



# आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ : 079-26305065

टेलीफैक्स : 079 - 26305136



क फाइल संख्या : File No : V2(ST)136 /North/Appeals/2018-19

8072 to 8076

ख अपील आदेश संख्या : Order-In-Appeal No..AHM-EXCUS-002-APP-139-18-19

दिनांक Date : 28-Dec-18 जारी करने की तारीख Date of Issue 9/1/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No 06/AC/D/BJM/18-19 Dated 18-Jul-18 Issued by Assistant Commissioner , Central GST , Div-III , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता  
Name & Address of The Appellants

## M/s MBM Precast India Pvt. Ltd

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-  
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

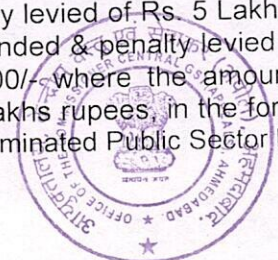
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.



(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर

आयुक्त, सहायक / उप आयुक्त अथवा अधीक्षक केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) 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, 1984 की धारा 13 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 दस 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।

4. 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.

4(1) इस संदर्भ 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।

4(1) 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.

रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065



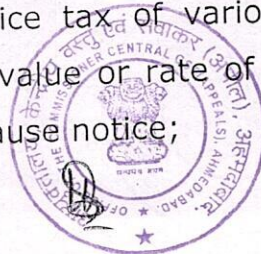
### ORDER IN APPEAL

M/s. MBM Precast India Pvt. Ltd., Survey No. 109/3/1, B/H Pratham Hyundai Show Room, Sanand-Viramgam Highway, Sanand, Ahmedabad (*hereinafter referred to as 'appellant'*) have filed the present appeal against the Order-in-Original number 06/AC/D/BJM/18-19 dated 18.07.2018 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, CGST, Div-III, Ahmedabad-North (*hereinafter referred to as 'adjudicating authority'*). Appellant are engaged in manufacture of prefabricated structural components and hold ST registration with Service Tax, Mumbai- South Commissionerate for providing the taxable service.

2. The facts of the case, in brief, are that during the EA-2000 of the appellant, it was noticed that the appellant were indulging in evasion of service tax by not paying appropriate service tax on the value of taxable services rendered by them and without filing ST-3 returns. They had availed cenvat credit of Rs. 24,582/- twice on an invoice; had not paid service tax amounting to Rs. 28,83,031/- on providing civil construction services; had not paid service tax amounting to Rs. 1,76,657/- on GTA services on reverse charge mechanism and had not paid service tax of Rs. 16,494/- towards security services. Accordingly, a show cause notice dtd. 20.04.2018 was issued proposing demand of service tax and adjustment of Rs. 24,582/- paid by them against the demand; proposed imposition of penalties and recovery of service tax with interest. The adjudicating authority, vide the impugned order, confirmed the demands of service tax of Rs. 24,582/-, Rs. 28,83,031/-, 1,76,657/- and of Rs. 16,494/- respectively; imposed penalties under various sections of the Finance Act, 1994 (for brevity 'the Act') and imposed penalty of Rs. 30,76,182/- under Section 78 of the Act. Adjustment of Rs. 24,582/- paid by them against the demand was also ordered.

3. Being aggrieved with the impugned order, the appellant have preferred this appeal wherein it is contended that-

- a) Confirming demand of Rs. 24,582/- is time barred as they had paid the amount with interest and the show cause notice was issued after more than one year. They seek support from the case law of Prakash Construction - 2009 (15) STR-579 (Commr. Appl.);
- b) Confirming demands of service tax of various amounts for various services is not proper as no value or rate of tax or nature of service has been given in the show cause notice;

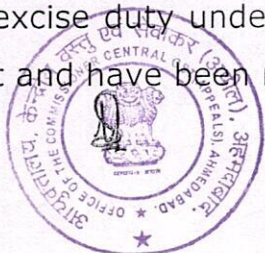


- c) It is a settled law that service tax cannot be demanded twice on the same activity and particularly when CBEC vide its Circular No. 58/7/2003-S.T., dtd. 20.05.2003 has categorically clarified that for wrong accounting code, service tax cannot be demanded again and they have paid the service tax and filed returns under their Mumbai office service tax code. They seek support from the case laws of Chaudhary Yatra Co. Pvt. Ltd. vs. CCE - 2013 (29) STR-240 (Tri. Mum.), CST vs. Air Charter Services Pvt. Ltd. -2017 (5) GSTL-107 (Tri. Del.), CCE vs. Veena Industries Ltd. -2013 (30) STR-318 (Tri. Ahd.);
- d) the penalties under various Sections of the Act are not tenable in view of their submissions made as there is no suppression of facts and no short payment of tax. They rely on the case of Fortune Network Pvt. Ltd. vs. CCE -2015 (39) STR-689 (Tri. Ahmd.), S-Mac Security Services Pvt. Ltd. vs. CST -2016 (45) STR-209 (Tri. Bang.), CCE vs. Mukesh Jain -2012 (28) STR-277 (Tri. Del.), Gujarat Guardian Ltd. vs. CCE -2016 (46) STR-737 (Tri. Ahmd.), Murugappa Morgan Thermal Ceramics Ltd. vs. CCE -2016 (45) STR-74 (Tri. Chenn.) and Trichem Enterprises Pvt. Ltd. vs. CCE -2016 (46) STR-592 (Tri. Ahmd.);
- e) service tax is applicable uniformly across Gujarat and Maharashtra and the revenue thereof goes to same central government and under the minor technical mistakes should not be a reason for imposing penalties.

