



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय उत्पाद शुल्क भवन,

7th Floor, Central Excise Building,

सातवीं मंजिल, पोलिटेकनिक के पास,

Near Polytechnic,

आम्बावाडी, अहमदाबाद-380015

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रजिस्टर डाक ए .डी .द्वारा

12/6/18
12/20

क फाइल संख्या (File No.): V2(STC) 11/EA-2/Ahd-II/Appeals-II / 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 318-16-17

दिनांक (Date): 02.02.2018, जारी करने की तारीख (Date of issue): 21-2-2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker, Commissioner (Appeals)

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

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No. 05/06/DKJ/DC/2017-18 Dated: 30/05/2017

issued by: Deputy Commissioner., Central Excise (Div-V), Ahmedabad-II

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

M/s Darshan Tours

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 धरा 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।

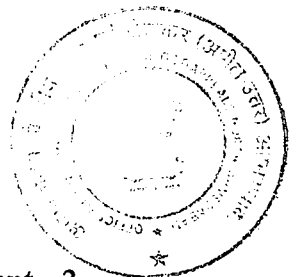
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 प्रक्रिया 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।

Cr. 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 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 :-

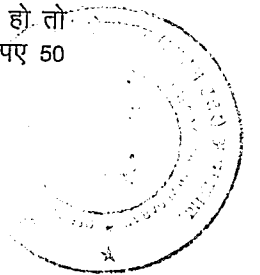
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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, 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.

- (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 प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ 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 पढ़ी 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।

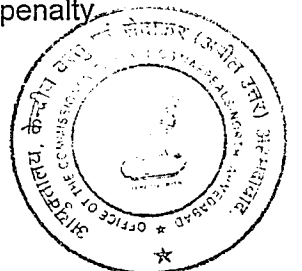
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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."

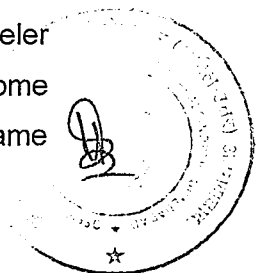


ORDER-IN-APPEAL

The instant order covers a Revenue appeal filed by the Assistant Commissioner of Central Tax & C.G.S.T., Division-II, Ahmedabad North, 3rd Floor, Vidyalay Chamber, Paldi Char Rasta, Paldi, Ahmedabad-380 006 as authorized by the Commissioner, C.G.S.T. and Central Excise, Ahmedabad North against **Order-in-original No. O.I.O. No. SD-05/06/DKJ/DC/2017-18 dated 30/05/2017** (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Service Tax, Division-V, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the facts of the case are that M/s Darshan Tours, 32, Abvantika Park Society, Khanpur Road, Ahmedabad-380 001 (hereinafter referred to as 'M/s Darshan') was holding Central Excise registration No.AAMPT0193KST001 for providing Rent-a-cab service. During the course of scrutiny of the balance sheet of M/s Darshan by CERA, it was observed that M/s Darshan had short paid Service Tax amounting to Rs.82,027/- during the period of 2004-05 to 2005-06. A show cause notice was issued to M/s Darshan that was adjudicated *vide* O.I.O. No. MP/5/ST.Dem/10-11 dated 30/04/2010 by confirming the demand of Service Tax, interest thereon and imposing penalties under Section 76 and Section 78 of the Finance Act, 1994 (hereinafter 'F.A., 1994'). M/s Darshan filed an appeal with Commissioner (Appeal) against the said O.I.O. that was decided *vide* OIA No. 82/2011(STC)/K.Anpazhakan/Commr(A)/Ahd dated 31/03/2011 rejecting the appeal. M/s Darshan approached Hon'ble CESTAT, WZB, Ahmedabad against the said O.I.A. that was decided *vide* Order No.A/1655/WZB/AHD/2012 dated 23/11/2012, remanding back the issue to the original authority to provide M/s Darshan the opportunity to produce proof that the other operators had paid Service Tax. In the impugned order the adjudicating authority has held that M/s Darshan had given its vehicle on hire to AEC and the charges for the same were recovered on kilometer basis and M/s Darshan was not giving its vehicle to its clients on rent. The adjudicating authority has dropped the proceedings initiated against M/s Darshan in the impugned order.

