



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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स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/409/2021 -Appeal-O/o Commr-CGST-Appl-Ahmedabad

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHIM-EXCUS-002-APP-62/2021-22**
दिनांक Date : **21.01.2022** जारी करने की तारीख Date of Issue : **21.01.2022**

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original Nos. **AR-IV/GAIPL/SUPDT/SSM/01/2020-21** dated **19.10.2020**,
passed by the Superintendent, AR-IV, Div-III, Central GST & C. Ex., Ahmedabad-North.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- M/s. Grupo Antolin India Pvt. Ltd., 30P, Nr. Fire Technology College, Village-Khoda, TA: Sanand, Ahmedabad-382170.

Respondent-The Superintendent, AR-IV, Div-III, Central GST & Central Excise, Ahmedabad-North.

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 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 :

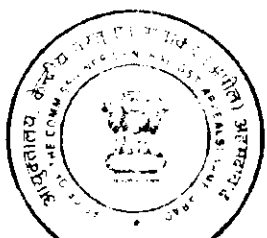
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक 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।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) 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.



(क) 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।

(A) 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.

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

(B) 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।

(c) 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 दिनोंक 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.

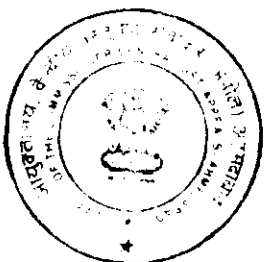
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. 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 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

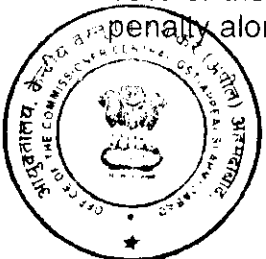
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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।

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

This appeal has been filed by M/s Grupo Antolin India Private Limited, 30 P, Village: Khoda, P.O. – Chandrasan, Tal: Sanand. Ahmedabad - 382170 (hereinafter referred as the "appellant") against the Order – in – Original No. AR – IV/GAIPL/SUPDT/SSM/01/2020-21 dated 19.10.2020 (hereinafter referred as the "impugned order") issued by the Superintendent, Central GST, Range – IV, Division – III, Ahmedabad North (hereinafter referred as the "adjudicating authority"). The appellant are engaged in manufacturing of Motor Vehicles parts under Chapter No. 87 of the First Schedule to the Central Excise Tariff Act, 1985 and holding Central Excise Registration No. AAACA6730GFM009 as well as Service Tax Registration No. AAACA6730GSD009.

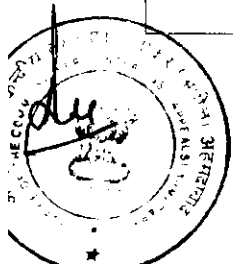
2. During the course of scrutiny of ST-3 returns of the appellant for the period from October-2016 to March-2017, it was noticed that they had short paid service tax amount of Rs. 95,942/- on Goods Transport Agency Service for the month of December, 2016 and January, 2017 under Reverse Charge Mechanism as per Serial No. 02 of Notification No. 30/2012-ST dated 20.06.2012 as amended and Serial No. 07 of Notification No. 026/2012-ST dated 20.06.2012 as amended. The details of short payment are as under:

(Amount in Rs.)

Month	Taxable Value	ST	SBCess	KKCess	Total	Service Tax paid	Service Tax Short paid
December, 2016	4,22,517	59,152	2,113	2,113	63,378	0	63,378
January, 2017	5,72,566	80,159	2,863	2,863	85,885	53,321	32,564
						Total	95,942/-

3. The applicant was asked vide letter F.No.AR-IV/ Scrutiny / 2018-19 dated 01.01.2019 for payment of the amount short paid along with applicable interest and penalty. In response, the appellant submitted their reply vide letter dated 23.01.2019 stating that there were three challans, as per details given below, which were not matching with their ST Registration No. AAACA6730GSD009 and that tax was inadvertently paid under Service Tax Registration of their associated company at another location:

Sr. No.	Issue Involved	Name	CIN	Date of Payment	Amount in INR
01	Paid in AAACA6730GST001 RANJANGOAN instead of 009	M/s. GRUPO ANTOLIN INDIA PVT. LTD.	69103330601201715157	06.01.2017	46,220/-
02	Paid in AAACA6730GSD005 RANJANGOAN instead of 009	M/s. GRUPO ANTOLIN INDIA PVT. LTD.	69103330601201715160	06.01.2017	17,158/-
03	Paid in AAACA6730GST002	M/s. GRUPO ANTOLIN INDIA PVT. LTD.	69103330702201710875	07.02.2017	32,565/-



