



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- टेलिफैक्स 07926305136



DIN: 20230864SW000000D204

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1540/2023-APPEAL / 15804-48-08
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-81/2023-24
 दिनांक Date : 21-08-2023 जारी करने की तारीख Date of Issue 21.08.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 360/AC/DEMAND/22-23 दिनांक: 27.12.2022 , issued by The Assistant Commissioner, CGST, Division-I, Ahmedabad North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Govindbhai Ramanbhai Shrimali, E-240, Prabhakar Tenament, G.D. High School Road, Saijpur Bogha, Ahmedabad - 382345.

2. Respondent

The Assistant Commissioner, CGST, Division-i, Ahmedabad North Ground Floor, Jivabhai Mansion, Ashram Road, 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 :

(1) 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 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 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 ईए-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 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 पढ़ी 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.

- (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) -

- (Section) खंड 11D के तहत निर्धारित राशि;
- लिया गलत सेनवैट क्रेडिट की राशि;
- 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.

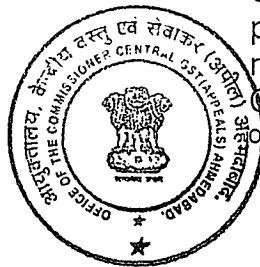
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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."



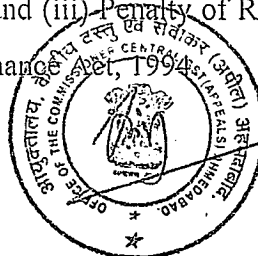
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Govindbhai Ramanbhai Shrimali, E 240, Prabhakar Tenament, G D High School Road, Saijpur Bogha, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. 360/AC/Demand/22-23 dated 27.12.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division I, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. CBTPS4493R. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that the appellant had earned an income of Rs. 28,44,440/- during the FY 2015-16, which was reflected under the heads "Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of relevant documents for assessment for the said period. However, the appellant had not responded to the letters issued by the department.

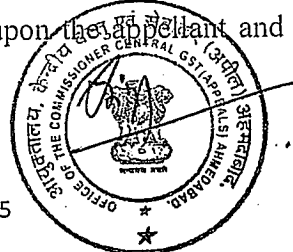
2.1 Subsequently, the appellant was issued a Show Cause Notice No. AR-III/Goviadbhai/ST/Un-Reg/2015-16 dated 09.06.2021 demanding Service Tax amounting to Rs. 4,12,438/- for the period FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(a), Section 77(1)(c), Section 77(2) and Section 78 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2016-17 & FY 2017-18 (up to Jun-17).

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 4,12,438/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16. Further, (i) Penalty of Rs. 4,12,438/- was imposed on the appellant under Section 78 of the Finance Act, 1994. (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) and Section 77(1)(c) of the Finance Act, 1994; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994.



3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

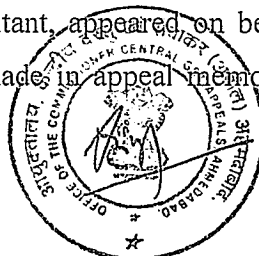
- The appellants are engaged in stitching of ready-made garments of their principals on job-work basis. The principal supplies fabrics to the appellants and the appellants cut the fabrics as per the requirement and stitch the same to make readymade garments. In short the activity carried out by the appellants is conversion of fabrics to ready-made garments on job-work basis. Sample copies of the invoices raised by the appellants on their principal for such job-work activity are submitted along with appeal memorandum.
- In terms of Section 66B of the Finance Act, service tax is leviable on the value of all services, other than those services specified in the negative list. Thus, the services specified in the negative list under Section 66D of the Finance Act are not leviable to service tax. The activity undertaken by the appellants is not liable to service tax in as much as the same is covered under the negative list of services as specified in Section 66D(f) of the Finance Act.
- The process of conversion of fabrics to ready-made garments amounts to manufacture as commercially different goods are brought into existence and such goods are known differently in the trade parlance. Further, the classification of fabrics is covered under Chapter Nos. 52, 54 and 55 of the First Schedule to the Central Excise Tariff Act whereas ready-made garments are covered under Chapter No. 62 of the First Schedule to the Central Excise Tariff Act. Thus, there is a distinct change in the nature of the goods i.e. fabrics and ready-made garments, the goods are known differently in the trade and the process of stitching brings into existence a distinct commercial commodity. Thus, the process of conversion of fabrics to ready-made garments undisputedly amounts to manufacture. Therefore, the activity undertaken by the appellants is not liable to service tax in as much as the same is covered under the negative list of services as specified in Section 66D(f) of the Finance Act.
- The appellant were not received any Show Cause Notice whatsoever from the department till date. Further, the impugned order mentions that the appellant did not attend the personal hearing granted on 12.12.2022, 19.12.2022 and 26.12.2022, however, the appellant have not received any of the above said letters.
- The impugned order is in violation of the principles of natural justice in as much as no Show Cause Notice has been served upon the appellant and also no opportunity for



personal hearing has been granted. Even if it is assumed for the sake of argument that personal hearing was scheduled on 12.12.2022, 19.12.2022 and 26.12.2022, as mentioned at para 18 of the impugned order, the adjudicating authority ought to have granted one more date of personal hearing in as much as Section 33A of the Central Excise Act, as made applicable to Finance Act, 1994 by virtue of Section 83, specifies that three adjournments are to be granted during the proceeding. The effective meaning of such statute is that the number of occasions granting personal hearing should be four and not three. The appellants crave leave to rely on the judgment in the case of M/s. Regent Overseas Pvt. Ltd. reported at 2017 (6) GSTL 15 (Guj) {Exhibit C}.

