



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/886/2022 -APPEAL / 626-31

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-206/2022-23**
दिनांक Date : **30-12-2022** जारी करने की तारीख Date of Issue : **30-12-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZV2412210046414 DT. 08.07.2022** issued by Assistant Commissioner, CGST, Division VI, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**M/s. Scarlet Prints LLP, 21,22, National Chambers,
Near City Gold Cinema, Ashram Road, Ahmedabad-380009**

(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



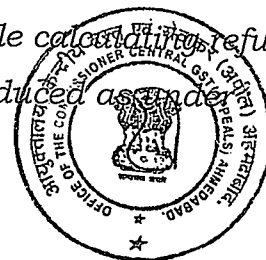
ORDER IN APPEAL**Brief Facts of the Case :**

M/s. Scarlet Prints LLP, 21, 22, National Chambers, Nr. City Gold Cinema, Ashram Road, Ahmedabad - 380 009 (hereinafter referred as '*Appellant*') has filed the present appeal against the Refund Sanction/Rejection order in the form RFD-06 bearing No. ZV2412210046414 dated 08.07.2022 (hereinafter referred as '*Impugned Order*') (i/r. Refund ARN AA241021097030Z / 25.10.21) passed by the Assistant Commissioner, CGST, Division - VI, Ahmedabad South (hereinafter referred as '*Adjudicating Authority*').

2(i). Briefly stated the fact of the case is that the appellant registered under GSTIN No.24ACPFS2687G1Z0 has filed refund application vide ARN AA241021097030Z dated 25.10.2021 for the period of September 2021 for refund of Rs.81,95,719/- of accumulated ITC due to export without payment of tax. In response to said refund claim a Show Cause Notice dated 15.11.2021 was issued to the '*Appellant*'. It was proposed that refund application is liable to be rejected for the reasons "*Other*" with Remark as "*Zero rated turnover is 60970806.31 and adjusted total turnover is 67067891 net ITC is 8195719, hence eligible refund amount is 7450653.19 and an amount of 745065.78 why should not be rejected*". The appellant has submitted their reply to SCN in Form GST RFD-09 dated 29.11.2021, wherein stated that there is no specific allegation in the SCN for rejection of refund, SCN is vague without reason and against principle of natural justice. The appellant has further argued that Zero rated turnover and adjusted total turnover mentioned in SCN is incorrect as they had mentioned both the turnover as same.

2(ii). Thereafter, the *adjudicating authority* has sanctioned partial amount of Refund of Rs.74,50,653/- and reject the Refund of Rs.7,45,066/- on the following grounds :

- *On preliminary scrutiny of the claim, it was found that in term of clarification issued by the CBIC under Circular No. 125/44/2019-GST dated 18.11.2019, while calculating the refund, lower of the two values declared by the claimant i.e. value of the goods declared under GST Invoice and value in corresponding Shipping Bill/Bill of Export needs to be considered by the refund sanctioning authority. The claimant was therefore issued a SCN (RFD-08).*
- *The argument made by claimant in reply to SCN (RFD-09) is not sustainable for the reason that para 47 of the Circular No. 125/44/2019-GST dated 18.11.2019 clearly mandates for taking into consideration lower of the two values (Invoice value and Shipping Bill value) while calculating the refund. The said para 47 of the Circular dated 18.11.2019 is reproduced 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**".

- In the instant case, FOB value is Rs.60970806.31 whereas Invoice value is Rs.67067891 and hence lower of the two value is Rs.60970806.31 which needs to be considered for arriving at eligible refund. Hence calculation of eligible amount of refund is as under :

$$\begin{aligned} \text{Refund admissible as per formula} &= \frac{\text{Turnover of Zero rated} * \text{Net ITC}}{\text{Total Adjusted Turnover}} \\ &= \frac{60970806 * 8195719}{67067891} \\ &= \text{Rs.74,50,653/-} \end{aligned}$$

In view of above, the adjudicating authority has held that the claimant is eligible for total Refund of Rs.74,50,653/- and accordingly passed the *impugned order*.

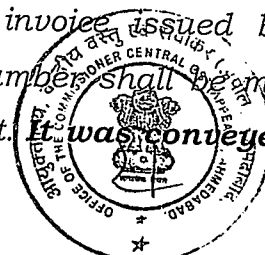
2(iii). Being aggrieved with the *impugned order* the appellant has filed the present appeal on dated 02.03.2022 on the following grounds :

- The appellant is engaged in business of manufacturing and sale of printed pictures, Design and Photographs of canvas duly registered under CGST Act, 2017;
- that they export goods of value Rs.6,70,67,891/- out of India under LUT (Letter of Undertaking) without payment of IGST in the month of September 2021. Accordingly, they had filed refund application under Section 54(3) of the CGST Act, 2017 for the period September 2021 amounting to Rs.81,95,719/-
- The adjudicating authority on examination of refund claim has found inadmissible amount of Rs.7,45,066/- out of Rs.81,95,719/-. Accordingly, the refund was issued to them for rejection of said inadmissible amount.
- The adjudicating authority vide *impugned order* rejected Rs.7,45,066/- out of Rs.81,95,719/-.