4. Personal hearing in both the cases was held on 19.11.2018 in which Shri Nilesh V Suchak, authorised representative appeared before me and reiterated the grounds of appeal. They submitted additional submissions. He also submitted copy of case law of Shaman Marketing Research Associates vs. CCE -2006 (3) STR-92 (Tri. Mum.) and their letter dtd. 01.10.2018 in which they have requested to treat the payment made service tax returns under Mumbai Service Tax Registration as that of Sanand Unit.

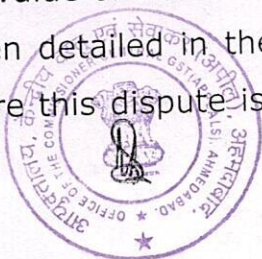
5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing.

6. I find that the issue to be decided in this appeal is whether service tax has been correctly demanded and penalties imposed when the appellants did not file required returns and did not pay service tax on the taxable service for which they were registered. The appellant have contended that they had paid the central excise duty under the central excise registration number of their Mumbai unit and have been regularly filing monthly returns.



7. I find that the main issue to be decided here is whether the appellant can pay duty from their Mumbai office whereas the manufacturing activities are being carried out from their Sanand Unit. It would be helpful to understand the concept of registration and the importance of registration number in central excise. Section 6 of the Central Excise Act, 1944 provides for registration of certain person, among other things, who is engaged in the production or manufacture or any process of production or manufacture of any specified goods included in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986). Central Excise Rules, 2002 provide under Rule 4 that every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 or under any other law. Rule 9 of the Central Excise Rules provide that every person, who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods, shall get registered. CBEC's Excise Manual of Supplementary Instructions that, in respect of provisions for registration under Rule 9 of the Central Excise Rules, 2002, separate registration is required in respect of separate premises, only except in cases where two or more premises are actually part of the same factory (where process are interlinked) but are segregated by a public road, canal, railway line, etc. Notification No. 35/2001-Central Excise (N.T.) dtd. 26th June, 2001 as amended gives detailed procedure for registration under central excise and as per that notification, if the person has more than one premises requiring registration, separate registration certificate shall be obtained for each of such premises. From the above detailed provisions of central excise rules and Act and Notification, it is very clear that each premise has to have separate registration except under one circumstance when the premise is separated by public road, rail etc. So it cannot be legitimate that central excise registration is for one unit and is used for different unit. I therefore hold that the argument given by the appellant that they have paid central excise duty by using central excise registration number of Mumbai unit is not acceptable and I therefore reject the same.

8. The appellant have contended that confirming demands of service tax of various amounts for various services is not proper as no value or rate of tax or nature of service has been given in the show cause notice. I find that the details of the value of the concerned services and the service tax leviable thereon have been detailed in the show cause notice and in the impugned order. Furthermore this dispute is not related to the method of valuation of



service liable to payment of central excise duty or service tax. Accordingly, I reject this contention of the appellant.

9. Appellant's contention that since duty with interest is paid before issuance of notice there was no requirement to issue the notice as matter is deemed to be concluded is not acceptable as it is applicable only where there is no fraud, no suppression or no mis-statement of facts. It was only during the course of audit proceedings that the entire event of non-payment of tax had come to the knowledge of department. Had it not been the audit scrutiny of the financial statements of the appellant, the payment of Service tax would have gone unheeded. My view is supported by decision in the case of Machino Montel (I) Ltd.-2006 (202) ELT 398 (P&H) wherein it was stated that mere deposition of the duty demand before issuance of SCN cannot give the benefit to the Assessee for non-imposition of penalty. Hence, I agree with the findings of the adjudicating authority and uphold impugned OIO.

10. As promised by the appellant at the time of personal hearing, the appellant have submitted the copies of challans through which the service tax had been claimed to have been paid in the name of Mumbai address and I reproduce the same three challans herein below:



## Taxpayers Counterfoil

Name of the Assessee: MBM FREEMAN INDIA PVT. LTD.  
 Complete Address: BOTAWALLA BUILDING, 36, 2ND FLOOR, BOWANDI MARKET ROAD, CHHODI TALAO, MUMBAI  
 MUMBAI, MAHARASHTRA 400002

Assessee Code: A A C C M 8 3 8 2 C S D U 0 1

Major Code: 0 0 4 4 Location Code: S G 0 0 0 2

Commissionerate Code: S G Division Code: 0 0 Range Code: 0 2

Accounting Code	Description of Tax	Amount in Rupees	HDFC BANK LIMITED	
DOMESTIC	WORKS OVERSEAS SERVICES - OTHER RECEIPTS	13,630.00	BSR Code	050047
	TOTAL	13,630.00	Date of Receipt	02/08/2017
			Challan Serial No.	64701
			Tax Payment Ref.	13,630.00
			Drawn On	HDFC Bank Netbanking

Rupees (In words): THIRTEEN THOUSAND SIX HUNDRED THIRTY ONLY

CIN: 05102470701200753100

Debit Account No.: 0703269002133 Payment Realization Date: 02/08/2017 17:34:29

Please Save a copy of this Acknowledgement Receipt for your future reference.



