



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

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टेलिफैक्स 07926305136



DIN- 20221064SW000021212D

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/183,185 & 314/2022 -APPEAL/4197 4283

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-137 to 139 /2022-23**

दिनांक Date : **20-10-2022** जारी करने की तारीख Date of Issue : **20-10-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZV2409210295422 DT. 22.09.2021, ZR2409210295344 DT. 22.09.2021 & ZU2409210295266 DT. 22.09.2021** issued by Assistant Commissioner, CGST, Division-VII, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
The Assistant Commissioner, Division-VII, Ahmedabad South

(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 व्यापक, विस्तृत और 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 may refer to the website www.cbic.gov.in .



ORDER IN APPEAL**Brief Facts of the Case :**

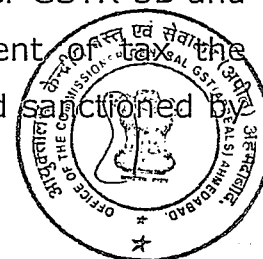
The Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the *appellant*) has filed the following appeals offline in terms of Advisory No.9/2020 dated 24-9-2020 issued by the Additional Director General (Systems), Bengaluru against following Orders (hereinafter referred to as the *impugned orders*) passed by the Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the *adjudicating authority*) sanctioning refunds to **M/s. Shivam Minerals and Allied Industries Pvt. Ltd.** (GSTN No. 24AAHCS9912R1ZL), A-411, Mondeal Heights, Near Wide Angle, S. G. Highway, Ahmedabad - 380 015 (hereinafter referred to as the *Respondent*).

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date ('impugned orders')
GAPPL/ADC/GSTD/183/2022-APPEAL Dated 04.03.2022	57/2021-22 Dated 15.02.2022	ZV2409210295422 Dated 22.09.2021
GAPPL/ADC/GSTD/185/2022-APPEAL Dated 04.03.2022	59/2021-22 Dated 15.02.2022	ZR2409210295344 Dated 22.09.2021
GAPPL/ADC/GSTD/314/2022-APPEAL Dated 04.03.2022	58/2021-22 Dated 15.02.2022	ZU2409210295266 Dated 22.09.2021

2. Briefly stated the fact of the case is that the respondent registered under GSTIN No. 24AAHCS9912R1ZL has filed following refund claims for refund of ITC accumulated due to export without payment of tax under Section 54 (3) of CGST Act, 2017.

Sr. No.	Period	Refund ARN & Date	Amount of Refund claims
1	March - 2021	AA240821111420Y / 21.08.2021	Rs.49,55,912/-
2	February - 2021	AA2408211089192 / 20.08.2021	Rs.12,63,338/-
3	January - 2021	AA240821056820E / 12.08.2021	Rs.20,07,240/-

After verification of the claims the Adjudicating Authority vide impugned orders 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 the claimant has shown adjusted total turnover for the said period which are not as per GSTR 3B returns of said period. Thus taking the figure of adjusted total turnover as per GSTR-3B 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 claim	Adjusted Total Turnover as per RFD-01 (1)	Adjusted Total Turnover as per GSTR-3B (2)	Net ITC (3)	Zero rated Turnover (4)	Refund Amount sanctioned (3*4/1)	Refund Amount admissible (3*4/2)	Excess Refund amount sanctioned
March'21	115816830	121750100	7809284	73499448	4955912	4714395	241517
Feb'21	13523187	15696992	2156818	7921094	1263338	1088384	174954
Jan'21	12558671	15029555	2901127	8689130	2007240	1677247	329993

3. In view of above, the appellant filed the present appeal on the following grounds:

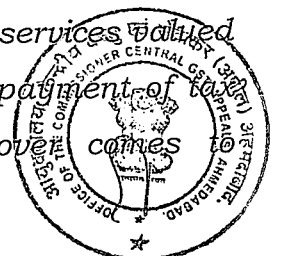
- i. *The adjudicating authority has erred in passing the refund order, as higher amount of refund has been sanctioned to the claimant than what is actually admissible to them in accordance with the Rule 89(4) of the CGST Rules, 2017 read with Section 54(3) of the CGST Act, 2017.*