3.1. It was contended that it was not a case of non-payment of service tax, but payment of service tax using wrong code. It was a fact that their unit had not used the said deposit for payment of any service tax arising there from, in their units, declaration of which has also been obtained from the said unit. It was also contended that the question of remittance of service tax did not arise for the reasons that the Govt. has provided a method to adjust the remittance in wrong code of service tax to give credit to correct code and thereby not to demand service tax again from the assessee under Board Circular No.58/7/2003-S.T. dated 20.05.2003 issued from F.No. 157/2/2003-CX-4 and Trade Notice No. 03/2014 dated 10.07.2014 issued by the Cochin Central Excise Commissionerate. Subsequently, the appellant vide letter dated 20.03.2019 enclosed a copy of letter dated 19.03.2019 addressed to the Pay and Accounts Officer, Central Excise and Service Tax/GST, Ahmedabad regarding correction of Service Tax Registration number wrongly mentioned for payment of Service Tax in GAR-7 challans.

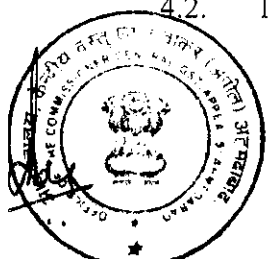
3.2. It was observed by the Range officers that the appellant did not follow the procedures prescribed under Board's Circular No.58/7/2003-S.T. dated 20.05.2003 issued from F.No. 159/2/2003-CX-4 and Trade Notice No. 03/2014 dated 10.07.2014 issued by the Cochin Central Excise Commissionerate. Accordingly, a SCN dated 12.04.2019 was issued to the appellant demanding the said amount under proviso to Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Act. It was also proposed to impose penalty under Section 76 of the Finance Act, 1994.

3.3. The said SCN was adjudicated vide the impugned order wherein the adjudicating authority has confirmed the demand along with interest and penalty.

4. Being aggrieved by the impugned order, the appellant has filed the instant appeal on various grounds. It was mainly contended that the matter was of clerical mistake of having incorporated the service tax registration number of their other unit while making service tax payments in GAR7 challan. They had, based on CBEC Circular No. 58/7/2003-S.T. dated 20.05.2003 issued from F.No. 159/2/2003-CX-4 and Trade Notice No. 03/2014 dated 10.07.2014, also preferred an application for effecting necessary changes relating to Service Tax Registration number vide letter dated 19.03.2019. They had also provided a Declaration from Grupo Antolin Pune plant & CAD Centre, Pune stating that they had not utilised duty head/Service Tax head etc.

4.1. It was further contended that when there was a remedy available on the application made by the appellants, the department could have forwarded it to the appropriate authority to make the correction and thus demand of service tax confirmed on this ground that the application was not made to e-PAO, Mumbai and Chennai but to Pay & Accounts Office, Ahmedabad is not sustainable.

4.2. They placed reliance on following case laws:



- i) M/s SAHARA INDIA TV NETWORK Vs COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, NOIDA, reported in [2015-TIOL-2341-CESTAT-DEL]
- ii) M/s. SUNDARAM INDUSTRIES LTD Vs THE DEPARTMENT OF CENTRAL EXCISE, reported in [2015-TIOL-1216-HC-MAD-ST]
- iii) COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, BHOPAL Vs K K KEDIA, reported in [2014-TIOL-2409-CESTAT-DEL]

5. Personal hearing in the case held on 26.10.2021 in virtual mode. S/Shri S. Narayanan, Advocate, and Himanshu Mehta, Finance Manager, appeared for the hearing. The advocate reiterated submissions made in the appeal memorandum.

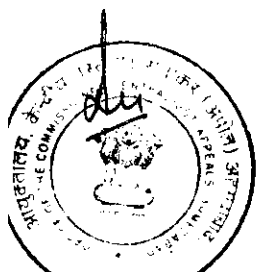
6. I have gone through the facts of the case, the impugned order and submissions made by the appellant, both written and oral. The issue to be decided in the case is whether the impugned order confirming the demand in respect of payment of service tax by the appellant under registration number of their other unit is legally sustainable or not.

7. I find that the facts related to liability of the appellant under GTA and its discharge under GAR 7 challans mentioned in the SCN mentioning registration number of their another unit at Pune is not disputed. In fact, the same are mentioned in the ST-3 Returns filed by the appellant for the period October – March, 2017. The said returns has been filed on time and the details of the said challans have also been mentioned in the Part-H of the return in Form ST-3 for the said period.

