

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015

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सत्यमेव जयते



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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1702/2024 / S8SS - 59
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-33/2024-25 dated 20.05.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	29.05.2024
(ङ)	Arising out of Order-In-Original No. GST-06/D-VI/O&A/654/CONCENTTO/AM/2022-23 dated 24.2.2023 passed by The Assistant Commissioner, CGST Division-VI, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Concentto Labs 605, City Centre, Opp. Shukan mall, Science City Road, Sola Ahmedabad-380060

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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:-

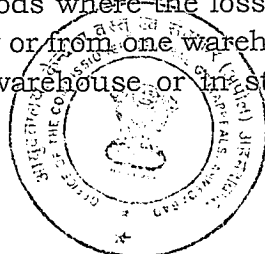
Revision application to Government of India:

(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 :-

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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।

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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

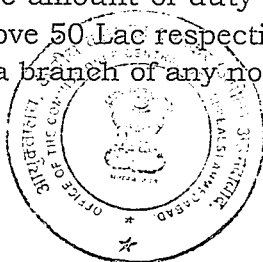
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलों 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।

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 above para.

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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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) एके प्रति अपीलो के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

(13) खंड (Section) 11D के तहत निर्धारित राशि;

(14) लिया गलत सेनवैट क्रेडिट की राशि;

(15) 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:

(xiii) amount determined under Section 11 D;

(xiv) amount of erroneous Cenvat Credit taken;

(xv) amount payable under Rule 6 of the Cenvat Credit Rules.

(6) (i) 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. Concetto Labs, 605, City Centre, Opposite Shukan Mall, Science City Road, Ahmedabad-3800061 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No.GST-06/D-VI/O&A/654/CONCETTO/AM/2022-23 dated 24.02.2023 (referred in short as '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant is holding PAN No. AALFC2899Q.

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. 2016-17, it was noticed that the appellant has shown substantial income from sale of services in ITR/P&L account and on which service tax was not paid. The appellant did not obtain service tax registration nor did they file any ST-3 returns for the said period. They were therefore asked to submit the documents in support of such non-payment, which they failed to submit. Therefore, the income of Rs.23,56,807/- reflected in the ITR/P&L account was considered as a taxable income and tax liability of Rs.3,53,521/- was computed for the F.Y. 2016-17. The details of the income are furnished below;

Table-A

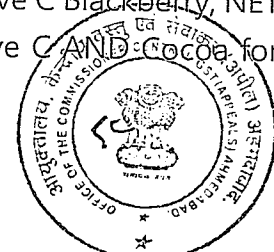
F.Y.	Value in ITR	S.Tax	Service tax payable
2016-17	23,56,807/-	15%	3,53,521/-

2.1 A Show Cause Notice (SCN) No. GST-06/04-1483/CONCETTO/2021-22/5270 dated 18.10.2021 was issued to the appellant proposing recovery of service tax amount of Rs.3,53,521/-not paid on the differential income received during the F.Y. 2016-17 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Late fees under Section 70, penalties under Section 77(1) and Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.3,53,521/- was confirmed alongwith interest. Late fees of Rs.40,000/-, Penalty of Rs.10,000/- under Section 77(1) and penalty of Rs.3,53,521/-was also imposed under Section 78.

4. 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 being entirely an export-oriented service unit has not obtained registration as service provider. They are engaged in the business of web and mobile app development for past many years and are providing IT solutions through web and mobile app development for many operating systems like Android, IOS (for Apple), Windows, Kotlin, Swift 3, Objective C Blackberry, NET, Win Forms, VB.NET, C+++, Java and J2EE Solutions, Objective C AND COCOA for past 10 years or so.



