to the place of removal. I find that the above definition covers any service used by a manufacturer, even though indirectly in relation to the manufacture of final products and covers every service provided up to the place of removal. The Cenvat credit availed by the respondent in this case are Vendor Maintenance Expenses, which includes services pertaining to Road maintenance of the Vendor Park, Street Light Bill of the Vendor Park, Main Gate Security Guard Expenses etc., which are not directly related to the manufacture and clearance of the final products. The said services are used by the factory just like the common amenities like street lights, sanitation, road maintenance, etc. provided by the local governing bodies who charge a certain tax to every entity who uses such services. The Vendor Maintenance Services are provided outside the factory of the respondent and as such are not covered in the basic definition of input service, as they are being provided outside the place of removal. Besides, the basic definition, there is an inclusive part of the definition, which provides a number of services which are a part of this inclusive part of the definition. In the inclusive part of definition of input service, prior to 1.03.2011, the words 'activities relating to business' was clearly indicated. However, consequent to Notification No. 3/2011-CE(NT) dt.1.03.2011, only the words 'activities relating to business' was deleted from this inclusive part of the definition. The deletion of the words 'activities relating to business' from the inclusive part of the definition showed the legislature's intent to remove all such services from the purview of Cenvat credit for input service.

It is clear from the above that after 1.03.2011, Cenvat credit of Road maintenance of the Vendor Park, Street Light bill of the Vendor Park, Main gate Security Guard Expenses of the Vendor Park etc. is neither falling under the main part or the inclusive part of the definition of input service. The services used in relation to business, has been kept out of the purview of the Input services under Rule 2(I) of the Cenvat Credit Rules, 2004, consequent to the issue of Notification No. 03/2011-CE(NT) dt.01.03.2011. This interpretation has been generated due to the exclusion of the words "activities relating to business" from the inclusive part of the definition of input service.

8. In the light of the above, the respondent's availment of Cenvat credit on Vendor Park Maintenance Services is rejected being related to business and the impugned order is set aside. The Department's appeal is allowed.



9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeal filed by the department, stands disposed off in above terms.


(उमा शंकर)
आयुक्त (अपील्स)

ATTESTED



(R.R. NATHAN)
SUPERINTENDENT,
CENTRAL TAX APPEALS, AHMEDABAD.

To,

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Ahmedabad-382170.

Copy to:

- 1) The Chief Commissioner, Central Tax, GST, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad-North.
- 3) The Dy./Asst. Commissioner, Division-III, Central Tax, GST, Ahmedabad (North), Ahmedabad.
- 4) The Asst. Commissioner(System), Central Tax, Hqrs., Ahmedabad (North).
- 5) Guard File.
- 6) P.A. File.

