



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय उत्पाद शुल्क भवन, 7<sup>th</sup> Floor, Central Excise Building,  
सातवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic,  
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015



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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(87)80 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-9-18-19**

दिनांक (Date): **22-May-18** जारी करने की तारीख (Date of issue): **21-6-2018**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals)

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

Arising out of Order-In-Original No **21/AC/D/BJM/2017** Dated: **30/11/2017**  
issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad North

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

### M/s Rane (Madras) 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 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, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैटल 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 रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज 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, ब्याज 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 एवं सेवाकर



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 यथार्थिती 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 यथार्थिती 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 अपीलो 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।

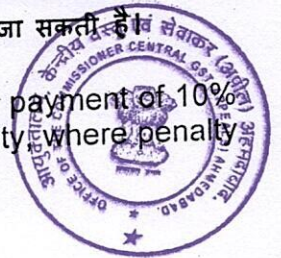
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

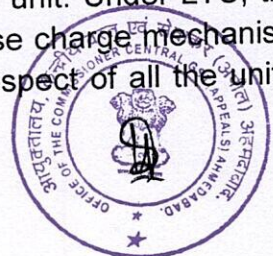
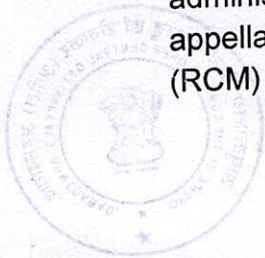


## ORDER-IN-APPEAL

M/s Rane (Madras) Ltd., B-10, North Kotpura village, Viroch Nagar, Sanand, Ahmedabad (hereinafter referred to as 'the appellant') was engaged in the manufacture of Steering Gears and Steering Suspension Links etc. falling under Chapter 87 of the Central Excise Tariff Act, 1985. During the audit of the accounts of the appellant by officers of Large Tax Payer Unit, Audit Circle, Chennai, it was noticed during the verification of miscellaneous invoices and non-CENVAT bills for the period **2012-13 to 2014-15** that the appellant had availed services of **Manpower Supply or Recruitment Agency Services; Security Services; Goods Transport Agency Service** but had not paid Service Tax under reverse charge mechanism. A Show Cause Notice No. LTUAC/CHN/67/2016-(ac) dated 20/12/2016 (hereinafter referred to as 'the SCN') was issued to the appellant demanding a amount of **₹3,34,224/-** under Section 73(1) of the Finance Act, 1994 (hereinafter FA, 1994) towards non-payment of Service Tax during the period from 2012-13 to 2014-15; proposing to appropriate an amount of **₹3,34,224/-** paid by the appellant towards the said demand; demanding interest under Section 75 of FA, 1994 and proposing to impose penalty on the appellant under Section 78(1) of FA, 1994. The SCN was adjudicated vide Order-in-original No. 21/AC/D/BJM/2017 dated 30/11/2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, C.G.S.T. & Central Excise, Division-III, Ahmedabad North (hereinafter referred to as 'the adjudicating authority'), confirming the demand of Service Tax along with interest and appropriating the payment towards confirmed demand as proposed in the SCN and imposing a penalty of **₹1,67,112/-** on the appellant under section 78(1) of FA, 1994.

2. Aggrieved by the impugned order the appellant has filed the instant appeal against the impugned order on the following grounds:

- 1) The appellant wish to submit that the impugned order passed without giving sufficient opportunity to the appellant to put forth its contentions would amount to denial of principles of natural justice. The adjudicating authority had issued an intimation for hearing on 13/11/2017 and another hearing on 29/11/2017. For the second hearing on 29/11/2017, the appellant had engaged a legal counsel stationed at Chennai, who was unable to travel to Ahmedabad within short notice for which, the appellant had sought an adjournment of hearing requesting another personal hearing during December, 2017. However, the adjudicating authority had proceeded to adjudicate the matter without hearing the appellant. The appellant had not received any personal hearing intimation for 14/08/2017, 18/08/2017 and 21/08/2017 referred to in para 11 of the impugned order.
- 2) On merits, the appellant submits that originally the appellant and all its group company units, situated all over India were registered and functioning under the Large Tax payers Unit (LTU) at Chennai. At that time, the appellant unit's administrative control was taken care of by its Pondicherry unit. Under LTU, the appellant was discharging Service Tax liability under reverse charge mechanism (RCM) on GTA/Manpower/Security services promptly in respect of all the units,



