

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

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(39)12 /Ahd-II/Appeals-II/ 2016-17 /131 to 135  
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 90-17-18  
 दिनांक (Date): 25.09.2017 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-V), अहमदाबाद- II, आयुक्तालय द्वारा जारी  
 मूल आदेश सं----- दिनांक -----से सृजित  
 Arising out of Order-In-Original No . \_MP/207/2015-16/Refund\_ Dated: 29/01/2016  
 issued by: Deputy Commissioner Central Excise (Div-V), Ahmedabad-II

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

**M/s Ambika Plastic Industries**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person an aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :  
 Revision application to Government of India:

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

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

Cont...2

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

अंतिम उत्पादन 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 :-

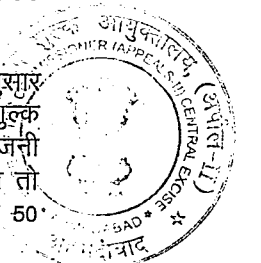
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 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 रूपरुप 5 लाख या उससे कम है वहाँ रूपरुप 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपरुप 5 लाख या 50 लाख तक हो तो रूपरुप 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपरुप 50 लाख या उससे ज्यादा है वहाँ रूपरुप 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान ले 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 पढ़ी 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।

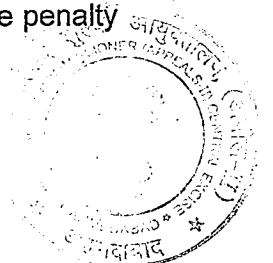
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 माँग 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. Ambica Plastic Industries, Ambica Bhavan, near Fire Bridge, O/s Shahpur Gate, Ahmedabad, Gujarat- 380 004, [for short - 'appellant'] has filed this appeal against OIO No. MP/207/2015-16/Refund dated 29.01.2016, passed by the Deputy Commissioner, Central Excise, Division V, Ahmedabad-II [for short - 'adjudicating authority'].

2. Briefly, the facts are that appellant filed a refund claim of Rs. 2,12,855/-, as they paid differential duty vide Challan No. 002 dated 11.09.2014, in lieu of short payment of duty i.e 10.30% instead of 12.36% for AARE-1 Nos. 01/02.04.2014 to 07/15.06.2014 after receiving rebate amount for above mentioned ARE-1s. On scrutiny of the said claim it was noticed that the said appellant filed refund claim after a period of more than one year, as provided under Section 11B of Central Excise Act, 1944, & relevant documents was not submitted with the claims therefore, a Show Cause Notice was issued by the Deputy Commissioner, Central Excise Division V, Ahmedabad-II asking as to why the claim of Rs. 2,12,855/- should not be rejected.

3. The adjudicating authority in his OIO, held that the appellants filed refund claim after expiry of one year from the relevant date, which is required under Section 11B of Central Excise Act, 1944. The appellant filed refund claim on 01.09.2015 and the relevant date (s) as per table here in below as envisaged under Section 11B of the Central Excise Act, 1944.

Sl. No.	File No.	ARE-1 No. & date	Amt. Of Duty Rs.	PLA/Cenvat E.No. & date	Date of Export	Date of receipt of present claim	Relevant date as per Sec. 11B of Central Excise Act, 1944
1	V.39/18-25/14-15/Reb.	01/14-15 /02.04.14	1,72,463/-	CEN.E.No. 2 dated 02.04.14	09.04.14	01.09.15	08.04.15
2	V.39/18-26/14-15-Reb.	02/14-15 /15.04.14	1,72,463/-	CEN.E.No. 4 & PLA E.No. 2 dated 15.04.14	24.04.14	01.09.15	23.04.15
3	V.39/18-29/14-15/Reb.	03/14-15 /28.04.14	1,72,463/-	PLA E.No. 5 dated 28.04.14	08.05.14	01.09.15	07.05.15
4	V.39/18-98/14-15/Reb.	04/14-15 /15.05.14	1,72,463/-	PLA E.No. 3 dated 15.05.14	17.05.14	01.09.15	16.05.15
5	V.39/18-99/14-15/Reb.	05/14-15 /26.05.14	1,07,552/-	PLA E.No. 5 dated 26.05.14	29.05.14	01.09.15	28.05.15
6	V.39/18-137 /14-15/Reb.	07/14-15 /05.06.14	1,59,315/-	PLA E.No. 5 dated 15.06.14	17.06.14	01.09.15	16.05.15
7	V.39/18-170 /14-15/Reb.	06/14-15 /03.06.14	1,07,552/-	PLA E.No. 3 dated 03.06.14	05.06.14	01.09.15	04.06.15