- The order passed by the learned adjudicating authority is not legal and bad in the eye of law, therefore, it required to be set aside.
- The order in GST RFD-06 not sanctioning full amount of refund is incorrect in law. The amount claimed as refund under Rule 89 of the CGST Rules, 2017 represent the tax actually debited in the Electronic Credit Ledger. The Ld. Assistant Commissioner has solely relied on the Circular No. 125/44/2019-GST dated 18.11.2019 which referred value mentioned in the tax invoice and the value in the corresponding Shipping Bill to be matched and the lower of two values to be considered for calculating for sanctioning the refund claim.
- The Ld. Assistant Commissioner has rejected the refund claim by comparing the transaction value of tax invoice with the FOB value of corresponding shipping bill of the appellant and latter is lower than the transaction value shown in Tax Invoice. As could be seen from perusal of said clarification, no where refer that the FOB value to be compared with transaction value shown in Tax Invoice for sanction the refund claim.
- The Ld. Assistant Commissioner has presumed that "Value recorded in corresponding Shipping Bill" in para 47 of the Circular is "FOB" value. However, on reading the said clarification between the lines it can be understand that the intention of the government was to clarify the arises in cases of difference between transaction value mentioned in Tax Invoice and Invoice value shown in the corresponding shipping bill.
- In shipping bill there are two values need to be declared by the exporter i.e. 1. FOB and 2. Invoice Value. The exporter needs to declare the value of goods at the time of export in "FOB column" and the actual transaction value (the amount which is actually going to be received from his buyer) in "Invoice value column". In some cases, exporter filed shipping bill in advance and raises GST invoice at later stage at the time of export the goods. In such cases value declared in tax invoice and the invoice value mentioned in the shipping bill may vary due to change in exchange rate. In such cases, for the purpose of refund, as clarified in Circular, lower of the value i.e. value mentioned in the GST invoice and invoice value mentioned in the shipping bill shall be taken into account. In any case FOB value shall not be taken as value of supply in respect of CIF contracts.
- The Delhi Customs has issued FAQ on IGST refund on goods exported out of India. In answer to Question No. 16 of the said FAQ, the following reference has been made :

After the implementation of GST, it was explained in the advisories that the details an exporter is required to enter in the "invoice" column while filing the SB (Shipping Bill) pertains to the invoice issued by him compliant to GST Invoice Rules. The invoice number shall be matched with GSTN to validate exports and IGST payment. **It was conveyed and**



reiterated that there should not be any difference between commercial invoice and GST invoice after implementation of GST since as per the GST law, IGST is to be paid on the actual transaction value of the supply between the exporter and the consignee, which should be the same as the one declared in the commercial invoice.

- The answer of the above FAQ makes it ample clear that the IGST refund is to be paid on the transaction value of the supply between the exporter and the consignee and no stretch of imagination FOB value can be taken for calculating the refund claim.
- At the time of supply of goods for export the transaction value of export goods is determined in terms of Section 15 of the CGST Act, 2017 and same is shown in Tax Invoice. Section 15 of the CGST Act, 2017 which is made applicable to IGST Act too vide section 20 of the IGST Act, 2017, provides valuation under GST.
- From reading of above provisions, it makes amply clear that value of supply of goods or services should be the transaction value which is the price actually paid or payable for the said supply of goods. In case of export under CIF contracts, the actual price paid by the recipient to the supplier (exporter) for the said supply is the transaction value which is in turn considered as the value of supply. In CIF contracts the recipient pays the price mentioned in the invoice-including freight and insurance to his exporter supplier for the supply of goods. Since, exports and imports are considered as inter-state supplies in terms of Section 7 of the IGST Act, 2017 the valuation thereto has to be strictly arrived under the provisions of GST law only.
- In view of above, to consider the FOB value of shipping bill for sanctioning the refund claim is not legal and therefore, it is requested to set aside the impugned order and allow the refund claim for sake of legality.
- The appellant further submit that provisions provided in para 47 of circular dated 18.11.2019 has traversed beyond the scope of Section 15 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 and Rule 89(4) of the CGST Rules, 2017 as such nothing is mentioned in the said provisions with regard to consider the FOB value for sanctioning the refund claim and therefore is not legal as circular have clarificatory nature and Section/Rules always prevails over circular. Therefore the said provision of circular is void in terms of Section 15 of the CGST Act, 2017. It is settled principle that if the circular is contrary to the legal provisions thereby it is non-est. in law as held by the Hon'ble SC in the case of Commissioner Vs. Ratan Melting and Wire Industries – 2008 (231) ELT 22 (S.C.).
- The ld. Assistant Commissioner in the OIO has nowhere mentioned the Section/Rule of CGST/IGST Act under which it is provided that FOB value is



required to be consider as "Turnover of Zero rated" in the formula to determine, admissible refund.