In respect of Refund Claim for the month of **MARCH'2021**

- ii. *It is noticed that the claimant has shown the adjusted total turnover as Rs.11,58,16,830/- for said period, whereas on perusal of the GSTR-3B return for the month of March 2021, it is noticed that the actual adjusted total turnover is Rs.12,17,50,100/-. Thus it appears that the claimant has shown the adjusted total turnover as Rs.11,58,16,830/- by considering (zero rated turnover as per FOB Value i.e. Rs.7,34,99,448/- + Local Turnover Rs.4,23,17,382/-). However, as per GSTR-3B return for the month of March 2021, the claimant has exported goods/services valued Rs.7,94,32,718/- and supplied goods/services locally on payment of tax valued Rs.4,23,17,382/-. Thus, the adjusted total turnover comes to Rs.12,17,50,100/-.*

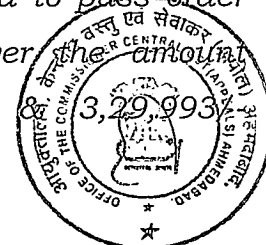
In respect of Refund Claim for the month of **FEBRUARY'2021**

- iii. *It is noticed that the claimant has shown the adjusted total turnover as Rs.1,35,23,187/- for said period, whereas on perusal of the GSTR-3B return for the month of February 2021, it is noticed that the actual adjusted total turnover is Rs.1,56,96,992/-. Thus it appears that the claimant has shown the adjusted total turnover as Rs.1,35,23,187/- by considering (zero rated turnover as per FOB Value i.e. Rs.79,21,094/- + Local Turnover Rs.56,02,093/-). However, as per GSTR-3B return for the month of February 2021, the claimant has exported goods/services valued Rs.1,00,94,899/- and supplied goods/services locally on payment of tax valued Rs.56,02,093/-. Thus, the adjusted total turnover comes to Rs.1,56,96,992/-*



In respect of Refund Claim for the month of JANUARY'2021

- iv. It is noticed that the claimant has shown the adjusted total turnover as Rs.1,25,58,671/- for said period, whereas on perusal of the GSTR-3B return for the month of January 2021, it is noticed that the actual adjusted total turnover is Rs.1,50,29,555/-. Thus it appears that the claimant has shown the adjusted total turnover as Rs.1,25,58,671/- by considering (zero rated turnover as per FOB Value i.e. Rs.86,89,130/- + Local Turnover Rs.33,87,773/-). However, as per GSTR-3B return for the month of January 2021, the claimant has exported goods/services valued Rs.1,16,41,782/- and supplied goods/services locally on payment of tax valued Rs.33,87,773/-. Thus, the adjusted total turnover comes to Rs.1,50,29,555/-
- v. Turnover in state or turnover in Union Territory as referred to in the definition of "Adjusted Total Turnover" as per Rule 89(4) of the CGST Rules, 2017 has been defined in Section 2(112) of the CGST Act, 2017 as "turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a 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". Accordingly, taxable value should be taken as per Section 15 of the CGST Act, 2017. The claimant has declared the export value in the GSTR 3B return for the month of March'21, February'21 & January'21 as Rs. 7,94,32,718/-, Rs.1,00,94,899/- & Rs.1,16,41,782/- respectively, which should be taken while calculating the adjusted total turnover of the claimant.
- vi. Thus it is noticed that the adjudicating authority has erred in passing the refund order, as higher amount of refund has been sanctioned to the claimant by taking lower value of adjusted total turnover; thereby excess refund amounting to Rs.2,41,517, Rs.1,74,954/- & Rs.3,29,993/- has been given; which is required to be recovered alongwith interest.
- vii. In view of above grounds the appellant requested to set aside the impugned orders wherein the adjudicating authority has erroneously sanctioned Rs.49,55,912/-, Rs.12,63,338/- & Rs.20,07,240/- respectively, instead of Rs.47,14,395/-, Rs.10,88,384/- & Rs.16,77,247/- respectively, under Section 54 (3) of CGST Act, 2017 and to pass order directing the original authority to demand and recover the amount erroneously refund of Rs.2,41,517/-, Rs.1,74,954/-



respectively, with interest and to pass any order as deem fit in the interest of justice.

