



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad
Phone: 079-26305065 - Fax: 079-26305136

E-Mail : commrappl1-cexamd@nic.in



आज़ादी का
अमृत महोत्सव

By Regd. Post

DIN NO. : 20221064SW0000111D20

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/116-118,37,60/2022 & / 3988-93 GAPPL/ADC/GSTP/193/2021
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-001-APP-125 to 130/2022-23 and 11.10.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	12.10.2022
(ङ)	Arising out of Order-In-Original No. ZA2404210309361 dated 27.04.2021, ZQ2405210506639 dt 28.05.2021, ZY2406210267230 dt 22.06.2021, ZU2410210146323 dt 11.10.2021, ZN2408210265465 dt 19.08.2021 & ZT2407210244275 dt 19.07.2021 issued by The AC/DC, Division - VI, Ahmedabad South Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	The Assistant Commissioner, Central GST, Division - VI, Ahmedabad South Commissionerate

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant

ORDER IN APPEAL

Brief Facts of the Case :

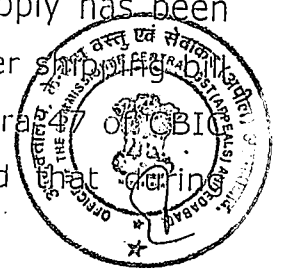
The Assistant Commissioner, CGST, Division VI, Ahmedabad South (hereinafter referred to as the *appellant*) has filed the following appeals offline in terms of Advisory No.9/2020 dated 24-9-2020 issued by the Additional Director General (Systems), Bengaluru against following Orders (hereinafter referred to as the *impugned orders*) passed by the Assistant / Deputy Commissioner, CGST, Division VI, Ahmedabad South (hereinafter referred to as the *adjudicating authority*) sanctioning refunds to M/s. Scarlet Prints LLP, 21, 22, National Chambers, Nr. City Gold Cinema, Ashram Road, Ahmedabad - 380 009 (hereinafter referred to as the *respondent*).

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date (<i>'impugned orders'</i>)
GAPPL/ADC/GSTD/193/2021- APPEAL Dated 25.10.2021	23/2021-22 Dated 21.10.2021	ZW2404210309361 Dated 27.04.2021
GAPPL/ADC/GSTD/37/2022- APPEAL Dated 26.11.2021	30/2021-22 Dated 17.11.2021	ZQ2405210506639 Dated 28.05.2021
GAPPL/ADC/GSTD/60/2022- APPEAL Dated 20.12.2021	36/2021-22 Dated 03.12.2021	ZY2406210267230 Dated 22.06.2021
GAPPL/ADC/GSTD/118/2022- APPEAL Dated 07.01.2022	39/2021-22 Dated 15.12.2021	ZU2410210146323 Dated 11.10.2021
GAPPL/ADC/GSTD/117/2022- APPEAL Dated 07.01.2022	38/2021-22 Dated 15.12.2021	ZN2408210265465 Dated 19.08.2021
GAPPL/ADC/GSTD/116/2022- APPEAL Dated 07.01.2022	37/2021-22 Dated 15.12.2021	ZT2407210244275 Dated 19.07.2021

2. Briefly stated the fact of the case is that the respondent registered under GSTIN No.24ACPF52687G1Z0 has filed following refund claims for refund of ITC accumulated due to export without payment of tax.

Sr. No.	Period	Amount of Refund claims
1	March - 2021	Rs.1,16,88,241/-
2	April - 2021	Rs.1,07,79,167/-
3	May - 2021	Rs.1,01,91,983/-
4	August - 2021	Rs.85,14,522/-
5	July - 2021	Rs.1,17,05,666/-
6	June - 2021	Rs.1,16,93,058/-

After verification the *adjudicating authority* sanctioned refund to the *respondent*. During review of refund claims it was observed that higher amount of refund has been sanctioned to the *respondent* than what is actually admissible to them in accordance with Rule 89 (4) of CGST Rules, 2017 read with Section 54 (3) of CGST Act, 2017. It was observed that turnover of zero rated supply has been taken which is the invoice value of goods exported, whereas as per FOB value the turnover of zero rated supply was lower. As per para 47 of Circular No.125/44/2019-GST dated 18-11-2019 it was clarified



processing of refund claim; the value of goods declared in GST invoice and the value in the corresponding shipping bill/bill of export should be examined and the lower of the two values should be taken into account while calculating the eligible amount of refund. Thus taking the lower value of goods exports and applying the formula for refund of export without payment of tax the admissible refund comes as per below table instead of refund sanctioned by the adjudicating authority to the respondent. Thus there is excess sanction of refund to the respondent which is required to be recovered along with interest. The details are as under :

(Amount in Rs.)

