

	केंद्रीय कर आयुक्त (अपील)	
सात्यमेव 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

रजिस्टर डाक ए .डी .द्वारा

1595/01599

क फाइल संख्या (File No.): V2(30)12/EA-2/North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 325-16-17

दिनांक (Date): 22.02.2018, जारी करने की तारीख (Date of issue): 17/3/2018

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. 789/Ref/III/17-18 Dated: 07/07/2017

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 Loxim Industries 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 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 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।



Cont...2

- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन को 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 न्युक्त किए गए हों।

- (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 दिनोंक 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 :-

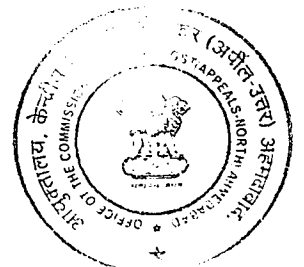
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैटल हॉस्पिटल कम्पाउण्ड, मेघानी 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 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 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)

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।

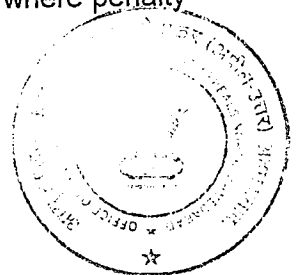
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

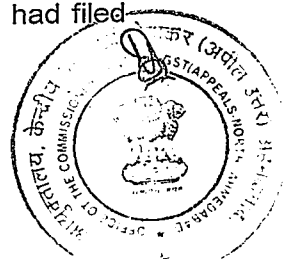


ORDER-IN-APPEAL

This is an appeal filed by the department against Order-in-original No. 789/R/III/17-18 dated 07/07/2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, GST, Division-III, Ahmedabad North (hereinafter referred to as 'the adjudicating authority'), sanctioning rebate claim amounting to **Rs.7,64,775/-** that was filed by M/s Loxim Industries Ltd., Plot No. 184-185/2, Sanand Viramgam highway, Ivaya, Sanand, Ahmedabad – 382 110 (hereinafter referred to as 'M/s Loxim').

2. The main grounds adduced by the department in the grounds of appeal are that the rebate claim was sanctioned in spite of specific objection by pre-audit that M/s Loxim had debited duty *vide* CENVAT entry No. 987 dated 30/01/2017 amounting to Rs.7,64,775/- under column Special Additional Duty or S.A.D. / ADC, which is not specified duty as per Explanation-1 in Notification No. 19/2004-CE (NT) dated 06/09/2004 issued under Rule 18 of Central Excise Rules, 2002 (CER, 2002); that on a combined reading of Rule 3 of Cenvat Credit Rules, 2004 (CCR, 2004), Rule 18 of CER, 2002 and Notification No. 19/2004-CE (NT), it is quite evident that through there is no bar in taking credit of SAD, there does exist a bar on utilization of the same; that Joint Secretary (Revisionary Authority), Government of India, Ministry of Finance, Department of Revenue, New Delhi in the matter of M/s Vinati Organics Limited – 2014 (311) ELT 994 (GOI) has held that SAD is levied on imported goods to counter balance Sales Tax / VAT, local taxes etc., which cannot be considered as duties of excise for being eligible for rebate benefit and that SAD collected under Section 3(5) of the Customs Tariff Act, 1975 is also not classified as duty in the list of duties provided in Explanation-I of the subject Notification and that a similar view was also taken in the case of M/s Alpa Laboratories Ltd. – 2014 (311) ELT 854 (GOI).

3. Personal hearing in the appeal was held on 23/01/2018, attended by Shri P.G. Mehta, Advocate and Shri Rakesh Shah, Executive, Excise. The learned Advocate explained the case and made written submissions. The main cross-objections reiterated by M/s Loxim are that the whole dispute has been raised by construing rebate of duty paid on excisable goods as rebate of Special Additional Duty (SAD). M/s Loxim clarifies that it had claimed rebate of duty paid on clearance of finished goods and not on SAD. M/s Loxim had availed CENVAT credit of SAD leviable under sub-section (5) of Section 3 of Customs Tariff Act under the provisions of CCR, 2004, which was thereafter utilized to discharge duty liability on export goods. Accordingly, rebate claim was lodged for duty of Excise paid by M/s Loxim. The reliance placed by department on the decisions in the cases of M/s Vinati Organics Limited – 2014 (311) ELT 994 (GOI) and M/s Alpa Laboratories Ltd. – 2014 (311) ELT 854 (GOI) are misplaced in as much as in those cases the rebate claim were filed under Notification No.21/2004-CE (NT) in respect of SAD paid on inputs under Section 3(5) of the Customs Tariff Act, 1975 that were used in the manufacture of finished goods whereas in the instant case, M/s Loxim had filed



rebate claim under notification No. 19/2004-CE (NT) in respect of Central Excise duty paid on final products under Section 3 of Central Excise Act, 1944.

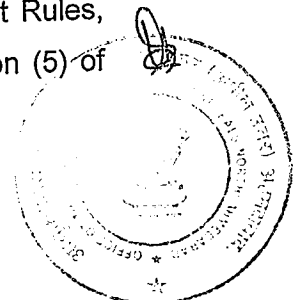
4. I have carefully gone through the facts of the case on records and the grounds of appeal filed by the department as well as the cross objections filed by the learned advocate for M/s Loxim.