4. Personal Hearing in the matter was through virtual mode held on 23.08.2022 wherein Sh. Tejendra Thakkar appeared on behalf of the 'Respondent' as authorized representative. During P.H. he has informed that they want to give written submission, which was approved and 3 working days period was granted.

Accordingly, the Respondent vide letter dated 24.08.2022 submitted relevant documents wherein they *inter-alia* made submissions as under:

- i. They have filed refund application for the month of January'21 to March'21 vide ARN dated 12.08.21, 20.08.21 and 21.08.21 respectively.
- ii. The goods were exported under LUT. They have prepared invoice on CIF value basis. Accordingly, value of invoice is bifurcated in FOB value of goods, Insurance and Freight in the Bill of Export / Shipping Bill. Accordingly, in GSTR-3B and GSTR-1 aggregate value of FOB of goods, Insurance and Freight (i.e. Invoice Value) is shown as zero-rated turnover. Hereby attaching copy of few shipping bills, copy of export invoice, copy of GSTR-3B and GSTR-1 for the period January, February and March 2021. Already submitted list showing invoice wise FOB value and shipping bill number while filing refund applications. However, for ready reference hereby attached list showing FOB value against each Export Invoice.
- iii. Referred Section 14 of the Customs Act, 1962 in connection with value of goods for purpose of export shall be FOB value.
- iv. Moreover, recently CBIC has issued Notification No. 14/2022-CT dated 05.07.2022 and inserted explanation to Rule 89(4) which is reproduced as under

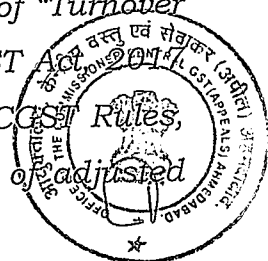
in sub-rule (4), the following Explanation shall be inserted, namely: -
-Explanation.-For the purposes of this sub-rule, the value of goods exported out of India shall be taken as -

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017;

or

(ii) the value declared in tax invoice or bill of supply, whichever is less.

- v. In the appeal filed by department they have quoted definition of "Turnover in state or turnover in Union territory" u/s 2(112) of the CGST Act, 2017 vis-à-vis "Adjusted Total Turnover" as per Rule 89(4) of the CGST Rules, 2017. Based on said definition department has taken value of adjusted



total turnover by taking value of export / zero-rated supply of goods as per Section 15 of the CGST Act, 2017 (i.e. invoice value) to arrive at admissible amount of refund.

- vi. Accordingly, the department has concluded on the basis of above definition of "Adjusted Total Turnover" and "Turnover in state or Union territory" only. However, they have not taken into account clarification given by CBIC in para 4 of Circular No. 147/03/2021-GST dated 12.03.2021 regarding "Turnover of Zero-rated supply of goods" under Rule 89(4) is taken to arrive at value of Adjusted Total Turnover alongwith example. The same is clarified as "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".
- vii. Hence, whenever the value of export / zero-rated value of goods is restricted the same restricted value has to be added in Adjusted Total Turnover as interpreted the said circular. In the given case assessee had taken value of export / zero-rated value of goods as FOB value as mentioned in shipping bill and the same value of zero-rated supply is taken to arrive at Adjusted Total Turnover for the calculation of admissible amount of refund under Rule 89(4). Accordingly, the order passed by the authority is in line with the said circular without any error. Hence, the allegation for excess sanction of refund in the appeal filed by the authority is not tenable in the eyes of law. Therefore, question of recovery of excess refund alongwith interest and penalty does not arise and accordingly appeal is not sustainable. We therefore, urge to drop the proceedings and pass the suitable order.

