

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

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(30)74 &75/North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 341-342-17-18

दिनांक (Date): 27-Feb-2018 जारी करने की तारीख (Date of issue):

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

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

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-V), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित.

Arising out of Order-In-Original No 08/ADC/2017/RMG Dated: 13/11/2017

issued by: Additional Commissioner Central Excise (Div-V), Ahmedabad North

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

M/s Astra Lifecare (India) Pvt. Ltd

M/s Mohinderasingh Fuluba Rana

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:

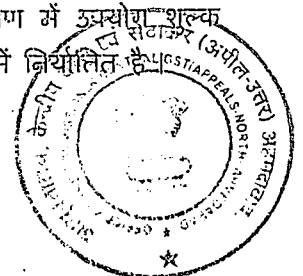
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

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।



- (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 मेटल हास्पिटल 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 रूपर 5 लाख या उससे कम है वहां रूपर 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहां रूपर 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्ट्रार के नाम



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 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।

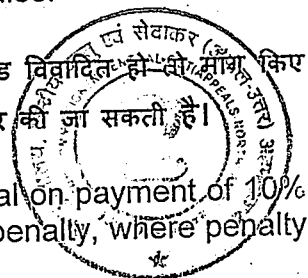
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 सीमा शुल्क एवं सेवाकर (अपील) नियमों के तहत अपील दाखिल की जा सकती है।

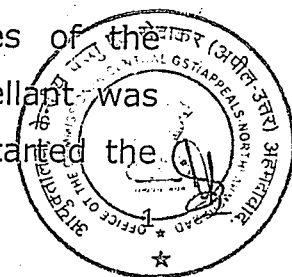
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

M/s. Astra Life Care (India) Pvt. Ltd. (100% EOU) [hereinafter referred to as the 'appellant'], situated at Plot No.57/P, Sarkhej Bavla Highway, Taluka Bavla, Ahmedabad, are engaged in the manufacture and clearance of Pharmaceutical Products falling Chapter 30 of the first Schedule to the Central Excise Tariff Act, 1985, and hold Central Excise Registration No. AAECA6553DXM001. The appellant was also engaged in the trading of Pharmaceutical products which is an exempted service. The appellant was not maintaining separate accounts for receipt of the common input services used for manufacturing dutiable goods as well as for provision of the exempted service i.e. trading of goods, as required under Rule 6(3) of Cenvat Credit Rules, 2004. The appellant had also failed to reverse Cenvat credit of duty paid on inputs, which had later expired and were not used in the manufacturing process. Accordingly, a show cause notice was issued to the appellant on the above mentioned grounds. The Adjudicating authority vide Order-in-Original No. 08/ADC/2017/RMG dt.13.11.2017, confirmed the recovery of Cenvat credit on the above-mentioned grounds and also imposed penalties on the appellant. The Adjudicating Authority also imposed a personal penalty on Shri Mahendrasinh Fuluba Rana, Director of the appellant. Being aggrieved by the OIO, the appellant and the Director have filed separate appeals against the same, before me.

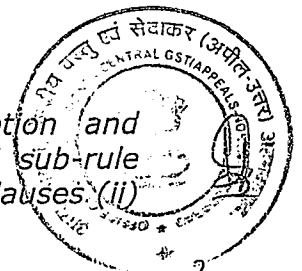
2. There was intelligence, that the appellant was also engaged in trading of Pharmaceutical products from their factory premises itself since F.Y. 2012-13, and was storing and clearing the manufactured as well as traded Pharmaceutical products from there and was also availing and utilizing the input service credit on traded goods which was actually an exempted service. Therefore, a search of the appellant's premises was conducted on 20.07.2016. The appellant had never declared to the department that they were engaged in the trading activities of pharmaceutical products. The appellant was also not maintaining separate accounts for the receipt of common input services on which Cenvat credit of Service tax was availed and utilized for the manufacturing of pharmaceutical products in their premises as well as for provision of exempted service i.e. trading of goods, which was a requirement under Rule 6(3) of the Cenvat Credit Rules, 2004. As such, the appellant was wrongly availing and utilizing the Cenvat credit on exempted services i.e. trading of goods. A detailed verification of the records/documents of the factory premises of the appellant was carried out wherein it was found that the appellant was engaged in manufacturing activities since 2006, however they started the



trading in pharmaceutical products only from 2012-13. Trading of goods was declared as an exempted service vide Notification No. 3/2011-CE(NT) dt.1.03.2011. Subsequently, from 1.06.2012, 'Trading of goods' was inserted in the Negative list of Services under Section 66D of the Finance Act, 1994. As such, it was obligatory for any manufacturer of dutiable and exempted goods and provider of taxable and exempted services, who was availing Cenvat credit on inputs or input services, to follow the procedure prescribed under Rule 6 of the Cenvat Credit Rules, 2004. In the instant case, the appellant was a 100% EOU engaged in the manufacture of P.P. Medicaments and also trading activity of similar goods. The goods manufactured by the appellant were cleared for export for which they subsequently claimed refund of accumulated Cenvat credit availed on inputs & input services under Rule 5 of the Cenvat Credit Rules, 2004, read with the relevant notification. The appellant also purchased similar goods from the local market for trading purpose and accounts for such goods were kept separately. In addition to the manufacturing activities, storing and clearing of such Pharmaceutical products traded by them was also carried out from their factory premises. The appellant accepted the fact that they were not maintaining separate accounts for receipt of common input services on which Cenvat credit of service tax paid was taken & utilized for manufacture of pharmaceutical products as well as for provision of the exempted service i.e. trading. Now, therefore, the appellant was required to maintain separate accounts for receipt of common input services as per the provisions of Rule 6(2) of the Cenvat Credit Rules, 2004. As the appellant was not maintaining such separate accounts for receipt of common input services, the appellant was liable to follow any of the options provided in Rule 6(3) of the Cenvat Credit Rules, 2004. Rule 6(3) of the Cenvat Credit Rules, 2004, indicated the options as follows :