In view of above submissions, the appellant has made prayer that impugned order may be set aside to the extent of rejection of Refund of Rs.745066/- ; and direct the adjudicating authority to sanction the refund amount of Rs.745066/- ; or to pass any other order as deem fit in the interest of justice.

3. 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.

4. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. The main reason for rejection of refund claim is that the *Appellant* 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 refund actually claimed by the appellant. The Appellant *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.

5. 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 IGST Act, 2017, the provisions of CGST Act, 2017 relating to time and value of supply is also made applicable to integrated tax under IGST Act, 2017. Concurrent reading of above statutory provisions leads that in case of export of goods the value of goods charged in the invoices and paid by the recipient of goods is the 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 clearly clarified 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 appellant has taken invoice value towards turnover of zero rated supply of goods whereas the adjudicating authority 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 appellant further contended that in their case there is no difference in the transaction value as per invoices and transaction value as per shipping bill.

6. Further, as per the definition of the adjusted total turnover as per Rule 89 (4) of the CGST Rules, 2017, the 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. Thus, 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. Accordingly, I 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 :

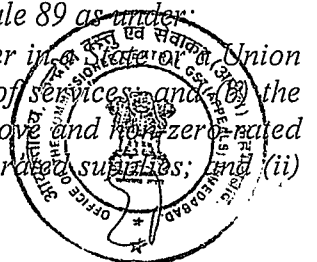
4. *The manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules, 2017.*

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 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 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.'

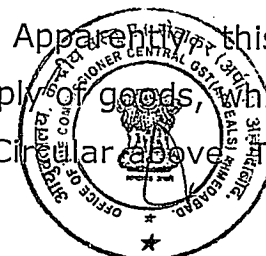
4.4 "Turnover in state or turnover in Union territory" as referred to in the definition of "Adjusted Total Turnover" in Rule 89 (4) has been defined under sub-section (112) of Section 2 of CGST Act 2017, as: "Turnover in State or turnover in Union territory" means the aggregate value of all taxable supplies (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.

7. Further, I find that as per definition of adjusted total turnover, defined in clause (E) of sub-rule (4) of Rule 89, the 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 but exclude value of inward supplies which are liable to reverse charge. Thus, 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 identical cases of refund the above Circular envisage to adopt the same value of export/zero rated supply of goods in turnover of zero rated supply of goods as well as in adjusted total turnover in the formula. In the present matter in impugned order, the value of zero rated turnover was taken as FOB value as per shipping bill. However, the value of zero rated turnover in 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. Apparently, this result in adopting two different values for same zero rated supply of goods, which I find is factually wrong method and not in consonance with Circular above. 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 towards value of zero rated (export) supply of goods.

8. Accordingly, I find that in respect of claim made for the month of September 2021, the turnover of zero rated supply of goods as per invoice value and adjusted total turnover was same at Rs.6,70,67,891/- which imply that there is no other taxable supply of goods which will form part of adjusted total turnover. Therefore, even by taking FOB value towards turnover of zero rated supply of goods the same value will figure in adjusted total turnover also and in such instances the admissible refund will remain same. Accordingly, even by taking into account FOB value of goods towards turnover of zero rated supply of goods at Rs.6,09,70,806/-, the adjusted total turnover comes to Rs. 6,09,70,806/- and admissible refund comes to Rs.81,95,719/- whereas refund claim was sanctioned for Rs.74,50,653/-/- only vide impugned order.

9. In view of above, I do not find any merit or legality in rejecting the refund claim of Rs.7,45,066/-. Accordingly, in view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside to the extent of rejection of refund claim of Rs.7,45,066/- for being not legal and proper and accordingly, I allow the appeal of the "*Appellant*" to that extent only.

अपीलकर्ता 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.

(Mikir Rayka)

Additional Commissioner (Appeals)

Date: 30.12.2022

Attested

(Durg Jada)

Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

M/s. Scarlet Prints LLP,
21, 22, National Chambers, Nr. City Gold Cinema,
Ashram Road, Ahmedabad - 380 009

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-VI, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File