- Penalty under Section 78 of the Finance Act is leviable only in cases where service tax is not paid by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax. In the instant case, the appellant were not liable to pay service tax and therefore the provisions of Section 78 of the Finance Act will not be applicable to the facts of the present case.
- Penalty under Section 77(1)(a) of the Finance Act is imposable in cases where a person who is liable to pay service tax fails to obtain registration. In this case, the appellant were not liable to pay service tax and as such were not required to obtain registration. Resultantly, the provisions of Section 77(1)(a) of the Finance Act will not be applicable to the facts of the present case.
- Penalty under Section 77(1)(c) of the Finance Act is imposable in cases where a person fails to furnish information, produce documents or does not appear against a summons. In this case, the appellant were never called to furnish information, produce documents or remain present against a summons and as such the provisions of Section 77(1)(c) of the Finance Act will not be applicable to the facts of the present case.
- Interest under Section 75 of the Finance Act is chargeable only in cases where the service tax has not been paid within the stipulated time frame. In this case, the appellant are not liable to pay service tax and as such the question of payment of interest does not arise at all.

4. Personal hearing in the case was held on 11.08.2023. Shri Ashish Kumar Jain, Consultant and Shri John F. Christian, Consultant, appeared on behalf of the appellant for personal hearing and reiterated submissions made in appeal memorandum. They submitted



that the appellant is engaged in the job work of conversion of fabrics to readymade garments. Sample invoices are enclosed. They submitted that the said activity during the relevant year was in the negative list under Section 66D(f) of the Finance Act, 1994. Even, in the subsequent years, the same was in the exempted list under the Notification No. 25/2012-ST. They undertook to submit a copy of job work ledger and Form 26AS within a week. They requested to set aside the impugned order, which was passed ex-parte, merely on the basis of income tax data, without any verification.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2015-16.

6. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 based on the Income Tax Returns filed by the appellant. Except for the value of "Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

"It was further reiterated 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.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."



6.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a valid ground for raising of demand of service tax

7. I find that the main contention of the appellant is that they are engaged in stitching of ready-made garments of their principals on job-work basis and the activity undertaken by the appellants is not liable to service tax as the same is covered under the negative list of services as specified in Section 66D(f) of the Finance Act, 1994.

7.1 It is also observed that the adjudicating authority has passed the impugned order ex-parte.

8. For ease of reference, I hereby produce the relevant text of the Negative List as per Section 66(D)(f) of the Finance Act, 1994, which reads as under:

Negative List as per Section 66(D)(f) of the Finance Act, 1994

"Section 66(D) Negative list of services.—

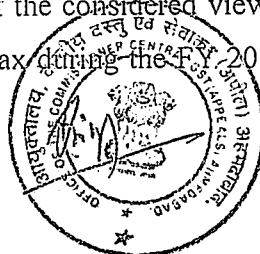
The negative list shall comprise of the following services, namely :—

(a)

(f) services by way of carrying out any process amounting to manufacture or production of goods"

9. On scrutiny of the documents viz. copy of income ledger and sample invoices issued by the appellant for the FY 2015-16, I find that the appellant engaged in job work in relation to stitching of ready-made garments of their principals on job-work basis. The process of conversion of fabrics to ready-made garments termed as amounts to manufacture as there is a distinct change in the nature of the goods i.e. fabrics and ready-made garments, the goods are known differently in the trade and the process of stitching brings into existence a distinct commercial commodity. Therefore, the activity undertaken by the appellants is not liable to service tax in as much as the same is covered under the negative list of services as specified in Section 66D(f) of the Finance Act. Therefore, the job work carried out by the appellant was falls under the Negative List of Services as defined under Section 66D(f) of the Finance Act, 1994 and the appellant not required to pay any service tax on the income received by them during the FY 2015-16.

10. In view of the above discussion, I am of the considered view that the activity carried out by the appellant not liable to pay Service Tax during the FY 2015-16. Since the demand

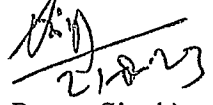


of Service Tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.

11. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of job work income received by the appellant during the FY 2015-16, is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.


12. अपील कर्ता 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.


(Shiv Pratap Singh)
Commissioner (Appeals)

Attested

Date : 21.08.2023


(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad



Appellant

By RPAD / SPEED POST

To,
M/s. Govindbhai Ramanbhai Shrimali,
E 240, Prabhakar Tenament,
G D High School Road, Saijpur Bogha,
Ahmedabad

The Assistant Commissioner,
CGST, Division-I,
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division I, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

- ✓ 5) Guard File
- 6) PA file



