



केंद्रीय कर आयुक्त (अपील)



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

केंद्रीय उत्पाद शुल्क भवन,

7th Floor, Central Excise Building,

Near Polytechnic,

सातवीं मंजिल, पॉलिटेक्निक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

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रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.): V2 (73)5&6/Ahd-II/Appeals-II/ 2016-17/1954 to 1959

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-84-85-17-18

दिनांक (Date): 28.08.2017, जारी करने की तारीख (Date of issue): 12/10/17

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

Passed by Shri Uma Shanker, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय वस्तु एवं सेवा कर, (मंडल-), अहमदाबाद उतर, आयुक्तालय द्वारा

जारी मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No.(I) 44-45/ADC/2015/DSN Dated: 27.01.2016.

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

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

(i) M/s AIA Engineering 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 धारा 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।



- (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 :-

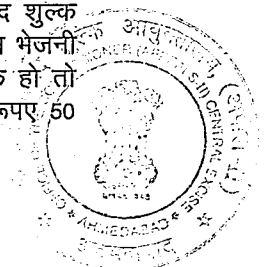
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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, अपीलों 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 इ.ए-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 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 रू.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।

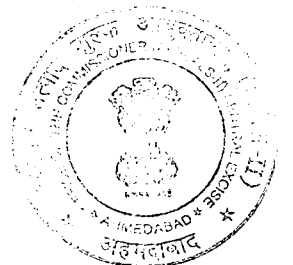
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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



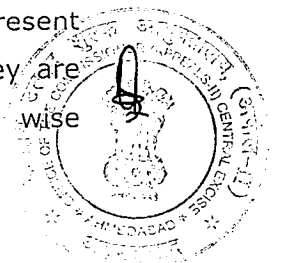
ORDER-IN-APPEAL

M/s AIA Engineering Ltd, Plot No. 423-427, Mahagujarat Industrial Estate, Sarkej- Bavla Highway, Village-Moraiya, Tal-Sanand, Ahmedabad-382213 (hereinafter referred to as "the Appellant"), has filed the present appeals against the Order-in-Original No 44-45/ADC/2015/DSN dated 27.01.2016 (hereinafter referred to as 'impugned orders') passed by the Additional Commissioner of Central Excise, Ahmedabad-II, Ahmedabad (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, the appellant are register with the Central Excise Department and engaged in Manufacturing of excisable goods falling under chapter 73 & 84 of Central Excise Traiff Act, 1985. The Internal Audit party of the department has audited the appellant records for the period October-2013 to June-2014 and July-2014 to December-2014. The audit party on the basis of records available proposed to deny service tax credit taken on various services. On the basis of Audit Para department issued two show cause notices. The same was adjudicated vide impugned order. The adjudicating authority rejected the following service tax credit as the same is not in the preview of Input Services. Equivalent penalty was also imposed and interest was also demanded. The details of Service Tax credit which are disallowed in the OIO for the above said period is as under.

SI NO	Name of the services	Amount of credit taken
1	Cab Operator	106546
2	Construction Services	31748
3	Convention Services	4676
4	Information and Technology Software	72116+188437=260553
5	Renting of Immovable Services	581902+667442=1249344
6	Service provided by Hemson organization transportation & Car Rental wrongly shown in the Business Auxiliary Service as same is falling in the Rent A Cab Services	387528
	Total	2040395

3. Being aggrieved with the impugned order, the appellant has filed the present appeal on the ground that the above service are valid input service as they are used directly or indirectly in or in relation to final product. The service wise submission is as under-:



(1) Rent A Cab Services -: They have availed this credit for transportation of employee from residence to factory. So that they come to the work place timely. The said service is not used for employee personal purpose. They have availed this service for various official activity of the company. They have relied on various judgments. Further reliance is also made on Circular No 934/4/2011 dated 29.04.2011.

(2) Construction Services-: it is contended that, credit of various services such as repairs, alterations, renovation work etc carried out in the factory premises. These services were utilized in their factory for fixing of anchor bolts in hot furnace. Said services have been used in or in relation to manufacturing activities. To support their case, they have cited case laws 1. M/s Stanzen Toyotetsu India (P) Ltd reported in 2011 (23) STR 444 (Kar.). 2. M/s KPMG V. CCE New Delhi UOI reported in 2014 (33) STR 96 (T.del). 3. Samruddhi Cement Ltd. V.CCE Indore reported in 2013 (297) ELT 562 (T).

(3) Convention Services-: This service was used for conducting workshop on "Maintenance of Bulk Handling system". The said service is covered under the second category of definition.

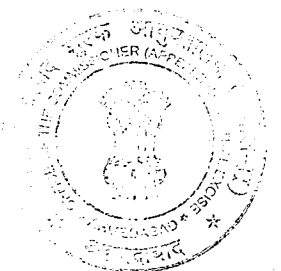
(4) Information and Technology Software Services-: appellants have claimed that said services were availed for implementation of SAP, DR, DMS, DR, DB as well as for e HRMS. Agreement copy between Appellants and the Service Providers was given so that functional use of such services can be ascertained. That these services were meant for running machines. This service is computer networking which is included in the input service. Said service has nexus directly or indirectly with manufacturing activities. They have relied on case laws of CCE V. Mavenir Systems Pvt. Ltd. Reported in 2012 (27) STR 510 (T)

(5) Renting of Immovable Services-: The said service is valid input services as they are used directly or indirectly in or in relation to manufacture of final product. They have relied upon the definition of Input Service defined under Rule 2(I) of Cenvat Credit Rules, 2004.

(6) Service provided by Hemson organization transportation & Car Rental wrongly shown in the Business Auxiliary Service as same is falling in the Rent A Cab Services-: The appellant submitted that the said services is inadmissible after 01.04.2011.