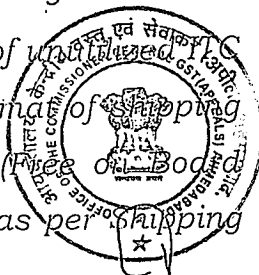
Period of Refund Period	Turnover of Zero rated supply of goods (Invoice Value) (1)	Turnover of Zero rated supply of goods (FOB Value) (2)	Net ITC (3)	Adjusted Total Turnover (4)	Refund Amount sanctioned (Invoice Value) (1*3/4)	Refund Amount admissible (FOB Value) (2*3/4)	Excess Refund amount sanctioned
March'21	63078940	57344494	11688241	63078940	11688241	10625674	1062567
April'21	67968901	61789897	10779167	67968901	10779167	9799241	979926
May'21	73433272	66757516	10191983	73433272	10191983	9265439	926544
August'21	60167424	54697648	8514522	60167424	8514522	7740473	774049
July'21	69988631	63625184	11705666	69988631	11705666	10641373	1064293
June'21	66489418	60444928	11693058	66489418	11693058	10630053	1063005

3. In view of above the *appellant* filed the present six appeals on following grounds:

The *adjudicating authority* failed to consider the lower value of zero rated turnover while granting the refund claim of ITC accumulated due to export of goods without payment of tax as required under Circular NO.125/44/2019-GST dated 18-11-2019 which has resulted in excess payment of refund to the respondent as mentioned in the above table. Therefore, the *appellant* prayed to set aside the *impugned orders* wherein he has erroneously sanctioned refund of Rs.1,16,88,241/-, Rs.1,07,79,167/-, Rs.1,01,91,983/-, Rs.85,14,522/-, Rs.1,17,05,666/- & Rs.1,16,93,058/- instead of Rs.1,06,25,674/-, Rs.97,99,241/-, Rs.92,65,439/-, Rs.77,40,473/-, Rs.1,06,41,373/- & Rs.1,06,30,053/- respectively under Section 54 (3) of CGST Act, 2017; to pass an order directing the original authority to demand and recover the amount erroneously refund of Rs.10,62,567/-, Rs.9,79,926/-, Rs.9,26,544/-, Rs.7,74,049/-, Rs.10,64,293/- and Rs.10,63,005/- with interest and to pass any other orders as deem fit in the interest of justice.

4. The respondent in the present matter has submitted the written submission on 14.07.2022 as under :

The respondent are engaged in business of manufacturing and sale of printed canvas duly registered under CGST Act, 2017 ; that they export goods under LUT/Bond i.e. without payment of tax and thereafter claiming refund of amount attributable to exports ; that they export goods on CIF basis ; the formula of shipping bill as per Customs Regulations require mentioning of FOB Value (Free on Board value) of goods and freight charges separately in the shipping bills as per shipping



Bill and Bill of Export (Forms) Regulations, 2017 ; that the manner of claiming refund in respect of exports is provided in Rule 89(4) of the CGST Rules, 2017 ; the provisions for valuation of goods are contained in Section 15 of the CGST Act, 2017.