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the respondent and documents available on record. I find that the present appeal was filed to set aside the impugned order 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 FOB value as turnover of zero rated supply of goods in "Adjusted Total Turnover" for arriving admissible refund whereas the turnover of zero rated supply of goods should be as per GSTR-3B i.e. Invoice Value. Accordingly the admissible refund comes to less than the sanctioned amount, resulting in excess sanction of refund of Rs.2,41,517/-, Rs.1,74,954/- & 3,29,993/- to the respondent.



6. The respondent in their submission taken the view that the value taken towards turnover of zero rated supply of goods need to be taken towards value export goods in the adjusted turnover also for determining admissible refund. In other words, in the formula prescribed under Rule 89 (4) of CGST Rules, if FOB value is taken for turnover of zero rated supply of goods in numerator, the same value should be taken towards value of export goods for arriving adjusted total turnover. I find that the Respondent in this regard has referred the CBIC Circular No.147/03/2021-GST dated 12.03.2021 wherein it was clarified that for the purpose of Rule 89 (4) the value of export/zero rated supply of goods to be considered to be included while calculating adjusted total turnover will be the same as being determined as per the amended definition of turnover of zero rated supply of goods in the said sub rule.

7. In view of above 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.*

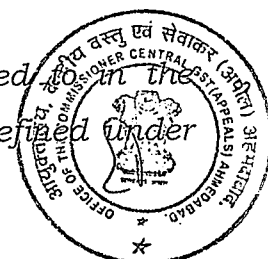
4.2 *Sub-rule (4) of Rule 89 prescribes the formula for computing the refund of unutilised ITC payable on account of zero-rated supplies made without payment of tax. The formula prescribed under Rule 89 (4) is reproduced below, as under:*

"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 in the definition of "Adjusted Total Turnover" in Rule 89 (4) has been defined under*



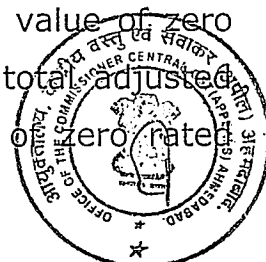
sub-section (112) of Section 2 of CGST Act 2017, as: "Turnover in State or turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union 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.

8. 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

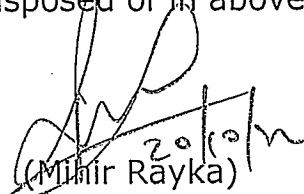


turnover was taken as FOB value as per shipping bill. However, the adjusted turnover is taken as per GSTR-3B returns, which imply that turnover of zero rated supply in adjusted total turnover is taken as invoice value. Apparently, this result in adopting two different values for same zero rated supply 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*.

9. 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।

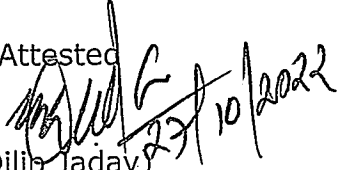
The appeals filed by the *appellant* stands disposed of in above terms.

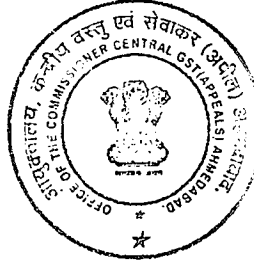

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 20.10.2022

Attested


(Dilip Jadav)
23/10/2022
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,
The Assistant / Deputy Commissioner,
CGST, Division - VII, Ahmedabad South.

Appellant

M/s. Shivam Minerals and Allied Industries Pvt. Ltd.,
A-411, Mondeal Heights, Near Wide Angle,
S. G. Highway, Ahmedabad - 380 015

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Principal Commissioner, CGST, Ahmedabad South
- 4) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 5) Guard File
- 6) PA file

