

	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय उत्पाद शुल्क भवन सातवीं मंजिल, पोलिटेक्निक के पास आम्बावाडी, अहमदाबाद-380015	7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(39)17 /North/ Appeals/ 2017-18 2302/19
2306
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-348-17-18
 दिनांक (Date): 28-Feb-2018 जारी करने की तारीख (Date of issue): 2/4/2018
 श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
 Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
 मूल आदेश सं _____ दिनांक _____ से सृजित
 Arising out of Order-In-Original No 10/DC/D/2017/RK Dated: 30/05/2017
 issued by: Deputy Commissioner Central Excise (Div-IV), Ahmedabad North

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

M/s Parikh Packaging Pvt 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 हैं।



- (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 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 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 मैन्टल 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 सहायके 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 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.

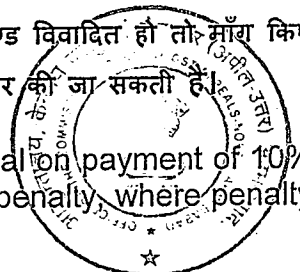
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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



4- P.NO.V2(39)177/NO.177/APP/2017

ORDER IN APPEAL

The subject appeal is filed by M/s. Parikh Packaging Pvt. Ltd., Survey No. 423/P, Sarkhej-Bavla Highway, Vill- Moraiya, Tal- Sanand, Dist.Ahmedabad (Hereinafter Referred To as 'The Appellant') Against the Order in Original No. 10/DC/D/2017/RK (hereinafter referred to as 'the impugned order') passed by the Asstt. Commissioner, Central Excise, Div-IV, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The appellant is engaged in the manufacture of printed Laminated Rolls/Pouches falling under CH. No. 39 of the Central Excise Tariff Act, 1985. They are availing benefit of CENVAT Credit under CENVAT Credit Rules, 2004.

2. Brief facts of the case is, during the course of the audit and scrutiny of records, it was noticed that appellant has removed printing roller Cylinder as old and used in numbers and paid duty on transaction value. The cylinders were of different weight instead of selling in kg (scrap is sale in kg) sales was made on transaction basis. The relevant invoices revealed that they cleared capital goods as used items in numbers and not as scrap. They violated Rule 3(5A) of the CCR, 2004. They submitted details of removed scrap for the period 2011-12 to 2015-16. Differential duty was required to be paid as per Straight Line Method. Further, statement of Shri Vinay B. Karnik was recorded. He stated that they were availing Cenvat credit of duty paid Cylinder as Capital goods. The invoices relating to the sale of old and used rollers were in numbers. Thus, they contravened the provisions of Rule 3(5A) of the CCR, 2004. They had taken credit on engraved cylinder as Capital goods whereas cleared the same in number as scrap and not paid excise duty as per provision made in Rules 3(5A) *ibid*. They had not informed the facts to the department in any manner, and suppressed the facts; hence, extended period of limitation under Section 11A is applicable. The differential duty Rs.14,49,294/- be demanded under the CEA1944 with interest and penalty. SCN was issued. Vide above order same was confirmed.

3. Being aggrieved with the impugned order the appellant has preferred this appeal on the following main grounds;

i. that the appellant has availed CENVAT Credit of excise duty paid on said printing rollers; that such printing rollers is not capital goods but parts of the machinery/capital goods; printing rollers were frequently changed as old and used printing rollers were scrapped. That the Department had accepted that they cleared only Old and Used printing rollers.

ii. The proper rule applicable in the facts is Rule 3 (5A)(b) of the Rules and it is clear that the capital goods when cleared as waste and scrap, were leviable to duty on transaction value and thus they had paid proper and correct amount of duty on clearance of the used printing rollers as scrap.

iii. that as per rule 5A (b) when capital goods are cleared as waste or scrap a manufacturer would be liable to pay an amount equal to the duty leviable on 'transaction value', instead of 'depreciated value', on the removal of capital goods as waste or scrap.



- iv. That the Board has issued Instruction F.No. 267141/2009-CX.8, dated 7-12-2009, it is clarified that an amount equal to the duty leviable on the transaction value for such capital goods cleared as waste and scrap, would be payable.
- v. That they had specifically mentioned on sale documents that the goods were "Old & Used" printing rollers, and cleared as metal scrap and for that reason only the CTH shown as 7204, In the periodical ER-1 returns also. The buyers of the printing rollers were metal casting manufacturers and they had ordered the goods on weight basis.
- vi. That the printing rollers could not be said to be cleared as such, and Rule 3 (5A)(a) of the said Rules was not applicable in the facts of the case. The appellant relied upon the decision in the case of M/s. Orient Bell Ltd. 201 6 (343) ELT 1007 in their support.
- vii. That they assessed and paid the duty payable by them correctly, and the details had been correctly reflected in the ER-1 returns. not contravened the provisions of the Act/the Rules. That when there was no justification of demanding duty/interest, penalty under Section 11 AC not sustainable. That they had never suppressed any information from the Department. Details of all the transactions have been recorded correctly in the books of accounts; extended period of limitation is not warranted.

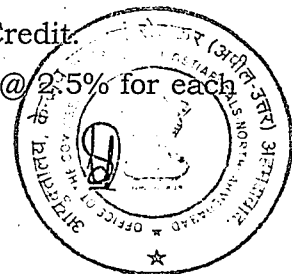
4. Personal hearing was held on 22.1.2018, Shri J.T.Vyas, Consultant appeared on behalf of the appellant, and reiterated GOA submitted earlier. He stated that, old & used cylinders are cleared as waste or scrap, duty paid on 'transaction value'. I have carefully gone through all case records, Show Cause Notice, the impugned order and written submissions made in GOA as well as submissions made during the personal hearing. I find that the issue to decide is whether the appellant is liable to payment of differential duty or otherwise.