The value of zero rated supply as declared in invoice is transaction value as per Section 15 of CGST Act, 2017 and the same transaction value reflects in the correspondent shipping bill and considering this transaction value they have calculated the amount of zero rated supply. Section 15 of the Act says that the value of supply of goods and services or both shall be the transaction value which is the price actually paid or payable for the said supply of goods or services. For all the invoices involved in the refund application the export is made at CIF value and not the FOB value. Also the price paid or payable by the foreign buyer is the entire CIF value and not only the FOB value. According to Section 15 the value of supply is the CIF value (i.e. transaction value which is the price actually paid or payable for the said supply of goods or services) and not the FOB value. Moreover they had calculated the value of turnover of zero rated supply of goods in accordance with Rule 89 (4) of CGST Rules, 2017. Hence referring to Rule 89 (4) one can clearly conclude that the Rule 89 (4) nowhere speaks about FOB value to be taken while calculating the turnover of zero rated supply of goods but it only refers to the terms value and term value in CGST Act, 2017 is the transaction value which is the price actually paid or payable as per Section 15 of CGST Act, 2017. The entire para 47 of Circular No.125/44/2019 clearly talks about the value recorded in GST invoice should be the transaction value as per Section 15 of CGST Act, 2017 and the same transaction value should have been declared in shipping bill as well. The correct interpretation of the last sentence of para 47 of above Circular is that where there is any difference between the transaction value of GST invoice and the transaction value of shipping bill the lower of the two transactions value should be taken into account while calculating the eligible amount of refund. Hence para 47 nowhere bifurcates between FOB and CIF value but rather it specifically mention that the GST invoice and shipping bill should show and match at transaction value and that where there is difference between the transaction value of GST invoice and the transaction value of shipping bill the lower of the two transaction value should be taken into account while calculating the eligible amount of refund. Thus the appellant has erred at taking into considering the entire para 47 of Circular above and due to that the limited reading of only the last sentence of para 47 of Circular the interpretation in the SCN comes to be ultra vires to Section 15 of CGST Act, 2017 and Rule 89 (4) of CGST Rules, 2017. Moreover, there is no difference between the transaction value of GST invoice and transaction value of shipping bill. The respondent has produced copies of shipping bills and GST invoices for reference. The respondent has also referred and relied upon following case law

1. Commissioner of Central Excise, Bolpur V/s. Ratan Melting and Wire Industries, reported in 2008(12) STR 416(SC)
2. J. K. Lakshmi Cement Limited V/s. Commercial Tax Officer, Raki, reported in 2018(14)GSTL 497(SC)

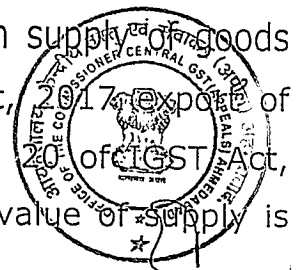


3. *Hyderabad Asbestos Cement Products Ltd. V/s. State of Andhra Pradesh reported at 24 STC 487 (SC)*
4. *Hindustan Sugar Mills Ltd. V/s. State of Rajasthan and Others reported at 43 S.T.C. 13 (S.C.)*
5. *UMC Technologies Pvt. Ltd. V/s. Food Corporation of India (2021) 2 SCC 551*
6. *J. K. Synthetics Ltd. V/s. Commercial Tax Officer (1994) 94 STC 422 (SC)*
7. *India Carbon Ltd. V/s. State of Assam 106 S.T.C. 460 (S.C.)*
8. *Rakesh Engineering Works V/s. State of Gujarat R.A. No. 101 of 1997 decided on 26.07.2006.*

5. Personal hearing was held on dated 10.08.2022 wherein Shri Jogender Gupta, authorized representative appeared on behalf of respondent on virtual mode. He stated that they have nothing more to add to their written submission till date.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the respondent and documents available on record. I find that the present appeals were filed to set aside the *impugned orders* on the ground that the *adjudicating authority* has sanctioned excess refund to the *respondent* and to order recovery of the same along with interest. The grounds in appeal is that the *respondent* has taken invoice value as turnover of zero rated supply of goods for arriving admissible refund whereas the turnover of zero rated supply of goods should be FOB value as per shipping bill which is the lower value, in terms of para 47 of Circular No.125/44/2019-GST dated 18.11.2019 and accordingly the admissible refund comes to less than the sanctioned amount resulting in excess sanction of refund to the respondent. The respondent *interalia* contended that as per Section 15 of CGST Act, 2017 the price actually paid or payable is the transaction value of goods ; that as per para 47 of Circular No.125/44/2019 the value recorded in GST invoice should be the transaction value as per Section 15 of CGST Act, 2017 ; that where there is any difference between the transaction value of GST invoice and the transaction value of shipping bill the lower of the two transactions value should be taken into account while calculating the eligible amount of refund and that in their case there is no difference between the transaction value of GST invoice and transaction value of shipping bill.