"(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow anyone of the following options, as applicable to him, namely :-

- (i) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value {w.e.f.01.06.2015 as per Notification No. 14/2015-CE(NT) dt.19.05.2015} of the exempted services; or
- (ii) pay an amount as determined under sub-rule 3A; or
- (iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under Sub-clauses (ii)



and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment:"

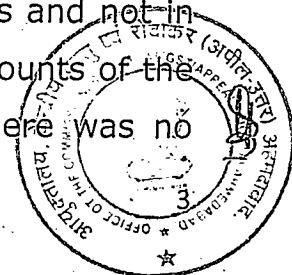
The appellant had neither declared to the department they were engaged in trading activity from their factory premises and nor did they follow the procedures laid down under Rule 6(3) of the Cenvat Credit Rules, 2004. Therefore, a demand for recovery of Cenvat credit of Rs.1,16,67,599/-, was issued to the appellant vide Show Cause Notice dt. 27.02.2017. The said notice was adjudicated by the impugned order dt. 13.11.2017, confirming the recovery of Cenvat credit amounting to Rs. 1,16,67,599/-, and seeking interest and imposing penalty under the relevant provisions.

3. Being aggrieved by the impugned order dt. 13.11.2017, the appellant has filed this appeal before me on the grounds that (i) the option (iii) of Rule 6(3) of the Cenvat Credit Rules, 2004, would be applicable to the appellant's case, as they had not maintained separate records for inputs services used in the dutiable goods cleared and exempted services provided; (ii) the impugned order had erred in holding that option (i) of Rule 6(3) of the Cenvat Credit Rules, 2004, would be applicable to them even if separate accounts were maintained for common inputs used in the dutiable goods cleared and exempted services provided; (iii) the adjudicating authority had erred in distinguishing the Tribunal's decision of Mercedes Benz; and (iv) the demand of reversal of cenvat credit of duty paid on inputs expired and not used has not been substantiated with any verification of documents.

4. During the personal hearing, Shri Bhavesh T. Jhalavadia, C.A., authorised by the appellant, appeared before me and reiterated the grounds of appeal and also submitted that in the Panchanama only the input service was mentioned as common and inputs for dutiable goods cleared and exempted services provided had separate accounts. He also stated that the impugned order does not say anything about their submission pertaining to maintaining of separate accounts for inputs used for manufacturing and separate account for inputs used for trading.

5. I have carefully gone through the facts of the case on record, grounds of appeal in the Appeal Memorandum, additional submissions and oral submissions made by the appellant at the time of personal hearing.

6. I find that the appellant was only trading in finished goods and not in any common inputs. As such, the appellant was maintaining accounts of the inputs used in the manufacturing of dutiable goods and as there was no



inputs involved in the trading of finished goods, they were fulfilling the criteria of maintaining separate accounts for inputs used for dutiable goods and separate account for inputs used for exempted services. This fact has been overlooked in the impugned order. The appellant's reply dt. 3.04.2017, to the Show Cause Notice explicitly informs at Para 8.1 that they maintain accounts for inputs used for manufacturing and separate account for inputs used for trading. This fact has not been put forth by the Adjudicating Authority while concluding that the appellant had to pay an amount equal to 6%/7% of the value of exempted services as per option 3(i) of the Rule 6 of the Cenvat Credit Rules, 2004. The decision of the Hon'ble Tribunal passed in the case of Mercedes Benz (India) Pvt. Ltd. [cited at 2015(40) STR 0381 (Tri. Mum.)], and relied upon by the appellant, also appears to have been distinguished overlooking the similarity of the facts of this case. At Para 5.4 of the said order, the Hon'ble Tribunal states that :

"The main objective of the Rule 6 is to ensure that the assessee should not avail the Cenvat Credit in respect of input or input services which are used in or in relation to the manufacture of the exempted goods or for exempted services. If this is the objective then at the most amount which is to be recovered shall not be in any case more than Cenvat Credit attributed to the input or input services used in the exempted goods."


The Adjudicating Authority should have brought the facts on record and arrived at a conclusion based on those facts.

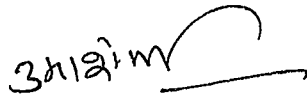
7. I, therefore, set aside the impugned order dt.13.11.2017, and remand the case back to the Adjudicating Authority to decide the case afresh, based on the facts available on record.

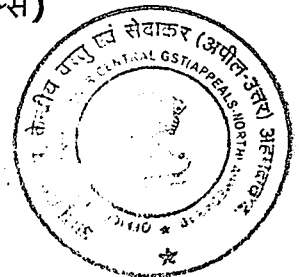
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

8. The appeals filed by the appellant and the director Shri Mahendrasinh F. Rana, stands disposed off on above terms.

ATTESTED


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


(उमा शंकर)
आयुक्त (अपील्स)



To,

- (1) M/s. Astra Life Care (India) Pvt. Ltd. (100% EOU),
Plot No. 57/P, Sarkhej-Bavla Highway, Taluka-Bavla,
Ahmedabad.
- (2) Shri Mahendrasinh F. Rana,
Director, M/s. Astra Life Care (India) Pvt. Ltd. (100% EOU),
Plot No. 57/P, Sarkhej-Bavla Highway, Taluka-Bavla,
Ahmedabad.

Copy to:

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