- The impugned Order-in-Original passed by the Ld. Adjudicating Officer on the ground of violation of Principle of Natural Justice- "Audi Alteram Partem" i.e., "Right of Fair Hearing-Justice should not only be done but manifestly be seen to be done". Ld. Adjudicating officer grossly erred in law while passed the impugned order ex-parte, without taking into consideration the detailed reply to the show-cause notice filed by the appellant on 22.11.2021.
- The appellant also challenges the impugned order on the ground of non-service of personal hearing notices dated 19.01.2023, 07.02.2023, 15.02.2023 & 21.02.2023 and therefore, the Ld. Adjudicating officer further grievously erred in law by denying the assessee a right of hearing, thereby again violating Principle of Natural Justice- "Audi Alteram Partem" i.e., "no one should be condemned unheard", being a settled law of the land, in view of landmark rulings of Hon'ble Apex court.
- Further Ld. Adjudicating officer further erred in law and without jurisdiction by invoking extended period of Limitation under proviso to section 73 (1) of the Finance Act; since the Appellant has not suppressed any value of taxable services received or provided in situations enumerated in proviso to section 73(1) and therefore, Ld adjudicating authority's invocation of extended period of limitation is legally untenable.
- Even on facts while taxing the entire services provided by the appellant being "Export of Service" within the meaning of Section 66C of the Finance Act read with Rule 6A of Service Tax Rules, 1994 and consequentially exempt from levy of Service Tax under Chapter V of the Finance Act, 1994.
- Interest on such service tax as per para (i) above at appropriate rate prescribed under the provisions of Section 75 of the Finance Act, 1994, as amended should not be levied.
- Furthermore, when there is no suppression of facts or willful- misstatement made by appellant and accordingly, the imposition of penalty of Rs.3,53,521/- under Section 78 for the period of default on the appellant is unwarranted.
- Penalty under Section 77 amounting to 10,000/- of the Finance Act, 1994 as amended should not have been imposed.

4.1 In their additional submissions dated 14.05.2024, they reiterated the above grounds of appeal and submitted copies of ITR, Business Profile of the firm, Ledger Accounts of Professional Income, copies of invoices showing export of service, e-mails received from Indus Ind Bank as a proof of foreign remittance received, Current Bank Account statement, Form 26AS, and copies of following case-laws and other case laws listed in their synopsis.

- Dharmopal Satyapal Vs CCE, (SC) 2015 ITL (ST) 209
- UOI Vs Tulsiram Patel- AIR 1985 SC 1416
- Aban Lyod Chiles Offshore Ltd- 2006(200) ELT 370 (SC)



o Z.R. Enterprise -2024 (5) TMI 202-Guj High Court

5. Personal hearing in the appeal matter was held on 15.05.2024 through virtual mode. Shri Bhavik D. Khandeliya, Chartered Accountant appeared for personal hearing on behalf of the appellant. He informed that he has made additional submissions. Further he requested for condonation of delay as the client is doing export of service (development of web apps) so not liable to pay service tax.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing and the documents available on record. The issue to be decided in the present appeal is whether the service tax demand amounting to **Rs.3,53,521/-** confirmed alongwith interest, and penalties vide 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. 2016-17**.

6.1 On going through the appeal memorandum, it is noticed that the impugned order was issued on 24.02.2023 and the appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 06.09.2023. However, the appellant has claimed that they received the impugned Order only on 07.08.2023. They filed a Miscellaneous Application seeking condonation of delay stating that they were not aware of the impugned order and realized that the matter was decided only after receiving recovery letter from Range Superintendent. They therefore vide letter dated 03.08.2023 requested the Division office to provide a copy of impugned order. The same was delivered personally on 07.08.2023. A copy of acknowledgment was also attached as proof alongwith the Affidavit dated 04.09.2023. As the impugned order was delivered on 07.08.2023 and appeal was filed on 06.09.2023, I do not find any delay in filing the appeal.

7. Coming to the merit of the case, I find that the appellant is engaged in Mobile Application Development, Web Development, Creative Services (Website designing, CSS & HTML, Logo & Corporate Identity), Full Stack Development (Angular JS Development, Node JS Development). In their P&L Account they have shown Rs.23,56,807/- as Professional Fees Income which is also tallying with the Ledger of Professional Fees. As per the ledger the amount was received from IndusInd Bank Ltd. Invoices issued to service recipients shows that these recipients are located outside India territory, mails from IndusInd Bank Ltd also shows inward remittance received in US Dollars for the F.Y. 2016-17. Further, the statement of Account with IndusInd Bank Ltd reflect each and every deposits/receipts which tallies with the entries of the Ledger of Professional Fees. Also, in Form-26AS no transaction is recorded for TDS. All these facts clearly indicate that the appellant has been rendering services to recipient who are located outside the taxable territory.