7. As per Section 15 of CGST Act, 2017 the value of taxable supply of goods is transaction value which is actually paid or payable and includes all related expenses, i.e. any amount charged by the supplier on supply of goods form part of transaction value. Under Section 7 of IGST Act, 2017, export of goods is considered as inter-state supply and as per Section 20 of CGST Act, 2017, the provisions of CGST Act, 2017 relating to time and value of supply is



transaction value of export goods and hence this value need to be taken towards turnover of zero rated supply of goods in the formula prescribed under Rule 89 (4) of CGST Rules, 2017. However, I find that CBIC in para. 47 of Circular No.18.11.2019 has clarified as under:

47. It has also been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero-rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are meant for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill / bill of export. During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be taken into account while calculating the eligible amount of refund.

8. The aforesaid Circular clearly clarify that in case of claim made for refund of unutilized ITC on account of export of goods where there is difference in value declared in tax invoice i.e. between transaction value under Section 15 of CGST Act, 2017 and export value declared in corresponding shipping bill, the lower of the two value should be taken into account while calculating the eligible amount of refund. The Circular further clarifies that in normal cases the transaction value (invoice value) should also be recorded in shipping bills but only in case of any difference in value declared in shipping bill with invoice value, the lower value should be taken for calculating the eligible amount of refund. Thus, the Circular envisage a situation where value of goods as per invoice was less than value as per shipping bill and vice versa. In the subject case the respondent has taken invoice value towards turnover of zero rated supply of goods whereas appellant has taken the stand that FOB value as per shipping bill which was lower than the invoice value needs to be taken towards turnover of zero rated supply of goods. The respondent further contended that in their case there is no difference in the transaction value as per invoices and transaction value as per shipping bill. Therefore, to confirm the veracity of contentions made by the appellant and respondent, I have verified the certain copies of invoices and shipping bills submitted by the respondent. On correlating the invoices with corresponding shipping bills, I do not find difference in transaction value as per invoice and transaction value as per shipping bill.



9. It further makes it clear that in the subject appeal lower value was taken considering the FOB value of goods only and without considering the freight and insurance amount. I find this method adopted by the appellant is not a correct method inasmuch as the freight and insurance charged in invoice also form part of transaction value in case of export of goods made at CIF. Therefore, freight and insurance charged in shipping bill also need to be taken into account for considering shipping bill value for the purpose of arriving lower value as per Circular. It is pertinent to mention that the Circular envisage to compare value as per invoice and value as per shipping bill and does not specify that only the FOB value as per shipping bill need to be compared with invoice value so as to adopt lower value among invoice and shipping bill. Accordingly, by taking into account the freight and insurance I find that shipping bill value is not lower than the invoice value.

10. I also refer para 4 of CBIC Circular NO.147/03/2021-GST dated 12-3-2021, wherein Board has given guidelines for calculation of adjusted total turnover in an identical issue as under :

4. *The manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules, 2017.*

4.1 *Doubts have been raised as to whether the restriction on turnover of zero-rated supply of goods to 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, imposed by amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dated 23.03.2020, would also apply for computation of "Adjusted Total Turnover" in the formula given under Rule 89 (4) of CGST Rules, 2017 for calculation of admissible refund amount.*

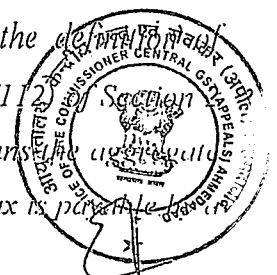
4.2 *Sub-rule (4) of Rule 89 prescribes the formula for computing the refund of unutilised ITC payable on account of zero-rated supplies made without payment of tax. The formula prescribed under Rule 89 (4) is reproduced below, as under:*

"Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover"

4.3 *Adjusted Total Turnover has been defined in clause (E) of sub-rule (4) of Rule 89 as under:*

"Adjusted Total Turnover" means the sum total of the value of- (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding- (i) the value of exempt supplies other than zero-rated supplies; and (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.'

