



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

☎: 079 - 26305136



Post Speed By द्वारा

क फाइल संख्या (File No.): V2(84)60/North/Appeals/ 2019-20/12887 To 12891

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-89-19-20

दिनांक (Date): 14/10/2019 जारी करने की तारीख (Date of issue): 04/11/2019

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Gopi Nath , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No 07-09/ADC/2019/MSC Dated: 27/03/2019

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

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

M/s Atmos Power Pvt. 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 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।



(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(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.

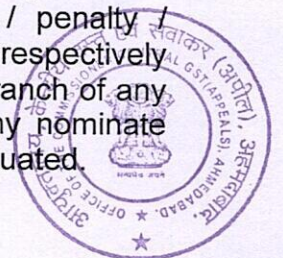
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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

(क) 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 हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) 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.

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 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 वाखिल 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, provided that the pre-deposit amount shall not exceed Rs.10 Crores. 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)

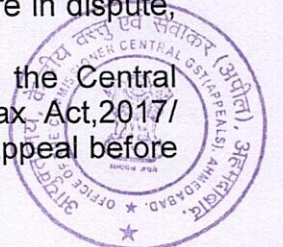
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 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

M/s.Atmos Power Pvt Ltd, Plot No.C/1/39/3B,Phase-III,GIDC,Naroda, Ahmedaad-382323(henceforth, "appellant") has filed the present appeal against the Order-in-original No.07-09/ADC/2019/MSC dated 27.03.2019 (henceforth, "impugned order") issued by the Additional Commissioner, CGST Ahmedabad-North(henceforth, "adjudicating authority").

2. The facts of the case, in brief, are that it was observed during investigation conducted by Ahmedabad-II Commissionerate that exemption under notification No.12/2012-CE dated 17.03.2012 (Sr.No.332,List 8 Sr.15) is available to 'Bio Gas Plant and Bio Gas Engine' and not to "Bio Gas System & spares" cleared by the appellant by classifying it under Tariff item 84051090 of CETA,1985. Therefore, a show cause notice dated 06.10.2015 was issued to the appellant which was decided under order dated 18.03.2016 holding that exemption is wrongly availed by the appellant. Demand notice covering further period i.e. July 2015 to June 2017 on the same issue was decided under impugned order confirming duty along with interest and penalty.

3. Aggrieved, the appellant preferred this appeal on the grounds *inter alia*, that the impugned order is non speaking, issued with pre-determined mind and has only copied the finding of earlier order issued by the Commissioner; that Bio Gas System & spares are part of Bio Gas Plant and entitle for exemption; that machinery sold by them is used for separation of gases viz. Methane,H₂O,CO₂ & moisture etc from raw Bio Gas; that notification includes purification plant and spares manufactured by the appellant; that the meaning of bio gas plant is where bio gas is produced, the bio-methnation process of converting biomass into gaseous fuel is superior and a sustainable process that needs to be preferred for such biomass materials that can be processed in biogas plant. In light of said fact it can be safely gathered that the Bio Gas purification plant is nothing but a part of bio gas plant which is used to purify the raw bio gas into purified gas.; that Bio Gas Plant includes all devices or equipments which are connected or combined together to complete the Bio Gas Plant. Therefore, bio gas purification plant is nothing but a part of bio gas plant and entitle for exemption; that as per Encyclopedic Dictionary, biogas plant would necessarily include a system and spare; that as per the policy framed by Central government as well as once the entry includes "bio gas plant", all material equipment used for the purpose of setting up bio gas based plant are certainly entitle for grant of exemption; that Bio gas systems & spares cleared are nothing but parts of bio gas plant and there is no mis classification or wrong availment of exemption. Etc