5. I find that, is that the appellant had cleared the capital goods viz. old and used printing rollers, on which Cenvat credit availed, and paid duty as per transaction value. They should have reversed the credit as an amount equal to the CENVAT credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified in rule 3(5) for each quarter of a year or part thereof from the date of taking the CENVAT credit.

6. I find that, the provisions contained in CCR, 2004., the rule regarding the reversal of cenvat credit when capital goods removed as such or as scrap was subjected to many changes over the period of time. Rule 3(5) of the CCR, 2004 provided for reversal of cenvat credit when capital goods are removed from the factory after being used and the same is reproduced as under:

"Provided also that if the capital goods, on which CENVAT Credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit.

b. for capital goods, other than computers and computer peripherals @ 2.5% for each quarter.



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7. The above proviso to Rule 3(5) was omitted and sub-Rule 5A to Rule 3 substituted w.e.f. 17.03.2012 vide Notification No. 18/2012-CE(NT), dated 17.03.2012. The substituted Rule 5A provided that if the capital goods, on which CENVAT credit has been taken, are removed after being used, whether as capital goods or as scrap or waste, the manufacturer or provider of output services shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT credit, namely:-

(b) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter:

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

8. The said Rule 3(5A) was again substituted vide Notification No. 12/2013-CE(NT), dated 27.09.2013,

“(5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:-

(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter:

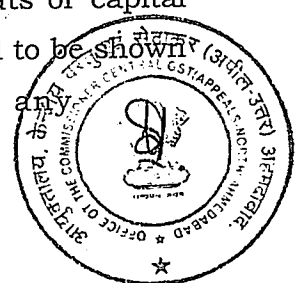
Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

(b) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.”

9. From the above provisions, it is clear that sub-rule 3(5A) covers two situations. First, where the capital goods being removed from the factory after being put to use for being used as capital goods, and second, where the capital goods are cleared as scrap.

10. I find that the appellant had removed printing rollers as old and used roller in numbers and paid duty on transaction value. The unit of measure for scrap of iron and steel under chapter 72 is Kg. In the present case. They adopted for determining the price in number of pieces, cylinders were of different weight. The invoices relating to the sale of old and used rollers showed sale in numbers from which it can be concluded that they had cleared the same as capital goods and not as scrap. Accordingly, they have violated the Rule 3(5A) of the CCR, 2004.

11. I find that, the appellant submitted that the said goods were cleared as metal scrap and for that reason only the CTH shown as 7204 and had the printing rollers been cleared as such, the CTH would have been shown related to the same under Chapter 84 and not as 7204. In this regard, I find that when any inputs or capital goods are removed as such, the details of such clearance are not required to be shown in the ER-1 return. They have to show the amount that is reversed when any



inputs or capital goods are cleared as such. The appellant submitted that they had mentioned printing rollers in numbers just to match the coding in their accounting system. However, I find that one of the buyers, M/s Image Gravures who is a manufacture of gravure cylinder and not a metal casting manufacturer. Thus, the contention of the appellant is not correct.

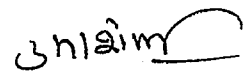
12. I find that the appellant is required to reverse the credit in the manner prescribed under Rule 3(5A) of the CCR, 2004 which provides for reversal of Cenvat credit on removal of capital goods after being used has been amended to provide that where capital goods on which Cenvat credit has been taken are removed after being used, the manufacturer is required to pay an amount equal to the Cenvat credit taken on the said capital goods reduced by prescribed percentage for each quarter or excise duty payable on the transaction value, whichever is higher. Accordingly, I find that the demand of differential duty for Rs.14,49,294/- is proper and legal.

13. Further, I find that, the appellant had not informed the department in any manner, suppressed the facts and contravened the provisions with intent to evade payment of duty. The extended period of limitation is correctly applicable. they have contested that they have not suppressed facts, and were filing the prescribed returns. That no penalty is imposable and also interest provisions are not attracted in this case. I find that the issue came into light only after the audit and ER-1 scrutiny. Therefore, I do not agree with the contention of the appellant. The appellant has relied on a case law in their support; I find that the said case law is not applicable to the present case. Thus, The penalty imposed on the appellant is correct and legal.

14. In view of above, I uphold the impugned order and disallow the appeal.

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

The appeal filed by the appellant stand disposed off in above terms.

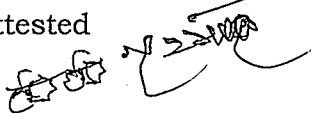


[उमा शंकर]

आयुक्त (अपील्स)

date- /2/18

Attested



[K.K.Parmar]

Superintendent (Appeals)

Central tax, Ahmedabad.

By Regd. Post A. D

M/s. Parikh Packaging Pvt. Ltd.,

Survey No. 423/P,

Sarkhej-Bavla Highway,

Vill- Moraiya, Tal-. Sanand,

Dist. Ahmedabad.

Copy to-

1. The Chief Commissioner, CGST Central Excise, Ahmedabad zone.
2. The Commissioner, CGST Central Excise, Ahmedabad- North
3. The Asstt. Commissioner, CGST Central Ex. Div-IV, Ahmedabad- North
4. The Asstt. Commissioner (Systems), CGST Central Ex., Ahmedabad- North.
5. Guard file.
6. PA File.

