



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 07926305065- टेलीफैक्स 07926305136



DIN:20230464SW000071767C

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2713/2022-APPEAL

1991-96

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-012/2023-24
 दिनांक Date : 21-04-2023 जारी करने की तारीख Date of Issue 26.04.2023

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

ग Arising out of Order-in-Original No. 10/ADC/GB/2022-2023 दिनांक: 18.05.2022, issued by Additional Commissioner, CGST, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Delhi Bombay Roadlines,
 H.O. No.8 , Dhanraj Complex,
 Opp. Ambica Petrol pump,
 Sarkhej Bavla Road, Sarkhej, Ahmedabad

2. Respondent

The Additional/Joint Commissioner, CGST, Ahmedabad North , Custom House, 1st Floor, Navrangpura, Ahmedabad - 380009

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 :

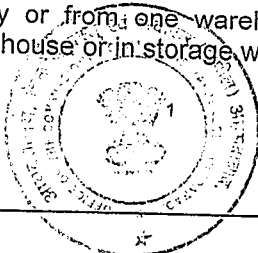
भारत सरकार का पुनरीक्षण आवेदन :
 Revision application to Government of India :

(i) केंद्रीय 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 प्रक्रिया 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 मामलों 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.

(ख) 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.

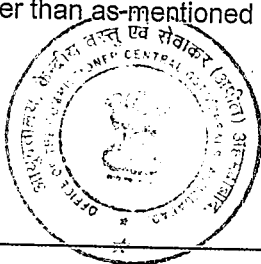
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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.

- (7) 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 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. Delhi Bombay Roadlines, H.O. No.8, Dhanraj Complex, Opp. Ambica Petrol Pump, Sarkhej Bavla Road, Sarkhej, Ahmedabad (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 10/ADC/GB/2022-2023 dated 18.05.2022 (in short '*impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad North, Ahmedabad (hereinafter referred to as '*the adjudicating authority*'). The appellant were holding Service Tax Registration No. AZBPS9033PST001.

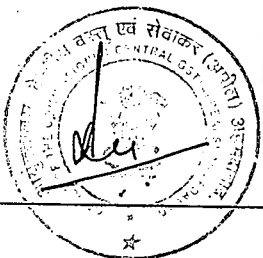
2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, it was noticed that the appellant had earned substantial income by providing taxable services. They had earned income of Rs. 5,88,30,643/- during the F.Y. 2014-15, which they reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total Amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" of the Income Tax Act, 1961, and same was less declared in the ST-3 Returns on which no tax was paid. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2014-15. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability was, therefore, quantified considering the differential income of Rs. 5,88,30,643/- as taxable income, based on the data provided by the Income Tax Department and the service tax liability of Rs. 72,71,467/- for the said period was accordingly worked out.

2.1 Thereafter, a Show Cause Notice (SCN) No. STC/15-40/OA/2020 dated 28.09.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 72,71,467/- not paid on the value of income received during the F.Y. 2014-15, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 76, Section 77 and under Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 72,71,467/- was confirmed alongwith interest. Penalty of Rs.10,000/- was imposed under Section 77 and penalty of Rs. 72,71,467/- was also imposed under Section 78.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the grounds elaborated below:-

- The appellant are having two service tax registrations. The proprietorship firm **Delhi Bombay Roadlines**, having S.T registration No. AZBPS9033PST001, was in operation during the F.Y. 2005-06 & F.Y. 2006-07 and thereafter business operation was closed. Whereas, the other proprietorship firm is **Delhi Bangalore Roadlines**, having S.T. registration No. AZBS9033PST003, which is in operation from F.Y. 2006-07 and is in operation till date. In the Tax Audit Report, the total turnover of Rs. 5,88,30,643/- has been shown under the proprietorship firm Delhi Bangalore Roadlines, whereas the Delhi Bombay Roadlines had no turnover during the F.Y.



2014-15. The SCN and the impugned order issued to Delhi Bombay Roadlines have considered the turnover of Delhi Bangalore Roadlines. As both the proprietorship firms are different entity, hence the demand is not sustainable. They placed reliance on following case laws in support of their contention.