5. The rebate of excise duty on exported goods is granted under Rule 18 of the Central Excise Rules, 2002. The procedure has been prescribed in notification No. 19/2004-CE(NT) dated 6.9.2004 which clearly states that there shall be granted rebate **of the whole of the duty paid** on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985, exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified therein. The notification further defines what is "duty" for the purpose of rebate *vide* explanation I in the following terms:

Explanation I. - "duty" for the purpose of this notification means duties of excise collected under the following enactments, namely :

- (a) **the Central Excise Act, 1944 (1 of 1944);**
- (b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
- (c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
- (d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003) and further amended by section 3 of the Finance Act, 2004 (13 of 2004);
- (e) special excise duty collected under a Finance Act;
- (f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);
- (g) Education Cess on excisable goods as levied under clause 81 read with clause 83 of the Finance (No. 2) Bill, 2004.

The sanction of rebate claim impugned in the instant departmental appeal was filed by M/s Loxim under notification No. 19/2004-CE(NT) dated 6.9.2004 and there is no dispute regarding the fact that M/s Loxim had exported the goods on payment of duty from their CENVAT account. The only issue disputed in the present appeal is that M/s Loxim had discharged the duty for export of goods by utilizing CENVAT credit that was lying in the credit on account of 4% SAD paid on imported inputs / raw materials. It is pertinent to note that the rebate claim was not in respect of 4% SAD paid under sub-section (5) of section 3 of the Customs Tariff Act, 1975, but the claim was for duties of excise paid under the Central Excise Act, 1944, which finds mention in "(a)" under Explanation I of Notification No. 19/2004-CE(NT) dated 6.9.2004 as reproduced *supra*. There is no bar either in CEA, 1944 or the Rules made thereunder or under any Notification issued thereunder on utilization of CENVAT credit of 4% SAD for payment of Central Excise duties. In fact it is specified in Rule 3(via) of Cenvat Credit Rules, 2004 that credit is admissible on the additional duty leviable under sub-section (5) of



section 3 of the Customs Tariff Act, which is nothing but the 4% SAD disputed in the instant departmental appeal. Therefore, while the CENTVAT credit is specifically admissible on the 4% SAD under CCR, 2004 and when there is no bar on utilization of the credit of 4% SAD for payment of Central Excise duty then the plea to reject rebate claim on the ground that Central Excise duty was paid utilizing CENVAT credit of 4% SAD is not tenable and the appeal is liable to be rejected.

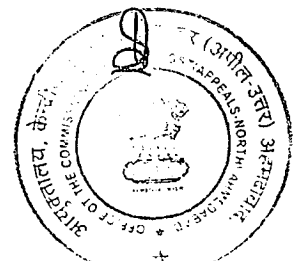
6. On considering the Revision Order of the Joint Secretary (Revisionary Authority), Government of India in the matter of M/s Vinati Organics Limited – 2014 (31) ELT 994 (GOI) relied upon in the departmental appeal, it is seen that rebate claim in the case of M/s Vinati Organics Limited was under Notification No. 21/2004, whereas in the instant case the rebate claim filed by M/s Loxim is under Notification No. 19/2004-CE (NT) dated 06/09/2004. There is a clear distinction between both these Notifications in as much as while Notification No. 19/2004 grants rebate on export of excisable goods, Notification No. 21/2004 grants rebate on duty paid on excisable goods used in the manufacture / processing of export goods. In the Revision Order relied upon by the department, it has been clearly brought out that M/s Vinati Organics Ltd. had claimed rebate of SAD levied under Section 3(5) of the Customs Tariff Act, 1975. The relevant portion is reproduced as follows:

“10. Government also notes that the applicant is claiming rebate of SAD levied under Section 3(5) of the Customs Tariff Act, 1975. The said provision of Section 3(5) reads as under :

“(5) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not] such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four per cent. of the value of the imported article as specified in that notification.”

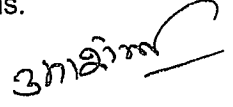
From perusal of above position, it is clear that SAD is levied on imported goods to counter balance the sales tax, value added tax, local tax, etc., which cannot be considered as duties of excise for being eligible for rebate benefit. Further, SAD collected under Section 3(5) is also not classified as a duty in list of duties provided in Explanatory-1 of the Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004. Hence, such payment of SAD is not eligible for rebate claim.”

It is clear from the above, that the claim of rebate was for SAD levied under Section 3(5) of the Customs Tariff Act, 1975 as filed by M/s Vinati Organics Limited, whereas in the case of the instant departmental appeal, the rebate claim filed by M/s Loxim was not in respect of 4% SAD paid under Section 3(5) of the Customs Tariff Act, 1975 but was in respect of duty paid under the Central Excise Act, 1944. Thus facts of in the matter of M/s Loxim are distinguished from the facts in the matter of M/s Vinati Organics Limited.



In view of the above discussion, there is no ground to deny the rebate claim filed by M/s Loxim in the instant case and sanctioned in the impugned order. The appeal filed by department is rejected.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in the above terms.

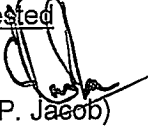


(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 22 / 02 / 2018

Attested



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

By R.P.A.D.

To

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Plot No. 184-185/2, Sanand Viramgam Highway,
Ivaya, Sanand,
Ahmedabad – 382 110..

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: III, Ahmedabad (North).
5. Guard File.
6. P.A.

