



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 Ambavadi, Ahmedabad-380015



☎ : 079-26305065

टैलेफैक्स : 079 - 26305136

रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.): V2(34)73 /Ahd-II/Appeals-II/ 2016-17 / 1034 to 1037
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-77-17-18

दिनांक (Date): 29.08.2017 जारी करने की तारीख (Date of issue): _____

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker, Commissioner (Appeals)

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

Arising out of Order-In-Original No. _06/ADC/2016/RMG_ Dated: 08/05/16 issued by:
Additional Commissioner Central Excise (Div-), Ahmedabad-II

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

M/s Nirma Limited

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:

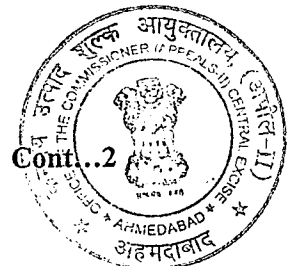
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त
धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व
विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

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 मेटल 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां 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 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."



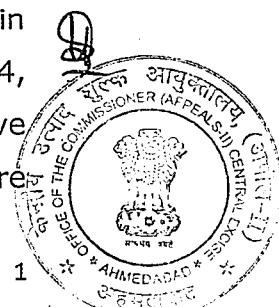
ORDER IN APPEAL

M/s. Nirma Ltd., situated at Block No. 415/P,416, Village; Moraiya, Tal. Sanand, Ahmedabad (*hereinafter referred to as the 'appellants'*) holding Central Excise Registration No. AAACN5350KXM001 for manufacturing excisable goods namely detergent cake, detergent powder falling under Chapter heading No.34, Fertilizer falling under Chapter heading No. 31 of the Central Excise Tariff Act, 1985. The said unit is availing the benefit of Cenvat Credit Scheme.

2. The facts of the case, in brief, are that during the course of test Audit, it was observed that the appellant had availed Cenvat credit of inputs after six months of the date of issue of Bills of entry/Invoices. The details of the Bill of Entries/Invoices on which such Cenvat credit was taken is as under :

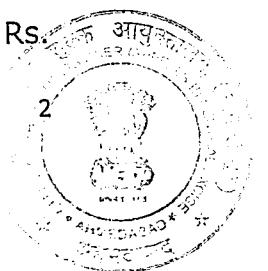
| Bill of Entry No./Invoice No. & Date | Part-II Entry No. for Credit taken and date | Total Cenvat Credit (in Rs.) |
|--------------------------------------|---|------------------------------|
| BE 3460522/05.10.2013 | 20401924/12.10.2014 | 106528 |
| BE 3525465/14.10.2013 | 20402025/27.10.2014 | 56661 |
| BE 3508468/10.10.2013 | 20402051/30.10.2014 | 56397 |
| BE 3567342/18.10.2013 | 20402052/30.10.2014 | 34127 |
| BE 3896724/25.11.2013 | 20402053/30.10.2014 | 93268 |
| BE 3958507/02.12.2013 | 20402054/12.10.2014 | 150259 |
| BE 5175179/11.04.2014 | 20402055/30.10.2014 | 79419 |
| 162/13-14/28.03.2014 | 20402065/31.10.2014 | 6675 |
| 2401606706/08.11.2013 | 20402066/30.10.2014 | 7571 |
| TOTAL | | 590905 |

The Appellant had availed Cenvat credit on a total of 7 Bill of Entries and 2 Local Invoices amounting to Rs. 5,90,905/-, as mentioned above, during the period 12.10.2014 to 31.10.2014. As per Notification No. 21/2014-CE(NT) dtd. 11.07.2014, w.e.f. 1.09.2014, the manufacturer or provider of output service shall not take Cenvat credit after six months of the date of issue of any of the documents specified in Rule 9 of the Cenvat Credit Rules, 2004. Therefore, the appellant was not eligible to take Cenvat credit on the above-mentioned Bill of entries/invoices, after six months of their date of issue, in view of the amended provision of Rule 4 of the Cenvat Credit Rules, 2004, and was asked to reverse the same. The appellant admitted that they have taken credit of the above-mentioned bill of entries/invoices which are more



than 6 months old. The appellant however stated that since the goods were sent to the job worker, the Cenvat credit was taken on the said goods after the manufactured goods were received back from the job worker and therefore the time limit as per the amended provision does not apply in their case. They also stated that they have followed the procedure prescribed in the Departmental Instructions whereby, in case the inputs are directly delivered to the Job worker, the entries are made in the RG 23 Pt. I Register (Raw-material Register) and the challan is issued to the job-worker and when the entire processed quantity is received, the credit is availed in the RG23 Pt.II (Cenvat Credit Account). Whereas the provisions of Cenvat Credit Rules, 2004, were very clear that when the raw materials are sent for job work, the appellant could take the credit of the duty involved in the raw materials and if the said goods are not received back within 180 days, then the credit so taken on the said raw materials, is to be reversed. Therefore, a Show Cause Notice to recover the Cenvat credit of Rs.5,90,905/-, was issued to the appellant. The appellant in his defence stated that in terms of provisions of Rule 4 of Cenvat Credit Rules, 2004, prior to 01.03.2015, the Cenvat credit could be taken immediately on receipt of the inputs in the factory of the manufacturer. So, receipt in the factory was a must to avail Cenvat credit. And in cases where goods were delivered directly to the job worker's premises, Cenvat credit was to be taken when the input after conversion/processing is received in the factory of the manufacturer. Rule 4(1) of the Cenvat Credit Rules, 2004, was amended vide Notification No. 6/2015-CE dt. 1.03.15, and it was provided that in case goods are sent directly to the job worker, Cenvat credit can be availed immediately by the principal manufacturer. This meant that in case of raw materials sent directly to the job worker's premises, Cenvat credit was not allowed immediately, till it was clearly specified in Noti. No. 6/2015-CE dtd. 1.03.15.