4.4 *"Turnover in state or turnover in Union territory" as referred to in the definition of "Adjusted Total Turnover" in Rule 89 (4) has been defined under sub-section (112) of CGST Act 2017, as: "Turnover in State or turnover in Union territory" means the value of all taxable supplies (excluding the value of inward supplies on which tax is payable in*



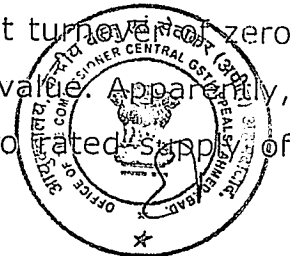
person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess”

4.5 From the examination of the above provisions, it is noticed that “Adjusted Total Turnover” includes “Turnover in a State or Union Territory”, as defined in Section 2(112) of CGST Act. As per Section 2(112), “Turnover in a State or Union Territory” includes turnover/ value of export/ zero-rated supplies of goods. The definition of “Turnover of zero-rated supply of goods” has been amended vide Notification No.16/2020-Central Tax dated 23.03.2020, as detailed above. In view of the above, it can be stated that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of “Turnover of zero-rated supply of goods”, need to be taken into consideration while calculating “turnover in a state or a union territory”, and accordingly, in “adjusted total turnover” for the purpose of sub-rule (4) of Rule 89. Thus, the restriction of 150% of the value of like goods domestically supplied, as applied in “turnover of zero-rated supply of goods”, would also apply to the value of “Adjusted Total Turnover” in Rule 89 (4) of the CGST Rules, 2017.

4.6 Accordingly, it is clarified that for the purpose of Rule 89(4), the value of export/ zero rated supply of goods to be included while calculating “adjusted total turnover” will be same as being determined as per the amended definition of “Turnover of zero-rated supply of goods” in the said sub-rule.

Applying the above clarification, the value of turnover of zero rated supply of goods taken towards turnover of zero rated supply of goods need to be taken as value of zero rated supply of goods in adjusted total turnover in the formula. In other words, in cases where there is only zero rated supply of goods, turnover value of zero rated supply of goods at numerator and turnover value of zero rated supply in total adjusted total turnover at denominator will be same.

11. I further find that as per definition of ‘adjusted total turnover’ defined in clause (E) of sub-rule (4) of Rule 89, adjusted total turnover includes value of all outward supplies of goods and services made during the relevant period including zero rated (export) supply of goods. Accordingly, in the formula prescribed under Rule 89 (4) of CGST Rules the value of zero rated turnover of goods comes at numerator as well as in total adjusted turnover at denominator. In the present appeal, the value of zero rated turnover was taken as FOB value as per shipping bill. However, the adjusted turnover is taken as per GSTR3B returns, which imply that turnover of zero rated supply in adjusted total turnover is taken as invoice value. Accordingly, this result in adopting two different values for same zero rated supply of



goods, which I find is factually wrong and not in consonance with statutory provisions. Therefore, I am of the considered view that the same value of zero rated supply of goods taken as turnover of zero rated supply of goods need to be taken in adjusted total turnover also. Accordingly, I find that the adjudicating authority has correctly sanctioned the refund claims to the respondent in the present matters. Therefore, I do not find any infirmity in the *impugned orders* passed by the *adjudicating authority* sanctioning refund claimed by the *respondent*.

12. In view of above, I do not find any merit or legality in the present appeals filed by the *appellant* to set aside the *impugned orders* and to order for recovery of excess refund on the grounds mentioned therein. Accordingly, I upheld the *impugned orders* and reject the appeals filed by the *appellant*.

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

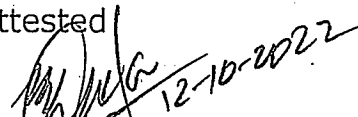
The appeals filed by the *appellant* stands disposed of in above terms.

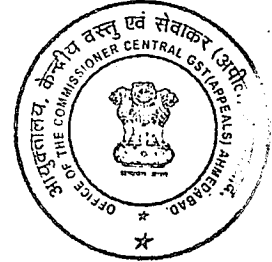

(Mihir Rayka)

Additional Commissioner (Appeals)

Date : 11.10.2022

Attested


(Dilip Jadav)
12-10-2022
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,
The Assistant Commissioner,
CGST, Division VI,
Ahmedabad South.

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals); Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) M/s. Scarlet Prints LLP, 21, 22, National Chambers, Nr. City Gold Cinema, Ashram Road, Ahmedabad - 380 009
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file