4. In the Personal hearing held on 13.09.2019 Shri Sarju Mehta,CA reiterated the submissions of appeal memorandum. He also produced additional submission dated 13.09.2019 mainly stating that object of the noti.No.12/2012-CE dated 17.03.2012 is to exempt non con-conventional energy device falling under list-8,Sr.No.332; that Sr.No.15 of list 8 covers "Bio gas Plant & Bio Gas Engine", the appellant manufactures bio gas purification plant which are part of Bio gas Plant which is non-conventional energy producing devices and hence the same are covered by Sr.No.15 of list 8; that bio gas purification plant are used in the factory of their client for manufacture of complete con-conventional energy devise/system, impugned order is not correct; that entire bio gas plant has five main components out of which bio gas purification plant is last components and also designed for separation of gases from raw biogases generated converting agriculture and municipal waste for producing energy, hence entitle for exemption; that they cited case law Commr. of Sales Tax v/s Jaynand Khira & Co., reported in (1975) 36 STR 242 Bombay of Hon'ble High Court at Bombay; that it cannot be disputed that goods supplied by the appellant is not non-conventional energy device; that merely because of the reason that the bio gas plant is cleared in part form, exemption is denied then exemption notification will become redundant; that objection of the notification supra can be achieved when exemption is extended irrespective of whether the bio gas plant is cleared in the name of biogas purification plant or bio gas system.; there is no dispute that the item manufactured and cleared are required for use in the products of nature specified in Sr.No.15,list 8 of notification supra.

5. I have carefully gone through the appeal memorandum and the oral averments made during the course of personal hearing. The issue requiring determination in the case is whether the appellant is entitled for exemption under Noti.No.12/2012-CE dated 17.03.2012, as amended, on goods i.e 'Bio Gas System & spares' cleared by them. I reproduce below relevant part of said notification for ease of reference;

Exemption and effective rates of duty for specified goods of Chapters 1 to 98 — Jumbo Exemption — Notification Nos. 3/2005-C.E., 3/2006-C.E., 4/2006-C.E., 5/2006-C.E., 6/2006-C.E. and 10/2006-C.E. replaced

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) and

.....

 the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below read with relevant List appended hereto and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise

specified thereon under the First Schedule to the Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions annexed to this notification, if any, specified in the corresponding entry in column (5) of the Table aforesaid :

Provided that nothing contained in this notification shall apply to the goods specified against serial number 296 and 297 of the said Table after the 31st day of March, 2013.

Explanation 1. - For the purposes of this notification, the rates specified in column (4) of the said Table are *ad valorem* rates, unless otherwise specified.

Explanation 2. - For the purposes of this notification, "brand name" means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and a person using such name or mark with or without any indication of the identity of that person.

TABLE

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
332	Any Chapter	Non-conventional energy devices or systems specified in List 8	Nil	-

LIST 8

(See S. No. 332)

(1) Flat plate solar Collector (2) Black continuously plated solar selective coating sheets (in cut length or in coil) and fins and tubes (3) Concentrating and pipe type solar collector (4) Solar cooker (5) Solar water heater and system (6) Solar air heating system (7) Solar low pressure steam system (8) Solar stills and desalination system (9) Solar pump based on solar thermal and solar photovoltaic conversion (10) Solar power generating system (11) Solar photovoltaic module and panel for water pumping and other applications (12) Solar crop drier and system (13) Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller (14) Water pumping wind mill, wind aero-generator and battery charger (15) **Bio-gas plant and bio-gas engine** (16) Agricultural, forestry, agro- industrial, industrial, municipal and urban waste conversion device producing energy (17) Equipment for utilising ocean waves energy (18) Solar lantern (19) Ocean thermal energy conversion system (20) Solar photovoltaic cell (21) Parts consumed within the factory of production of such parts for the manufacture of goods specified at S. Nos. 1 to 20.

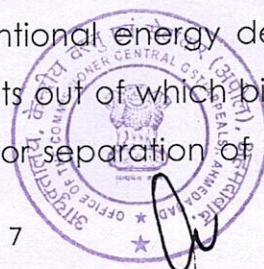
[Notification No. 12/2012-C.E., dated 17-3-2012]

