



आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या (File No.) : V2(38)99 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-129-18-19

दिनांक (Date): 20-Nov-18 जारी करने की तारीख (Date of issue): 1/11/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals)

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

Arising out of Order-In-Original No MP/04/Dem/AC/2018/KDB Dated: 07/05/2018
issued by: Assistant Commissioner-Central Excise (Div-II), Ahmedabad North.

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

M/s Nagarjuna Construction Company 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 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।



न 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 हो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हैं।

(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 इ.ए. 8 में दो प्रतियों में, प्रेषित आदेश के पत्रि आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ अतिरिक्त आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्षक के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के समूह के साथ टीआर 6 बालान 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- एनबी/35-इ के अंतर्गत-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियों सहित जहाँ उत्पाद शुल्क की मांग, व्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, व्याज 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, व्याज की मांग और 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 संवत् की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की धार्या का 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 उपरोक्त 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 अधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क लगाया जाएगा।



One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear 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 और 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टैट) के प्रति अपीलों के मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय (संख्या-2) अधिनियम 2014 (2014) की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 63 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दरा करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores.

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.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) 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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/ Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

This appeal has been filed by M/s. Nagarjuna Construction Company Ltd.(Project site Civil Hospital, Asarwa, Ahmedabad) having their Head office at NCC House, Madhapur, Hyderabad, Telangana (hereinafter referred to as "the appellants") against the Order-in-Original number MP/04/Dem/AC/2018/KDB dated 07.05.2018 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, GST, Division-II (Naroda Road), Ahmedabad-North (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case are that intelligence was gathered by the officers of the Directorate General of Central Excise Intelligence, Hyderabad Zonal Unit that the appellants were involved in the manufacture and captive consumption of "Ready Mix Concrete" (hereinafter referred to as "RMC") for their project construction activities. However, they were not paying Central Excise duty by misusing Central Excise Exemption Notification number 12/2012-CE (Sr. number 146) as amended. After completion of a thorough investigation, a show cause notice, dated 09.02.2017, was issued to the appellants which was adjudicated by the adjudicating authority. The adjudicating authority, vide the impugned order, confirmed the demand of Central Excise duty of ₹ 1,30,911/- under Section 11A(4) of the Central Excise Act, 1944. He also ordered to recover interest under Section 11AA of the Central Excise Act, 1944 and imposed penalty under Section 11AC of the Central Excise Act, 1944.

3. Being aggrieved, the appellants have filed the present appeal before me. The appellants argued that the goods manufactured, at the site for use of construction work, are exempted from Excise duty by virtue of Notification number 4/97-CE dated 01.03.1997. This is because RMC is also a concrete mix falling under Chapter 38 and hence would for exemption of excise duty in terms of Serial No. 51 or Sl. No. 74 of Notification No. 04/1997-CE or Notification No. 04/2006-CE respectively.

4. A personal hearing in the matter was held on 26.10.2018 and Shri Pravin Tovi, Manager Taxation with NCC Ltd., appeared for the same and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case on records, appeal memorandum and submissions made by the appellants. The primary dispute is whether the exemption claimed by the appellant under Notification No. 12/2012 -CE dated 17/03/2012 is admissible to the Ready Mix Concrete ('RMC') manufactured by the appellant to be used at the construction site.

It has been clarified in Board's Circular number 315/31/97-CX dated 23.05.1997 that RMC and CM are two separate distinguishable commodities in the following terms:



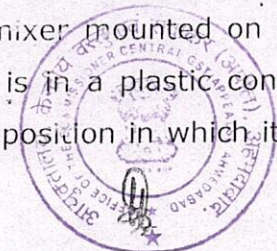
"2. The Board has examined the issue of "RMC" afresh and finds that a clear distinction needs to be made between the two types – (a) concrete mix at site and (b) Ready Mix Concrete. The Ready Mix Concrete plant consists of stone crushers, conveyors, vibrator screen to segregate different sizes of stone aggregates, and a sand mill to produce sand from stones. A central batching plant is also installed in which all aggregates are weighed, batched by electrical controls and limit switches. Cement from silo is carried to the batching plant by a screw conveyer operated with automatic weighing gauges. Water is fed through flow meters after subjecting such water to chemical analysis. The mixture of stone aggregates, sand, cement and water is mixed in a mixer. The shelf life of the mixture so obtained is increased by addition of chemicals. This mix is loaded on a transit mixer mounted on truck chassis which is transported to the site of the customers and the same is discharged at site for use in further construction of building etc.