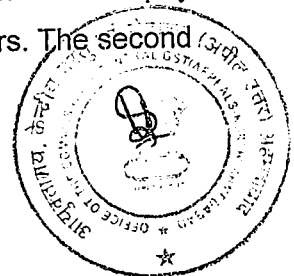
3. The grounds on which the departmental appeal has been filed by the appellant are that the directions given by Hon'ble CESTAT but followed the submission dated 04/10/2016 of M/s Darshan that it had provided the vehicle on hire to the Ahmedabad Electricity Company on kilometer basis and since it had not given its vehicle on rent hence its activity was not covered under Rent-a-cab operator service. Revenue has further contended that on going through the original case file it was found that M/s Darshan's submission dated 04/10/2016 was not supported by any documentary evidence which suggest that it had provided the vehicle on hire to AEC on kilometer basis; that though it is mentioned that Ledger copies of income from tempo & traveler vehicle having capacity of passenger of more than 14 and Ledger copies of income from principal rent a cab service provider were produced by M/s Darshan, the same



were not available in the case file and thus discussing this aspect, the adjudicating authority had decided the matter incorrectly in favour of M/s Darshan; that from the invoice file for the period 2004-05 and 2005-06, lying with department it was found that in fact M/s Darshan had rented the taxi to other tour operator and not to AEC and hence the new plea taken by M/s Darshan before the adjudicating authority in remand proceedings was nothing but an afterthought. In the prayer portion of the departmental appeal it has been pleaded that the impugned order may be set aside as it is not proper or legal and as it violates judicial discipline.

4. Personal hearing in the instant appeal was held on 23/01/2018 that was attended by Shri Vipul Khandhar, C.A. The learned C.A. explained the case and submitted that the issue had been decided on the basis of facts and he filed cross objections. In the cross objections it has been submitted by M/s Darshan that Rent-a-cab operator means any person engaged in the business of renting of cabs and sub-section 105(O) of Section 65 defined taxable service with regard to rent-a-cab scheme as any service provided to any person by a rent-a-cab scheme operator in relation to the renting of a cab. M/s Darshan has relied on CESTAT decisions in Service Tax Appeal No. 459 of 2006 – M/s R.S. Travels vs CCE, Meerut CESTAT and Vijay Travels vs Commissioner of Service Tax, Ahmedabad – 2010 (19) STR 671 (Tri.-Ahmd.) as well as on Sunil L Parmar vs Commissioner of Service Tax – 2010 (19) STR 584 (Tri.-Ahmd.). It has been contended in the cross objection that the adjudicating authority had made necessary verifications and there was no question of verification of the payment of tax by the principal and the adjudicating authority had relied on the citations correctly in the impugned order. In the cross objection filed by M/s Darshan, a catena of decisions has been relied upon in support of the plea that penalty cannot be imposed only because it was lawful to do so.

5. I have carefully gone through the facts of the case on records, the grounds of appeal in the departmental appeal and the submissions made by M/s Darshan in the cross-objections submitted during personal hearing. The impugned order is an order passed in remand proceedings following the directives given by Hon'ble CESTAT, Ahmedabad in Final Order No.A/1655/WZB/AHD/2012 dated 23/11/2012. = Darshan Tours vs CCE, Ahmedabad – 2013 (30) S.T.R. 234 (Tri. – Ahmd.). Hon'ble Tribunal in this case was dealing with two issues viz. (i) whether M/s Darshan was liable to pay Service Tax only in respect of such cabs that were rented directly to the customers but not when rented out to other rent-a-cab operators and (ii) whether M/s Darshan was liable to pay Service Tax under rent-a-cab on vehicles which had the capacity to carry more than 12 persons. It is pertinent to note that the remand proceedings has been ordered only with regards to the first issue i.e. whether M/s Darshan was liable to pay Service Tax even when cabs were rented out to other rent-a-cab operators. The second



issue stands settled by Hon'ble Tribunal in Final Order No. A/1655/WZB/AHD/2012 dated 23/11/2012 in favor of M/s Darshan.

6. The relevant portion ordering the remand proceeding is reproduced as follows:

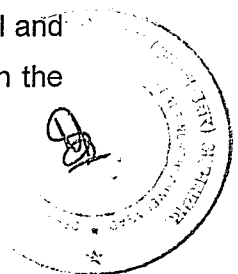
"4. I have gone through the letter issued by Assistant Commissioner of Service Tax. He has cited the clarification issued by the Board in paragraph 3.5 in F. No. B-43/7/97-TRU, dated 11-7-1997 which is as under :

"However, service tax will not be payable in cases where a bill has been raised on a Rent a Cab Scheme operator, by another rent-a-cab scheme operator who has sub-let the motor cab to the latter operator provided who pays service tax on the amount billed to his client for renting out the motor cab so obtained by him."