5.1 Above notification specifically exempts '**Bio gas plant and bio-gas engine**' describing it as non conventional energy devices or systems. I observe that looking to the importance of non conventional energy in India, the exemption under Section 5A(1) of Central Excise Act,1944 has been made available to 'Bio gas plant and bio-gas engine'. The wording 'Bio gas plant and bio-gas engine' chosen in the notification has left no scope for the industries to make any other interpretation other than 'Bio gas plant and bio-gas engine'. I observe that there may exist any other structure, device, machinery or mechanism etc in the field of non conventional energy other than specified in list 8 above. Said list is restricted to 21 items, specifying description in detail in respect of all. Therefore, exemption available under notification supra cannot be extended to any other machine/device/ system which are not covered under the ambit of said list. I observe that once the items for exemption stands listed under any notification by

the government, the scope of interpreting the notification by way of considering other named item in the list becomes redundant and efforts in this regard if any, may ultimately result in widening the scope of said list. Therefore, the exemption notifications which describes the goods in general and lists/specifies each item individually, leaves no scope of further interpretation in respect of description. Notification No.12/2012-CE dated 17.03.2012 as amended, covers **non conventional energy device or systems** in column 3 specifically mentioning '**Bio gas plant and bio-gas engine**' at Sr.No.15 of list 8 and hence there is no ambiguity as to which item would qualifies for the same.

6. Further facts which are not under dispute are that in addition to Bio gas purification plant, the appellant also manufactures oxygen plant, nitrogen plant etc which they clears on payment of appropriate duty; that on function of Bio gas purification system, It was explained by Shri Sajay Patel, authorized signatory of the appellant firm that it segregate/separate B-CNG(Bio CNG) from B-Gas(Bio-Gas), that description of goods are mentioned in PO etc are 'Bio gas purification plant' ;that it was stated by Shri Kinner Shah, General Manager of buyer M/s. Bharat Bio Gas Energy Ltd., Anand that post the production, the Bio gas was subject to refined with the help of Bio gas purification system; that PO/ invoice etc shows name of the goods as Bio gas purification plant/Bio gas system. From said facts, I find that the appellant manufactured Bio gas purification plant mentioning the same as Bio-Gas System in the invoice. It was argued by appellant that Bio gas purification plant is an essential part of Bio-Gas plant and hence benefit of exemption cannot be denied. In this regard, I agree with the adjudicating authority who held that Bio gas purification plant and Bio-Gas plant, two cannot be equated to be one and the same. Further, in view of the fact that post the production, the Bio gas was subject to refined with the help of Bio gas purification system, I observe that biogas purification plant cleared by the appellant in the name of Bio Gas System is neither a 'Bio Gas Plant nor a 'Bio Gas Engine' as specified under the notification supra and hence exemption to the same is not eligible.

7. It is further argued by the appellant that they manufactures bio gas purification plant which are part of Bio gas Plant which is non-conventional energy producing devices and hence the same are covered by Sr.No.15 of list 8; that bio gas purification plant are used in the factory of their client for manufacture of complete con-conventional energy devise/system; that entire bio gas plant has five main components out of which bio gas purification plant is last components and also designed for separation of gases from raw biogases



generated converting agriculture and municipal waste for producing energy; that merely because of the reason that the bio gas plant is cleared in part form, exemption is denied then exemption notification will become redundant; that aim of the notification supra can be achieved when exemption is extended irrespective of whether the bio gas plant is cleared in the name of biogas purification plant or bio gas system.;there is no dispute that the item manufactured and cleared are required for use in the products of nature specified in Sr.No.15, list 8 of notification supra. In view of the observations at para 5.1 above on clarity under notification supra as well as the fact that biogas purification plant cleared by the appellant in the name of Bio Gas System is neither a 'Bio Gas Plant nor a 'Bio Gas Engine' specified under the notification supra, I do not agree with the contention of the appellant. The case laws referred by the appellant are having different background and not squarely applicable to the present case and hence I do not rely on it.

8. In view of the above, the appeal filed by the appellant is not maintainable. I therefore, reject the same accordingly.

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

The appeal filed by the appellant stands disposed of in above terms.

Gopi Nath
(Gopi Nath) 14/11/19

Commissioner,CGST (Appeals)
Date:

Attested

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

By R.P.A.D.

To,

M/s. Atmos Power Pvt Ltd,

Plot No.C/1, 39/3B,39/8B,Phase-III,GIDC,Naroda,Ahmedaad-382323.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad-North
3. The Additional Commissioner of Central Tax (System) Ahmedabad-North.
4. The Asstt./Deputy Commissioner, CGST Division-VI, Ahmedabad-North.
5. Guard File.
6. P.A.File