- R.R. Paints- 2016 (55) GST 563 (Mum-CESTAT)
 - Nizam Sugar- 2008 (9) STR 604 (Tri-Bangalore)
 - Pals Micro Systems Ltd- 2007 (6) STR (Tri-Bang)
 - CPC(P) Ltd – 2007(7) STR 191 (Tri-Chennai)
- Any service in relation to transport of goods by road when provided by Goods Transport Agency then service tax is to be payable by recipient of services and there is no liability to pay service tax on provider of service. In terms of Notification No. 30/2012-ST dated 20.06.2012, 100% liability is on the service recipient.
- The notice proposing demand for the period April-September, 2014 is barred by limitation as the same was issued after the relevant date. The due date to file ST-3 Returns for April-September, 2014 is 17.10.2014 and the SCN should have been issued by 16.10.2014, whereas the notice was issued on 28.09.2020, hence is time barred.
- In terms of Notification No. 26/2012-ST dated 20.06.2012, the service tax is to be calculated on 25% of the value and the balance 75% of the value is abated/exempted on which no tax is payable. However, the tax was worked out on 12.36% instead of 3.09%.

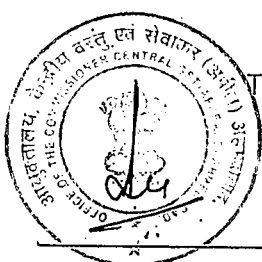
4. Personal hearing in the matter was held on 29.03.2023. Shri Meet Jadawala, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submission made in the appeal memorandum. He also stated that he would submit a paper book as additional written submission containing relevant documents.

4.1 The appellant vide letter dated 05.04.2023, as additional submissions, submitted copies of sales register of April to September, 2014 & October to March, 2015 (to establish that the service demand on the turnover of Rs. 2,63,13,854/- pertaining to April to September, 2014 is time barred); Summary of services provided to Body Corporate, Partnership Firm and Proprietorship Firm to establish the quantum of service tax payable by recipient of service and not by appellant; sample copies of invoices alongwith lorry receipt / consignment note; copy of Form –ST-3 return of Delhi Bangalore Roadlines. As the turnover of Delhi Bombay Roadlines is nil, the same is not submitted.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum, additional submissions as well as the submissions made at the time of personal hearing. The issue to be decided in the present case is as to whether;

- a) the demand for the period April to September, 2014 is time barred?
- b) the service tax demand of Rs 72,71,467/- confirmed alongwith interest and penalties in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise?

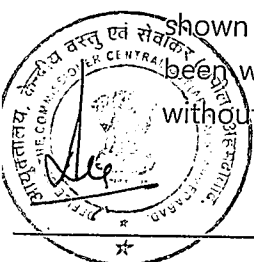
The demand pertains to the period F.Y. 2014-15.



6. Firstly, I will examine whether the demand pertaining to period April, 2014 to September, 2014 is time barred or otherwise? The appellant have claimed that the due date of filing the return for the said period was 17.10.2019 and, therefore, the notice issued on 28.09.2020 is time barred as the same should have been issued on or before 16.10.2019. It is observed that CBEC vide Order No. 02/2014-ST dated 24.10.2014 extended the date of filing of ST-3 Returns from 25th October, 2014 to 14th November, 2014 due to natural calamities in some parts of India. The appellant is registered with the department but it seems that they have not filed the ST-3 Returns for the F.Y. 2014-15. The SCN as well as the impugned order mentions that the ST-3 Return is not available. The appellant have also stated that due to nil turnovers during the said period, they have not submitted the ST-3 returns. As the return for the period (April 2014 to September, 2014) was not filed, I find that in terms of Section 73(6), where no return is filed, the relevant date shall be the due date to file such return which in this case is 14.11.2014. So, considering the due date of filing of returns, the demand notice for the period (April 2014 to September, 2014) should have been issued on or before 13.11.2019. However, the demand notice for the period (April, 2014 to September, 2014) was issued invoking extended period of limitation on 28.09.2020, i.e. beyond the period of limitation, which ends on 13th November, 2019. Thus, I agree with the contention of the appellant that even if the clause of suppression is invoked, the demand for April, 2014 to September, 2014 is time barred, in terms of the proviso to Section 73(1) of the Finance Act, 1994.