5. In my opinion, the letter is very clear. According to the definition of rent-a-cab service, tax liability arises when a cab is rented to another operator. There is nothing conclude to that such a client cannot be a rent-a-cab operator himself. In such a situation, the liability to service tax would arise when a cab is rented out to another operator and bill is raised. **However, if the other rent-a-cab operator is also registered and pays the tax, then it would result in a situation where two operators would be paying tax on the same service.** To prevent such a situation, this clarification has been issued. **There is no dispute and there cannot be any dispute that liability would be on the operator who has rented out the cab to the other operator also, but he need not pay tax if other operator who hired the cab paid the tax.** Therefore, lower authorities were right in asking the appellant to submit proof that the other operator who had hired the cab from the appellant has paid service tax.

6. At this stage, Id. C.A. submits that the matter may be remanded to enable him to produce evidence that other operators have paid tax. Since the appellant always felt that it has not his responsibility to produce proof, I would consider that this is a fair request and **accordingly the matter is required to be remanded to enable the appellant to provide proof of payment of service tax by other operators, failing which liability will be fastened on the appellant.**

From a plain reading of the order *supra* it is clear that Hon'ble Tribunal has decided that the liability to pay Service Tax arises when a cab is rented out to a client and bill is raised, even if the client is a rent-a-cab operator. In this scenario, the remand proceeding was ordered as requested by the Counsel for M/s Darshan to enable them to produce proof before the original authority, evidencing the fact that the other rent-a-cab operators had paid Service Tax, in which case M/s Darshan was not required to pay Service Tax. It is pertinent to note that Hon'ble Tribunal has categorically ruled that if such evidence was not produced by M/s Darshan, then it was liable to be fastened with the liability to pay Service Tax. Thus the remand order issued by Hon'ble Tribunal was specifically for the purpose to enable M/s Darshan to provide proof of payment of Service Tax by other operators failing which liability will be fastened on M/s Darshan. On examining the impugned order passed by the adjudicating authority in the remand proceedings it is seen that there is no discussion as to in what manner the evidence, if any, produced by M/s Darshan was appreciated by the adjudicating authority to arrive at the decision to drop the proceedings. In other words there is no specific mention in the discussions and findings of the impugned order showing whether the other rent-a-cab operators to whom the cabs were rented by M/s Darshan had paid Service Tax or not. It is reiterated that the taxability of the said service stands settled by Hon'ble Tribunal and hence tax is payable on the impugned services. The only aspect to be ensured on the



basis of evidence in the remand proceeding was that Service Tax was not paid twice on the same service. However, I find that there is merit in the Revenue appeal that in the remand proceedings, the order of Hon'ble CESTAT was not followed by the adjudicating authority. Accordingly, I remand the matter back to the original authority to carry out the directives in CESTAT Final Order No.A/1655/WZB/AHD/2012 dated 23/11/2012 and after providing adequate opportunity to M/s Darshan, pass a reasoned order clearly bringing out whether the other rent-a-cab operators had paid Service Tax. M/s Darshan is directed to produce all the proof before the adjudicating authority in its favor when the case is posted for hearing. The Revenue appeal is allowed by way of remand.

7. रेवेन्यू द्वारा दर्ज किया गया अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by Revenue is disposed of in the above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 02 / 02 / 2018

Attested

(K. P. Jacob)
(K. P. Jacob)
Superintendent (Appeals-I)
Central Excise, Ahmedabad.

By R.P.A.D.

To
M/s Darshan Tours,
32, Abvantika Park Society, Khapur Road,
Ahmedabad – 380 001.

Copy to:

1. The Chief Commissioner of C.G.S.T, Ahmedabad.
2. The Principal Commissioner of C.G.S.T, Ahmedabad North.
3. The Joint Commissioner, C.G.S.T, Ahmedabad North.
4. The Assistant Commissioner, C.G.S.T. Division-II, Ahmedabad North.
5. ~~Guard File.~~
6. P.A.