7.1 The appellant claim that in terms of Export of Services, Rules 2005, they are not liable to pay taxes as the services were exported. It is observed that the 'Place of Provision of Services Rules', 2012 (POPS) have been framed in the exercise of powers conferred by sub-section (1) of Section 66C of the Finance Act,1994, to determine the taxing jurisdiction for a service in the context of import or export of services. These rules have



replaced the 'Export of Services, Rules, 2005' and 'Taxation of Services (Provided from outside India and received in India) Rules, 2006, therefore to examine the case on hand, POPS Rules shall be relevant.

7.2 In order to examine the issue in proper perspective, Rule 3 & 4 of POPS Rules, 2012 are reproduced below;

RULE 3. Place of provision generally — *The place of provision of a service shall be the location of the recipient of service:*

Provided that in case of services other than online information and database access or retrieval services, where] the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

RULE 4. Place of provision of performance based services. — *The place of provision of following services shall be the location where the services are actually performed, namely :-*

(a) *services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service :*

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

Provided further that this clause shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair;]

(b) *services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.*

7.3 In terms of Rule 3 above, generally the place of provision of service shall be the location of the recipient of service. However, where the location of the service receiver is not available, in all such services other than the Online Information and Database Access or Retrieval Services (OIDAR), the place of provision of service shall be the location of the service provider.

7.4 Para 5.9.5 of the Education Guide on Taxation of Service, in respect of Rule 3 of POPS Rules, 2012, clarifies that;

5.9.5 What are "Online information and database access or retrieval services"?

"Online information and database access or retrieval services are services in relation to online information and database access or retrieval of both, in electronic form through computer network, in any manner. Thus, these services are essentially delivered over the



internet or an electronic network which relies on the internet or similar network for their provision. The other important feature of these services is that they are completely automated, and require minimal human intervention.

Examples of such services are:-

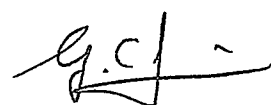
- i) online information generated automatically by software from specific data input by the customer, such as web-based services providing trade statistics, legal and financial data, matrimonial services, social networking sites;*
- ii) digitized content of books and other electronic publications, subscription of online newspapers and journals, online news, flight information and weather reports;*
- iii) Web-based services providing access or download of digital content.*

7.5 In the instant case, the appellant is providing Mobile Application Development, Web Development, Creative Services (Website designing, CSS & HTML, Logo & Corporate Identity), Full Stack Development (Angular JS Development, Node JS Development, which I find are squarely covered under Online Database Access or Retrieval Services. These services were rendered to clients who were located outside the taxable territory. So, I find that the proviso to Rules 3 of the POPS Rules shall not be applicable here as exclusion is provided to OIDAR services. In the present case, the appellant is located in taxable territory and the service recipient is located outside the taxable territory of India. Thus, in terms of Rule 3 of the POPS Rules, 2012, the provision of service shall be treated at the place of service recipient which in this case is outside India. In such scenario, the service shall be treated as export of service and thus, I find that the appellant shall not be liable to pay any taxes on export of services.

7.6 The essence of indirect taxation is that a service should be taxed in the jurisdiction of its consumption. In terms of this principle, exports are not charged to tax, as the consumption is elsewhere. In terms of Rule 3 of the POPS Rules, 2012, the place of provision of service shall be the location of the recipient of service, which is outside the taxable territory. As is evident from the fact that the consideration received was in convertible foreign exchange. In view of the settled law and above discussion, I find that the demand is not legally sustainable. When the demand is not legally sustainable, question of interest and penalty does not arise.

8. In view of the above, I set-aside the impugned order and allow the appeal filed by the appellant.

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

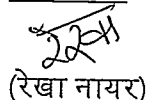


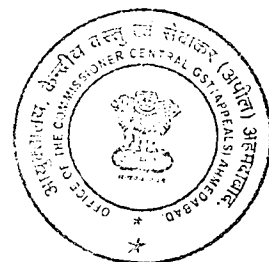
(ज्ञानचंद जैन)

आयुक्त(अपील्स)

Date: 20.05.2024

Attested


(रेखा नायर)



अधीक्षक (अपील्स)
केंद्रीय जी. एस. टी, अहमदाबाद

By RPAD/SPEED POST

To,

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605, City Centre, Opp Shukan Mall,
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Ahmedabad-3800061

- **Appellant**

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 (System), CGST, Appeals, Ahmedabad.
(For uploading the OIA)

~~4.~~ Guard File.