3. The qualities of Ready Mix concrete, are somewhat different to mixed concrete. The final product Ready Mix Concrete is a material in plastic, wet process state and not a finished product like blocks or precast tiles or beams.

4. Ready Mix Concrete is thus an excisable product which has a separate tariff entry under sub-heading 3824.20 of the Central Excise Tariff Act, 1985. It is also known under the Indian Standard IS: 4926-1976, which for the purposes of that **standard defines Ready Mix Concrete as concrete delivered at site or into the purchaser's vehicle in a plastic condition and requiring no further treatment before being placed in the position in which it is to stay and harden**".

As per the above clarification, the impugned goods in the present case is liable to be treated as 'RMC' by virtue of the fact that the appellants had installed their own concrete mix batch plant and produced RMC out of raw materials such as coarse aggregates, sand, cement, admixture and fly ash and the RMC was used onsite for construction work at Civil Hospital, Asarwa, Ahmedabad. This clarification by Board has been cited and endorsed by Hon'ble Supreme Court in the case of LARSEN AND TOUBRO LTD. vs C.C.E., HYDERABAD – 2015 (324) E.L.T. 646 (S.C.). The relevant portion of this decision is reproduced as follows:

"19. We are also inclined to agree with the stand taken by the Revenue that it is the process of mixing the concrete that differentiates between CM and RMC. In the instant case, as it is found, the assessee installed two batching plants and one stone crusher at site in their cement plant to produce RMC. The batching plants were of fully automatic version. Concrete mix obtained from these batching plants was delivered into a transit mixer mounted on a self propelled chassis for delivery at the site of construction is in a plastic condition requiring no further treatment before being placed in the position in which it is to



set and harden. The prepared chassis which was mounted was to ensure that when the concrete mix is taken to the actual place of construction, it keeps rotating. It is also significant to mention that for producing the concrete mix, material used was cement, aggregates, chemically analysed water and admixtures, namely, retarders and plasticizers. As the L&T was constructing cement plant of a very high quality, it needed concrete also of a superior quality and to produce that aforesaid sophisticated and modernised process was adopted. The adjudicating authority in its order explained the peculiar feature of RMC and the following extracts from the said discussion needs to be reproduced :

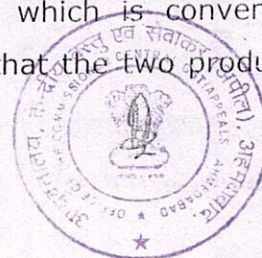
"32. Central Excise Tariff does not define Ready Mix Concrete. Therefore, as per the established case-laws on the subject it is necessary to look for the meaning of this expression as understood in the market viz., as understood by the people who buy and sell this commodity. In this connection it would be relevant to refer to the following excerpts from an article - what is ready mix concrete, appearing in internet website of National Ready Mix Concrete Association, USA :-

(i) Concrete, in its freshly mixed state, is a plastic workable mixture that can be cast into virtually any desired shape. It starts to stiffen shortly after mixing, but remains plastic and workable for several hours. This is enough time for it to be placed and finished. Concrete normally sets or hardens within two to 12 hours after mixing and continue to gain strength within months or even years.

(ii) Ready Mix Concrete refers to concrete that is delivered to the customer in a freshly mixed and non-hardened state. Due to its durability, low cost and its ability to be customized for different applications, Ready Mix Concrete is one of the world's most versatile and popular building materials.

(iii) Admixtures are generally products used in relatively small quantities to improve the properties of fresh and hardened concrete. They are used to modify the rate of setting and strength, especially during solid and cold weather. The most common, is an air-entraining agent that develops millions of tiny holes in the concrete, which imparts the durability to concrete in freeing and thawing exposure. Water reducing Admixtures enable concrete to be placed at the required consistency while minimizing water used in the mixture, thereby increasing the strength and improving durability. A variety of fibers are incorporated in the concrete to control or improve aberration and impact resistance."