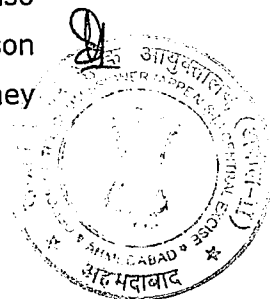


4. In view of the above, the adjudicating authority found that the said appellant has contravened the provisions of Section 11B of Central Excise Act, 1944 as the said appellant had filed refund claim after expiry of one year from the date of payment of differential amount of Central Excise duty of Rs. 2,12,855/- vide Challan No. 002 dated 11.09.2014, as the claim was filed on 01.09.2015. They had paid differential amount of Central excise duty of Rs. 2,12,855/- in lieu of short payment of duty i.e. 10.30% instead of 12.36% for above mentioned ARE-1s after receiving rebate amount. The appellant filed said claim separately for differential amount they paid. Hence, the claim is also decided under the provisions of Rule 18 of Central Excise Rules, 2002 read with the Notification No. 19/2004-CE (NT) dated 06.09.2004 and as per Provisions of Section 11B of Central Excise Act, 1944. In short, in this case supplementary rebate claim was filed on 01.09.2015 not a refund claim. As such relevant date would be decided as per their rebate claims. The Adjudicating Authority also observed that Rebate claim was filed without ARE-1s & proper requisite documents and proof of receipt of payment from buyer not produced. Hence adjudicating authority rejected their refund claim.

5. Being aggrieved with the impugned order the appellants have preferred the present appeal. In their grounds of appeal, the appellants pleaded that they have subsequently submitted supplementary rebate claim of Rs. 2,12,855/-, in continuation of their earlier sanctioned seven rebate claims. There was no physical clearance of goods as such ARE-1 was not submitted. They also relied on the following case Laws:-

1. (2011) 31 STT 47+9 Taxman.Com 241 (Mad HC-DB), where in it was held that time limit of one year for filing refund claim was not applicable if the appellant had paid duty under compulsion in & payment of duty under protest. They further claimed that in their case they paid duty under compulsion since non-payment of short paid duty, which were to invite action on them for contravention of the provisions of Central Excise Act, 1944 & Central Excise Rules, 2002.

2. They also relied on another case law- 2015(321) ELT-45 (Mad), held- Export-Rebate/Refund Limitation-Relevant date . Question of rebate of duty is govern by separately under Section 12 of CEA, 1944 & entitlement of rebate claim, would arise only out of Notification under Section 12 (1) abide. Rule 18 of CEX Rules, 2002 is to be constructed independently. Notification No. 19/2004-CE dated 06.09.2004 did not contain the prescription of limitation of time. Their claim is identical to this decision. They also requested to condone the delay of 13 days due to reason that the person concerned looking after excise work had misplaced the OIO in question. They

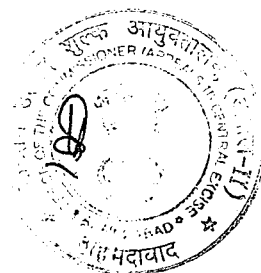


also preyed to allow their appeal condoning delay and set aside the OIO passed by the Deputy Commissioner.

**6.** Personal hearing in the matter was granted on 16.05.2017 and second hearing was fixed on 12.06.2017. First opportunity was given for hearing on 19.06.2017 and last opportunity for hearing was given on 12.09.2017. However no one had attended hearing and they had also not submitted any other submission except appeal memorandum.