7.1. It has been contended by the appellant that when there was a remedy available on the application made by them, the department could have forwarded it to the appropriate authority to make the correction and thus demand of service tax confirmed on this ground that the application was not made to e-PAO, Mumbai and Chennai but to Pay & Accounts Office, Ahmedabad is not sustainable

7.2. In this regard, it is observed that there is neither explicit provisions under the Service Tax law for adjustment of service tax payments from the account of one registered unit to the account of another registered unit not there is any provision which prohibits such adjustment. Accordingly, I find that the issue in the present case is not so much of law but of a mistake of incorrectly mentioning the registration number in the service tax deposit challan. In order to allay the apprehensions of the Trade, the Board has vide Circular No. 58/7/2003 dated 20.05.2003 issued from F. No. 157/2/2003 CX.4 provided following clarifications:

“2. The Board has examined the issue. In this connection, I am directed to clarify that the assessee need not be asked to pay the service tax again. In such cases the matter should be sorted with the P.A.O. As regards to the cases where the assessee was asked to pay



service tax again, the amount thus paid may be refunded by the concerned divisional Asst. Commissioner/ Deputy Commissioner.”

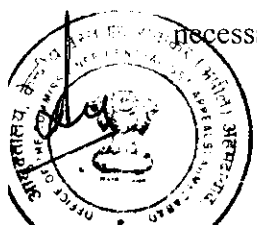
It is thus apparent from the Board clarification that the matter in hand needed only reconciliation with the PAO and in no case they be asked to pay service tax again.

7.3. In pursuance of the Board's aforementioned Circular, the Cochin Central Excise Commissionerate had issued Trade Notice No. 03/2014 dated 10.07.2014, which the adjudicating authority has relied upon to confirm the demand as it was held by him that the appellant had made request to wrong PAO i.e. the PAO, Ahmedabad and not e-PAO, Mumbai or Madras. I find that the findings of the adjudicating authority are in contravention of the Board's Circular in as much as the payment should have been reconciled with the PAO instead of confirming the demand. I have gone through the said Public Notice and the procedure prescribed for such case. It is undisputed that the appellant has made a declaration from the Unit concerned that the said challan was not used by them. Then, it was needed to get a verification from concerned Range Superintendent which has not been done in this case.

7.4. It is further observed that the Hon'ble High Court of Gujarat in case of Auro Pumps P. Ltd. Vs. Union of India [2017 (353) ELT (Guj)] and in case of Devang Paper Mills Pvt. Ltd. Vs. Union of India [2016 (41) STR 418 (Guj)] has dropped the demand of duty in case of payment under Challan containing any other code or registration number. These orders were relied upon by the appellant before adjudicating authority, as is evident from the Para 38.5. of the impugned order, but no findings have been recorded in that respect.

7.5. In view of the above judicial pronouncements and Trade Notice No. 3/2014-ST dated 10.07.2014 issued by the Commissioner, Central Excise, Cochin in pursuance of the clarification issued by Board vide Circular No. 58/7/2003 (issued under F.No. 157/2/2003 Cx.4) dated 20.05.2003, I find it a settled position that when the payment of Service Tax is made by the appellant under their own different registration number and it is confirmed that such amounts have neither been utilized [by the assessee holding such registration number] nor got refunded, then such procedural lapse on the part of the appellant cannot be treated a short-payment service tax as provided under Section 73 of the Finance Act, 1994. Hence, I find it proper to conclude the present case in line of the judicial pronouncements, as discussed above, and the Board's Circular dated 20.05.2003 in favour of the appellant.

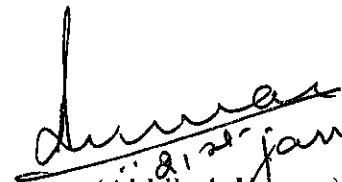
7.6. It is further observed from the impugned order that the process of reconciliation has not been completed in as much as there is no report from the jurisdictional Range Superintendent of the appellant's unit at Pune nor any reference made to the jurisdictional PAO at Mumbai. Accordingly, the matter needs to be remanded back to the adjudicating authority for conducting necessary verification.



8. In view of the above, the impugned order passed by the adjudicating authority is set aside and is remanded back to the adjudicating authority for denovo consideration, to the extent of verification of the facts as discussed in para-7.6 above, from the respective jurisdictional service tax authorities and to issue a fresh order.


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

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


21st January, 2022
(Akhilesh Kumar)
Commissioner (Appeals)

Date: /January/2022

Attested


(M.P.Sisodiya)
Superintendent (Appeals),
CGST, Ahmedabad.



BY SPEED POST :

To,
M/s Grupo Antolin India Private Limited,
30 P, Village: Khoda,
P.O. – Chandrasan, Tal: Sanand,
Ahmedabad - 382170

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Commissionerate: Ahmedabad-North.
3. The Deputy /Asstt. Commissioner, Central GST, Division-III, Commissionerate: Ahmedabad-North.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Commissionerate: Ahmedabad-North.
- ✓ 5. Guard file
6. PA File