20. After referring to some text as well, the adjudicating authority brought out the differences between Ready Mix Concrete and CM which is conventionally produced. The position which was summed up showing that the two products are different reads as under :



"From the literature quoted above it is clear that Ready Mix Concrete is an expression now well understood in the market and used to refer to a commodity bought and sold with clearly distinguishable features and characteristics as regards the plant and machinery required to be set-up for its manufacture and the manufacturing processes involved, as well as its own properties and the manner of delivery. RMC refers to a concrete specially made with precision and of a high standard and as per the particular needs of a customer and delivered to the customer at his site. Apparently due to the large demand resulting from rapid urbanization and pressure of completing projects on time, consumption of RMC has steadily grown replacing the conventional/manual concreting works. Today leading cement companies have entered the field by setting-up RMC plants in which L&T ECC is one. RMC is slowly replacing site or hand mixed concrete because of the distinct advantages due to technology, speed and convenience. Furthermore, absence of the need to deal with multiple agencies for procuring and storing cement, sand, blue metal and water as well as the absence of the need to handle unorganized labour force are factors influencing customers to go in for RMC in preference to CM."

21. In this backdrop, the only question is as to whether RMC manufactured and used at site would be covered by notification. Answer has to be in the negative inasmuch as Notification No. 4, dated March 1, 1997 exempts only 'Concrete Mix' and-not 'Ready Made Mixed Concrete' and we have already held that RMC is not the same as CM.

The above distinction between 'Concrete Mixture' ('CM') and 'RMC' has been made on factual basis and the appellant's attempt to challenge the question of fact on the maxim '*a judgment is an authority for what it decides*' is not sustainable because the explanation of a wider import of 'Concrete Mix' under entry 144 of Notification No.12/2012 dated 17/03/2012 leads to the erroneous conclusion that 'CM' also includes 'RMC', which is contradictory to the law settled on factual basis that there is a clear distinction between the product 'CM' and RMC' as held by Hon'ble Supreme Court on the basis of *process of mixing* as follows:

"We are also inclined to agree with the stand taken by the Revenue that it is the process of mixing the concrete that differentiates between CM and RMC."

Thus, in view of the above, it is very much clear that RMC and CM are two different products. There is no doubt that the appellants was engaged in the manufacture of RMC falling under Chapter Head 38245010. This has been stated by the adjudicating authority in paragraph 32 of the impugned order where he has confirmed that the appellants were fully equipped with batching plant at the required sites based on the project requirements. The distinction between 'CM' and 'RMC' is settled clearly on the

factual basis of 'process of mixing' and cannot be undone or challenged on the basis of the difference in classification for different periods. Hence there is no scope to accept the contention of the appellant that entry no. 144 of Notification No. 12/2012 - CE dated 17/03/2012 covers under its ambit of 'concrete mix' all types of concrete mixed at the site of construction. The said entry pertains to 'CM' only and not to 'RMC' that is different from 'CM' on the basis of the process of mixing. Therefore, I find that the demand for Central Excise duty and interest as confirmed in the impugned order is just and proper and I uphold the same. Thus, without much ado, I conclude that the adjudicating authority has rightly confirmed the demand.

8. In view of above discussions, I up held the impugned order passed by the adjudicating authority and reject the appeal filed by the appellants.

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

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

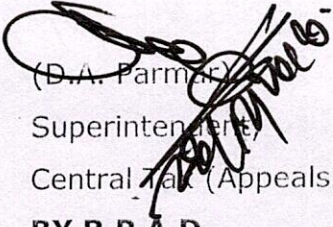
3/11/2018

(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.



ATTESTED


(D.A. Parmar)
Superintendent
Central Tax (Appeals), Ahmedabad.

BY R.P.A.D

To,

M/s. Nagarjuna Construction Company Ltd.
(Project site Civil Hospital, Asarwa, Ahmedabad),
NCC House, Madhapur, Hyderabad, Telangana.

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad-North.
3. The Dy./Asstt. Commissioner, CGST, Division-II, Ahmedabad-North.
4. The Asstt. Commissioner, (Systems), CGST, Hq., Ahmedabad-North.
5. Guard file.
6. P.A file.