however, due to accounting mistake, the service tax payments in respect of this appellant unit at Ahmedabad was missed out to be reckoned with, hence this omission of non-payment. The availment of services and payment to service providers has been entered in the books of account and documents maintained by the appellant and only from during the audit conducted, department has taken note of the above short payment which culminated in issue of the present notice and impugned order. On being pointed out by audit that the appellant is liable to pay service Tax under reverse charge mechanism for the aforesaid services, the appellant immediately paid the said amount of ₹3,34,224/- vide Challan dated 3694 and 3696 both dated 06/02/2016 and 94729 dated 31/03/2016. The impugned notice has proposed for appropriation but wrongly mentions as against certain ineligible credit instated of against the demand proposed in the impugned notice. This proves the *bona fides* that at no point in time did the appellant have any intention either to contravene the rules or to evade payment of service tax. Non payment of service tax was due to the *bona fide* accounting error in not capturing the reverse charge liabilities properly and not with any intention to evade tax. The said services are input services for the appellant in manufacture of its final products and as such it is entitled to take credit of the payment of service tax paid on these services, making it a revenue neutral situation. Thus there could be no intent to evade payment of tax and the invoking of extended period of limitation is clearly not justified. The appellant places reliance on (i)Tenneco RC India Pvt. Ltd. – 2015 (323) ELT 299 (Mad.); (ii) Nirlon Ltd. vs Commissioner – 2015 (320) ELT 22 (SC); (iii) CCE, Mumbai vs Mahindra & Mahindra Ltd. – 2004 (171) ELT 159 (SC); (iv) Amco Batteries Ltd., vs CCE, Bangalore – 2003 (153) ELT 7 (SC); (v) Commissioner vs Indeos ABS Ltd. – 2011 (267) E.L.T. A 155 (SC); (vi) CCE, Ahmedabad vs Sagar Enterprises Ltd. – 2010 (18) STR 212 (Tri.Ahmd.) and several other decisions. In the present case, the appellant submits that it is only an inadvertent non-payment of Service Tax and there was nothing on record displaying a willful default on its part. It was only from the appellant's books of accounts that the audit had found that it had not paid the partial payment of service tax under reverse charge. Hence the allegation / observation that the appellant had not disclosed the above with intent to evade Service Tax is not sustainable at all. In the case of MP Laghu Udyog Nigam Ltd. – 2015 (37) STR 308 Tri. Del., the Tribunal has held that 'mere non-registration, non-filing of ST-3 return or non-payment of Service Tax do not suffice for sustaining allegations of suppression of facts for invoking extended period. There has to be on part of the appellant some act of omission or commission pointing intention to evade tax. The SCN does not elaborate as to how appellant is guilty of suppression of facts and hence the appellant's intention to evade duty by suppressing facts is not established. The appellant also relies on (i) Mahesh Kumar Sharma – 2017 (49) STR 239 (Tri.Del.); (ii) Future link India – 2017 (48) STR 353 (Del.); (iii) Simplex Infrastructure Ltd., - 2016 (42) STR 634 (Calcutta); (iv) Sourav Ganguly vs UOI – 2016 (43) STR 482 (Calcutta). The appellant also relies on a catena of decision to plead that the imposition of penalty is not sustainable in the absence of any willful suppression with intent to evade payment of tax.

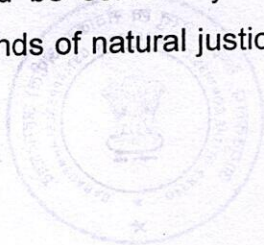
3. Personal hearing in the appeal was held on 09/05/2018. Shri R. Subramanya, Advocate appeared on behalf of the appellant and reiterated the grounds of appeal. He submitted that it is a case of L.T.U., Chennai and stated that request for adjournment



was not allowed by the adjudicating authority and the impugned order had been passed *ex parte*.