6.1 Now coming to the demand pertaining to period from October, 2014 to March, 2015, the appellant have vigorously contested the demand on the sole ground that the demand notice issued to M/s. Delhi Bombay Roadlines has been issued considering the turnover of M/s. Delhi Bangalore Roadlines, which is a different entity and holds a separate S.T. registration No. AZBS9033PST003. They had before the adjudicating authority submitted documents like Sample Ledger, invoice copies, IT Returns, ST-2 pertaining to M/s. Delhi Bangalore Roadlines. The adjudicating authority has observed that these documents were not relevant to the case as were pertaining to M/s. Delhi Bangalore Roadlines. It was also observed that the Service Tax Registration No. AZBPS9033PST001 of M/s. Delhi Bombay Roadlines was active and was not surrendered by the appellant. The appellant, however, in their additional submission have stated that M/s. Delhi Bombay Roadlines has closed their business operation since F.Y 2006-07 and has not made any turnover since then. If that being the case, it is not clear why 'Nil' return was not filed for the disputed period when the registration certificate was active and not surrendered by the appellant.

6.2 However, on going through the Profit & Loss Account of M/s. Delhi Bangalore Roadlines, as submitted by the appellant, I find that the differential value of Rs. 58,830,643/- arrived in the SCN issued to M/s. Delhi Bombay Roadlines is actually reflected in the Balance Sheet of M/s. Delhi Bangalore Roadlines for the F.Y. 2014-15. Thus, to that extent I find merit in the contention of the appellant that the demand to M/s. Delhi Bombay Roadlines has been raised considering the turnover of M/s. Delhi Bangalore Roadlines. Further, it is also not clear when the ST-3 return of M/s. Delhi Bombay Roadlines was not available with the department, then how the differential value not shown in the ST-3 return has been arrived at. Thus, it appears that the entire demand has been worked out based on the income data provided by the by Income Tax Department without verifying the factual details.



6.3 Board, vide Instruction dated 26-10-2021, has specifically instructed the field formations that while analysing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. It was also instructed that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns. The show cause notices based on the difference in ITR-TDS data and service tax returns should be issued only after proper verification of facts. In the instant case, I find that the entire demand has been raised on the basis of the sales of the services under Sales/Gross Receipts from services (Value of ITR) of a different firm, which in no way corroborate the allegation that the appellant has not paid service tax, which actually is the income of a different proprietorship firm M/s. Delhi Bangalore Roadlines.

6.4 When the appellant before the adjudicating authority has submitted the documents to establish their claim that the demand has been raised on turnover of a different firm, then the burden of proof would be shifted to the Department to controvert otherwise, which I find was not done by the adjudicating authority. It is a trite law that the burden of proof of establishing the levy of tax lies on the revenue authorities and without discharging such onus, no recovery of tax could sustain. This finding is support by the judgment of Hon'ble Supreme Court in *Cooperative Company Ltd. v. Commissioner of Trade Tax, U.P.* [(2007) 4 SCC 480], wherein it has been held that burden of proof of establishing the levy of tax lies on the revenue authorities.

6.5 In view of above discussion, I set-aside the demand for the period (April, 2014 to September, 2014) on limitation. Further, I also set-aside the demand pertaining to the period from October, 2014 to March, 2015, alongwith interest and penalty.

7. Accordingly, I allow the appeal preferred by the appellant by setting aside the impugned order.

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

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

Attested

Rekha A. Nair
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

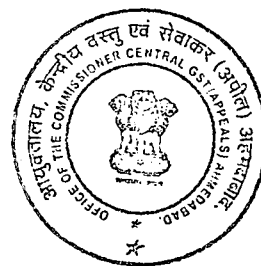
By RPAD/SPEED POST

To,
M/s. Delhi Bombay Roadlines,

Aruna
21st April,
(अखिलेश कुमार) 2023..

आयुक्त(अपील्स)

Date: 21.4.2023



Appellant

H.O. No.8, Dhanraj Complex,
Opp. Ambica Petrol Pump,
Sarkhej Bavla Road, Sarkhej,
Ahmedabad

The Additional Commissioner,
Central Tax, CGST & Central Excise,
Ahmedabad North,
Ahmedabad

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
4. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on
the website.
- ✓ 5. Guard File.