**HDFC BANK**  
We understand your world

**Taxpayers Counterfoil**

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Name of the Assessee: **MMB PRECAST INDIA PVT. LTD.**  
 Complete Address: **DOTAWALLA BUILDING, 36, 3RD FLOOR, BOMANJI MASTER ROAD DHOBI TALAO, MUMBAI**  
**MUMBAI, MAHARASHTRA 400002**

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Assessee Code: **A A G C M 8 3 8 2 C S D 0 0 1**  
 Major Code: **0 0 4 4** Location Code: **S G 0 6 0 2**  
 Commissionerate Code: **S G** Division Code: **0 6** Range Code: **0 2**

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Accounting Code	Description of Tax	Amount in Rupees
00442410	ADHES CONTRACT SERVICES	202,183.00
00441457	ADHES CONTRACT SERVICES	51,695.00
	TOTAL	253,878.00

**HDFC BANK LIMITED**  
 BSR Code: 0510247  
 Date of Receipt: 12/04/2017  
 Chalan Serial No.: 51138  
 Tax Payment (Rs): 253,878.00  
 Drawn On: HDFC Bank Netbanking

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Rupees (In words): **TWO LAKHS, FIFTY THOUSAND ONE HUNDRED EIGHTY ONLY**  
 CIN: **05102470009001751620**  
 Debit Account No.: **0753251002103** Payment Realization Date: **12/04/2017 12:00:11**

Please Save a copy of this Acknowledgement Receipt for your future reference.

**HDFC BANK**  
We understand your world

**Taxpayers Counterfoil**

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Name of the Assessee: **MMB PRECAST INDIA PVT. LTD.**  
 Complete Address: **DOTAWALLA BUILDING, 36, 3RD FLOOR, BOMANJI MASTER ROAD DHOBI TALAO, MUMBAI**  
**MUMBAI, MAHARASHTRA 400002**

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Assessee Code: **A A G C M 8 3 8 2 C S D 0 0 1**  
 Major Code: **0 0 4 4** Location Code: **S G 0 6 0 2**  
 Commissionerate Code: **S G** Division Code: **0 6** Range Code: **0 2**

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Accounting Code	Description of Tax	Amount in Rupees
00442411	ADHES CONTRACT SERVICES - OTHER RECEIPTS	86,310.00
	TOTAL	86,310.00

**HDFC BANK LIMITED**  
 BSR Code: 0510247  
 Date of Receipt: 03/08/2017  
 Chalan Serial No.: 59570  
 Tax Payment (Rs): 86,310.00  
 Drawn On: HDFC Bank Netbanking

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Rupees (In words): **EIGHTY EIGHT THOUSAND ONLY**  
 CIN: **05102470009001751620**  
 Debit Account No.: **0753251002103** Payment Realization Date: **03/08/2017 14:00:11**

Please Save a copy of this Acknowledgement Receipt for your future reference.

I have perused the copies and since it is a matter of payment of service tax which can only be verified by the adjudicating authority, I find it appropriate to remand the case to the adjudicating authority to ascertain the genuineness of the challans submitted by the appellants and the payment made by them and whether the payment made can be correlated with the appellants against the liabilities of Sanand address and the same can be adjusted. In view of the above findings, I find it appropriate and justified to remand the issue to the adjudicating authority on the conditions specified herein above. In case the payment of the service tax is proved beyond doubt, the demand of service tax and the penalty under section 78 (1) of the Act to the extent of confirmation of service tax amount shall stand set aside.

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

अपीलकर्ता द्वारा दर्ज की गयी अपीलों का निपटारा उपरोक्त तरीके से किया जाता है !

*उमा शंकर*

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)  
अहमदाबाद

दिनांक:

सत्यापित

*धर्मेंद्र उपाध्याय*

(धर्मेंद्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

**By R.P.A.D.**

To,

M/s. MBM Precast India Pvt. Ltd.,  
Survey No. 109/3/1,  
B/H Pratham Hyundai Show Room,  
Sanand-Viramgam Highway,  
Sanand,  
Ahmedabad

**Copy to:**

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (North),
- (3) The Dy./Astt. Commissioner, CGST, Div.-III, Ahmedabad (North),
- (4) The Dy./Astt. Commissioner (Systems), CGST, Ahmedabad (North),
- (5) Guard File,
- (6) P.A. File.