4. I have carefully gone through the facts of the case on records and submissions made by the appellant. The appellant accepts the lapse and admits that the L.T.U had failed to pay Service Tax liability amounting to ₹3,34,224/- under reverse charge mechanism on the services relating to "Manpower recruitment or supply agency"; 'Security' and 'Transport of Goods by road'. It is also a fact on record that on being pointed out by audit, the appellant had paid up the Service Tax amount of ₹3,34,224/-, that has been appropriated towards the confirmed demand in the impugned order. Thus there is no dispute regarding the liability on part of the appellant to pay the Service Tax amount of ₹3,34,224/-. However, the appellant has challenged the impugned order on the ground that as no personal hearing was granted to them the order was passed in violation of the principles of natural justice and also that as there was no suppression of facts with intent to evade duty on part of the appellant, there was no justification in invoking extended period for demanding and confirming the demand and for imposing penalty on the appellant.

5. On considering the ground of natural justice, I find that the adjudicating authority has clearly brought out in paragraph 11 of the impugned order that opportunities for personal hearing were granted to the appellant on 14/08/2017; 18/08/2017; 21/08/2017 and 13/11/2017 but the appellant had not attended personal hearing on any of these dates. On the other hand the appellant contends in the grounds of appeal that it had received intimation letters for personal hearing on 13/11/2017 and on 29/11/2017. It is the appellant's own admission that it had responded only to the intimation for personal hearing on 29/11/2017 requesting for adjournment as the Advocate from Chennai could not attend on short notice. Going by its own admission, the appellant had ample time between 13/11/2017 and 29/11/2017 to arrange for representation of its case in personal hearing and hence the ground of short notice is not valid. It is also an admitted fact on record that the appellant had not filed a written reply to the SCN dated 20/12/2016 even upto 29/11/2017. Therefore, the adjournment sought on receipt of intimation for hearing on 29/11/2017 is not reasonable. The adjudicating authority has clearly held in paragraph 13 of the impugned order that he proceeded to decide the case *ex parte* as no written submission had been filed by the appellant and it had not availed of the four opportunities for personal hearing granted during the course of adjudication. Further, on considering the grounds of appeal, I find that the appellant has not challenged its liability to pay Service Tax as confirmed to be paid in the impugned order. The impugned order has been challenged on the ground of violation of principles of natural justice and on the grounds of limitation. Therefore, I find that no purpose would be served by remanding the case back to the adjudicating authority on the grounds of natural justice. On going through the case laws cited by the appellant, I find



that these are not relevant to the facts of the present case. Accordingly, I reject the plea of the appellant on the grounds of violation of the principles of natural justice.

6. On considering the plea regarding there being no suppression of facts, I find that the non-payment of duty in contravention of the provisions of the Finance Act, 1994 and the Service Tax Rules was detected only due to intervention of the department by way of the audit of the appellant's records by the officers of the Large Tax Payer Unit, Audit Circle, Chennai. But for the said intervention by the department, the non-payment of Service Tax would have remained suppressed and the loss to the exchequer would not have been made good. Therefore, the ingredients of suppression of facts and contravention of provision with intent to evade payment of Service Tax is very much present in the instant case, justifying the invoking of extended period of demand and the imposing of penalty on the appellant. The case laws cited by the appellant are distinguishable on facts. In view of the above, the appeal is not sustainable even on the ground of limitation. The appeal is rejected.

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

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 09/05/2018

Attested

*(K. P. Jacob)*  
Superintendent (Appeals-I)  
Central Excise, Ahmedabad.

By R.P.A.D.

To  
M/s Rane (Madras) Limited,  
B-10, north Kotpura village,  
Viroch Nagar,  
Sanand, Ahmedabad

Copy to:

1. The Chief Commissioner of C.G.S.T, Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T. (System), Ahmedabad (North).
4. The Deputy Commissioner, C.G.S.T., Division-III, Ahmedabad (North),
5. Guard File.
- ✓ 6. P.A.