**7.** I have carefully gone through the facts of the case, on records, grounds of appeal in the Appeal Memorandum and other documents available. I find that the adjudicating authority has rejected the refund claims on the ground that the said appellant has contravened the provisions of Section 11B of Central Excise Act, 1944, as the said appellant had filed their claim after expiry of one year from the date of payment of differential amount of Central Excise duty of Rs. 2,12,855/- vide Challan No. 002 dated 11.09.2014, as the claim was filed on 01.09.2015. They had paid differential amount of Central excise duty of Rs. 2,12,855/- in lieu of short payment of duty i.e. 10.30% instead of 12.36% for above mentioned ARE-1s after receiving rebate amount. The appellant filed said claim separately for differential amount they paid. Hence, the claim is also decided under the provisions of Rule 18 of Central Excise Rules, 2002 read with the Notification No. 19/2004-CE (NT) dated 06.09.2004 and as per Provisions of Section 11B of Central Excise Act, 1944. In short, in this case supplementary rebate claim was filed on 01.09.2015 and not a refund claim. As such relevant date would be decided as per their original rebate claims. They also observed that Rebate claim was filed without ARE-1s & proper requisite documents and proof of receipt of payment from buyer not produced. Hence adjudicating authority rejected their refund claim. The adjudicating authority also described the relevant date.

**8.** On the basis of documents I found that the appellant filed a supplementary rebate claim on 01.09.2015 and not a refund claim. The appellant also made it clear in their appeal memorandum dated 20.04.2016 that they had subsequently submitted supplementary rebate claim of Rs. 2,12,855/-- in continuation of their earlier sanctioned seven rebate claims. In their memorandum, they are also not claiming that it is a refund claim. Looking to the fact that it is supplementary rebate claims in continuation of their earlier rebate claims, the relevant date is to be considered as per date of export of goods as per seven ARE-1s. As per table mentioned at para 3 above the claim filed by the appellant is filed beyond time limit of one year from the date of export as mentioned hereinabove. Hence their claim is time barred and liable for rejection in terms of the provisions of Section 11B of Central Excise Act, 1944. They filed separate refund claim of Rs. 2,12,855/-

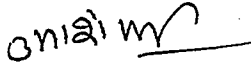


after making differential of duty of seven ARE-1s which they had not paid earlier at the time of clearance of goods. The differential of duty they paid is relevance with seven ARE-1 and as such their claim is not refund but supplementary rebate claim in continuation of their old rebate claims. As such the relevant date is to be decided under the provisions of Rule 18 of Central Excise Rules, 2002. Hence their claim is time barred as per the provisions of Section 11B of Central Excise Act, 1944 and the Deputy Commissioner, Central Excise Division V, Ahmedabad-II had rightly rejected their claim. The case Laws referred by them are not relevant to this appeal, as their claim is not a refund claim but it was supplementary rebate claim in continuation of their old rebate claims. However, the condonation of delay of appeal is considered on the grounds, they claimed.

9. In view of above, I do not find any reason to interfere in the impugned order and reject the appeal filed by the appellants.

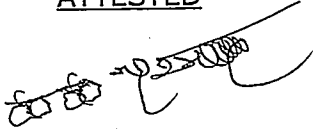
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

  
(उमा शंकर)  
आयुक्त (अपील्स )

CENTRAL EXCISE, AHMEDABAD.

ATTESTED



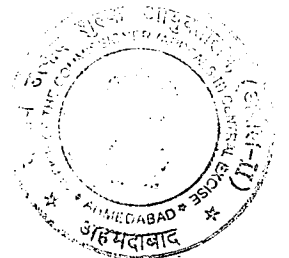
(K.K.PARMAR)

SUPERINTENDENT (APPEALS) ,,  
CENTRAL EXCISE, AHMEDABAD.

To,  
M/s. Ambica Plastic Industries,  
Ambica Bhavan, near Fire Bridge,  
O/s Shahpur Gate,  
Ahmedabad, Gujarat- 380 004

**Copy to:**

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Central Excise, Ahmedabad-II (North).
- 3) The Dy. Commissioner, Division-V,(Now Division VII) Ahmedabad (North)
- 4) The Asst. Commissioner (System), HQ, Ahmedabad (North).
- 5) Guard File.
- 6) P.A. File.



11