The appellant further submitted that the adjudicating authority cannot impose penalty and interest as demand of Cenvat credit is unsustainable.

4. Personal hearing was accorded on dated 20.04.2017. Shri Hardik P. Modh, Advocate appeared on behalf of the respondents. He reiterated the submissions made in Grounds of Appeal earlier and further submitted copies of various case laws. I have gone through all the case records placed before me.



5. I have carefully gone through the facts of the case on records, grounds of the appeal, put forth by the appellant. Looking to the facts of the case, I proceed to decide the case on merits.

6. Now issue to be decided is whether all such credit which are taken by the appellant are eligible or otherwise. I will take up the matter issue wise as shown above in the list. However before proceeding to discuss each of services, I hereby reproduce the definition of input service as provided in Rule 2(I) of CCR, 2004 which came into force on 01.04.2011. The same is as under.

(I) "input service" means any service, -

(i) used by a provider of [output service] for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products**computer networking**, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

[but excludes], -

[(A) service portion in the execution of a **works contract and construction services** including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) Construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) **laying of foundation or making of structures for support of capital goods,**

except for the provision of one or more of the specified services; or]

B)

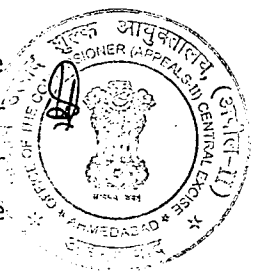
[(BA)

a)

(b)

(C) such as those provided in relation to **outdoor catering**, for personal use or consumption of any employee;]

(1)Rent A Cab Services -: I find that adjudicating authority has rightly denied the credit taken by the appellant as submitted that they have availed this service for various official activity of the company. In The definition of Input service after 01.04.2011, activity related to business was deleted. In the instant case the



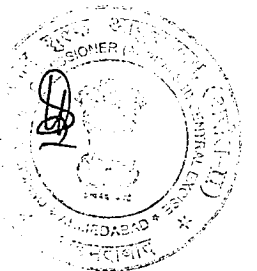
Appellant have used the said services for various official activities which are related to business only. Therefore credit availed by them is rightly denied.

(2) Construction Services-: As regards, Construction Services, the adjudicating authority has rejected credit of various service such as repairs, alterations, renovation work etc. carried out in the factory premises by finding that these services have been availed for laying of foundation or making of structures for support of Capital Goods and these activities have been specifically excluded from the definition of input services with effect from 01.04.2011 and hence credit inadmissible. I have gone through the records available before me and find that it is not forthcoming from either the impugned order or from the submissions of the appellants as to where these services were actually utilized. This needs to be ascertained before rejecting the credit. Accordingly, this issue is fit for remanding back to the adjudicating authority for ascertaining the actual use of such services whether it is repair, alteration, renovation etc. by the appellants before considering the admissibility of Cenvat Credit. Therefore, adjudicating authority is directed to conduct on the spot enquiry of the appellant's factory and verify where these services actually utilized and then pass a reasoned order.

(3) Convention Services-: The appellant have availed the said credit for conducting workshop for "Maintenance of Bulk Handling System" for the labours engaged in manufacturing activity. The adjudicating authority have relied upon the order of my predecessor in which credit was denied as it is of optional nature and have no bearing what so ever with the activity of manufacture of final product. Therefore credit availed by them is rightly denied.

(4) Information and Technology Software Services-: In respect of credit availed on Information Technology Services, I find that, the appellants have claimed that said services were availed for implementation of SAP, DMS, DR, DB as well as for E HRMS. I find that, said services are meant for running machines. Also said services are related to 'computer networking' which is included in the input service. Said services have nexus directly or indirectly with manufacturing activities. Hence, I find that, same is covered under the definition of input service as per Rule 2(1) of Cenvat Credit Rules 2004. I therefore, hold that said credit is admissible to the appellants.

(5) Renting of Immovable Services-: The renting of immovable property service is availed by them in relation to the godown rented by them situated at Changodar taken from Kalpavijay Engineering Co., Ahmedabad. The storage of inputs as well as final products is integral part of our manufacturing activity. The appellant has also state that they have availed Cenvat credit of the Service Tax paid by the service provider under the head of renting immovable property services. They are entitled to avail the Cenvat credit of "renting of immovable property services" because the service was used in or in relation to the manufacturing activity.



Further in respect of yash metal the credit was taken on the document of Input service distributor. I therefore, hold that said credit is admissible to the appellants.

(6) Service provided by Hemson organization transportation & Car Rental wrongly shown in the Business Auxiliary Service as same is falling in the Rent A Cab Services-: I find that the credit is shown wrongly and it is actually "Rent -A-Cab Service" credit which is bad in the law. As held earlier that "Rent -A-Cab" Service is not admissible from 01.04.2011. Therefore credit availed by them is rightly denied.

I find that Government has introduced the SRP procedure as they have faith in the trade. The Trade themselves decide whether credit is to be availed or otherwise. The penalty is proportionately reduce for all such Cenvat credit which are allow. The appeal stands disposed of in above terms.

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

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

S S Chowhan

(S S Chowhan)
SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,
M/s AIA Engineering Ltd (Unit-7),
Plot No. 70-77, Survey No. P-423/426/427,
Mahagujarat Industrial Estate,
Sarkej- Bavla N.H. 8-A, Village-Moraiya,
Post-Changoder, Tal-Sanand, Ahmedabad-382213

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II, Ahmedabad.
3. The Additional Commissioner, Central Excise, Ahmedabad-II, Ahmedabad.
4. The Dy. /Assistant Commissioner, Central Excise Division-IV, Ahmedabad-II, Ahmedabad.
5. The Assistant Commissioner(Systems), Central Excise, Ahmedabad-II, Ahmedabad
6. Guard File.
7. P.A. File.