3. The Adjudicating Authority found that the Board's Circular No. 990/14/2014-CX-8 dt. 19.11.2014, examining the issue of availment of Cenvat credit after Six months, clarified that the purpose of the amendment made by Notification No. 21/2014-CE dtd. 11.07.14, was to ensure that after the issue of a document, credit is taken for the first time within six months of the issue of the document. He thus felt that there was no ambiguity that the initial Cenvat credit had to be taken within six months period. He therefore ordered vide OIO No. 06/ADC/2016/RMG dt.05.08.2016, to recover Rs.5,90,905/-, from the appellant, under Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11A(4) of the Central Excise Act, 1944, along with interest at the prescribed rate and also imposed penalty of Rs.



5,90,905/-. Aggreived by the said OIO dt.5.08.16, the appellant has filed this appeal on the ground that whether the Show Cause Notice and confirmation of demand is sustainable in law, when the department has revised the Audit Report and dropped the Audit objection and settled the Audit para.

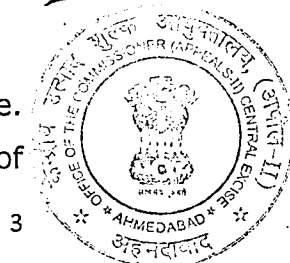
4. The Appellant during their Personal Hearing in this matter, reiterated the grounds of appeal and pointed out that prior to 01.03.2015, under Rule 4(1) of CCR, 2004, it was not permissible to take Cenvat Credit on the inputs, which are directly sent to the premises of job worker without first bringing them in the factory of the respondent.

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

6. The question to be decided is as to (i) whether the Show Cause Notice and confirmation of demand is sustainable in law when the department has dropped the audit objection; (ii) whether prior to 1.03.2015, the appellant was right in taking Cenvat credit after six months of the Bill of Entry/Invoice date, on the inputs directly sent to the job worker without first receiving in the factory, at the time of the receipt of the processed goods in the factory; and (iii) whether in the circumstances of the present case, penalty can be imposed on the appellant.

7. The matter in this case was raised by the audit officers of Audit-II Commissionerate, Ahmedabad, vide FAR No. 73/2015-16, and a S.C.N. was issued to the Appellant. The Commissioner, Audit-II Commissionerate based on the submission and after hearing the appellant, dropped the audit objection and issued a revised Audit Report No. 1210/15-16, wherein the Cenvat Credit availed by the appellant was found eligible and the para was settled accordingly. The said fact was not taken into consideration by the Adjudicating Authority while rejecting the appellants contention and confirming the demand against them. It is very surprising that the adjudicating authority has not taken cognizance of the closure report of the Audit on the basis of which the S.C.N. is based. Legally speaking, when the very basis of the S.C.N. does not exist, the S.C.N. should be allowed to fall because of lack of legality and I have the option of doing so. However, ~~since~~ I would also like to discuss the merits of the case, I accordingly proceed.

8. Prior to the implementation of Noti. No. 21/2014-CE(NT) i.e. prior to 01.09.2014, there was no restriction or time limit for availing of



Cenvat credit. The Cenvat credit had to be availed immediately on receipt of inputs in the factory. The appellant has relied on the case of (i) Alembic Ltd. v/s. Commr. of Central Excise, Vadodara and (ii) Brakes India Ltd. v/s. Commissioner of Central Excise, Chennai-II, in this regard, wherein it was observed that if credit of the goods has been taken in RG-23 Part-I, the obligation under Cenvat Credit Rules has to be considered as fulfilled. So, in this case where the inputs are directly sent to the job-worker's premises, the appellant was empowered to take Cenvat credit at any time after receipt of the inputs in the appellant's factory, once he had made an entry in the RG 23A Part-I Register. The Notification No. 21/2014-CE(NT) dated 11.07.2014, inserted the third proviso to the existing Sub-Rule (1) of Rule 4 of the Cenvat Credit Rules, 2004, which read as follows :

"Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub- rule (1) of rule 9".

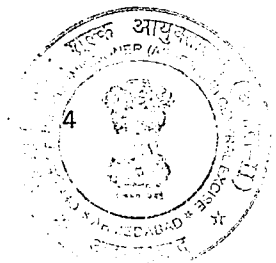
On going through the said proviso, it is apparent that the basic Rule that the inputs have to be received in the factory for availing Cenvat Credit continued to exist even after 1.09.2014. Therefore, the appellant was correct in interpreting the Notification No. 21/2014-CE(NT) dated 11.07.2014, that the Cenvat credit of the inputs sent to the job worker's premises directly, was only to be availed on the actual receipt of the same in their factory from the job worker's premises. The said scenario only got changed consequent to the issue of Noti. No. 6/2015-CE(NT) dt.01.03.2015, wherein the Rule itself got changed vide insertion as below:

"after the words "

"the provider of output service", occurring at the end and before the first proviso, the words "or in the premises of the job worker, in case goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be," shall be inserted;"

Thus, it is amply clear that the appellant was eligible to avail Cenvat credit of the Bill of Entries/ Invoices amounting to Rs. 5,90,905/-, which was availed by them before 01.03.2015.

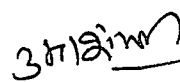
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9. In view of above, I allow the Appellant's appeal and set aside the impugned order.

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

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



(उमा शंकर)

आयुक्त (अपील्स)

ATTESTED


(R.R. NATHAN)

SUPERINTENDENT,

CENTRAL TAX APPEALS, AHMEDABAD.

To,

M/s. Nirma Ltd.,
Block No. 415/P, 416,
Village Moraiya,
Tal. Sanand,
Ahmedabad.

Copy to:

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

