



आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

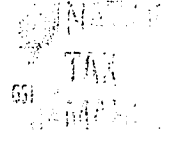
Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20231064SW000021742A

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2152/2023 -APPEAL / 364K -99

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-134/2023-24
दिनांक Date : 17.10.2023 जारी करने की तारीख Date of Issue : 26.10.2023

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. ZL2405230126786 dated 09.05.2023 issued by The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South

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

Appellant	Respondent
M/s. Maxim Exports, 708, Mauryansh Elanza, Nr. Parekhs Hospital, Shyamal Cross road, Satellite, Ahmedabad-380015 (GSTIN 24AKQPS8709Q1Z1)	The Assistant Commissioner, CGST, Division-VIII, 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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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.apelcentralgst.com 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.apelcentralgst.com

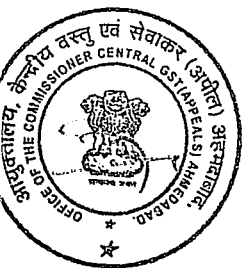


ORDER-IN-APPEAL

M/s. Maxim Exports, 708, Mauryansh Elanza, Near Parekhs Hospital, Shyamal Cross Road, Satellite, Ahmedabad - 380 015 (hereinafter referred as '**Appellant**') has filed the appeal against the Order (in Form RFD-06) bearing No. ZL2405230126785 dated 09.05.2023 (hereinafter referred as '**impugned order**') passed by the Assistant Commissioner, CGST, Division-VIII, Ahmedabad South (hereinafter referred as '**adjudicating authority**').

2(i). Briefly stated the facts of the case is that the '**Appellant**' holding GST Registration - GSTIN No.24AKQPS8709Q1Z1 had filed the refund application under category "*Export of Goods/Services without payment of Tax (Accumulated ITC)*" under ARN No. AA2404230607801 dated 15.04.2023 for Rs. 68,05,574/- for the period of February 2023. The '**Adjudicating Authority**' vide '**Impugned Order**' sanctioned the refund of Rs. 55,83,114/- to the **Appellant** and rejected the refund claim of Rs.12,22,460/-. The reason for rejecting refund claim as mentioned in the *impugned order* are as under:

- *The calculation given by the applicant in respect of export/zero-rated turnover, adjusted aggregate turnover is incorrect;*
- *On observing the details of invoices wherein export on CIF value i.e. there is inclusion of FOB and Freight and Insurance value. Thus the difference is because of variation between FOB value and invoice value.*
- *Since, in the clause (c) of para 8 of the Notification no. 14/2022-Central Tax dated 05.07.2022, there is clearly mentioned regarding the difference of FOB and invoice value which is as under:*
"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) (ii) the value declared in tax invoice or bill of supply, whichever is less. "
- *As per para 47 of Circular No. 125/44/22019-GST dated 18-11-2019, 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 I 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."*
- *As per Advisory issued by the Additional Commissioner, CGST, Ahmedabad-south, it is clearly mentioned that " While Calculating Adjusted turnover, Invoice value of FOB value whichever is higher has to be taken"*
- *that the claimant has correctly taken zero rated supply as per para 47 of the Circular No. 125/44/2019-GST but the claimant has not considered zero rated supply correctly.*



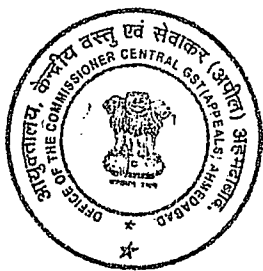
- that the claimant is eligible for the Turnover of Zero Rated Supply amounting Rs. 7,15,23,111/- for the purpose of calculation of refund being claimed. Hence, the claimant was found eligible for a refund amount of Rs. 55,83,114/-, according to the calculation mentioned below:

$$\begin{aligned} \text{Refund admissible as per formula} &= \text{Turnover of Zero Rated} * \text{Net ITC} \\ &\quad \text{Total Adjusted Turnover} \\ &= \frac{7,15,23,111/- * 68,05,574}{8,71,83,579} \\ &= \text{Rs.55,83,114/-} \end{aligned}$$

- that the claimant is eligible for a total refund claim of Rs. 55,83,114/-.

2(ii). Being aggrieved with the impugned order dated 09.05.2023 'Appellant' has filed the present appeal online on dated 27.06.2023 on the following grounds:

- the order passed by the Ld. Asst. Commissioner is also not a speaking order thus null and void. The Appellants submit that the Appellants had made various submissions before the Ld. Asst. Commissioner in response to the show cause notice. The Ld. Asst. Commissioner has clearly overlooked the submission made by the Appellants;
- The appellant relies on judgments In the case of Cyril Lasardo (Dead) V/s Juliara Maria Lasarado 2004 (7) SCC 431 at Para 11, 12, the Hon'ble Apex Court and in the case of Asst. Commissioner, Commercial Tax Departmen Shukla Brothers reported at 2010 (254) (SC);
- that the Ld. Assistant Commissioner had denied the partial refund amounting to Rs.12,22,460/- claimed by appellant relying on para 47 of circular no.125/44/2019- GST dated 18.11.2019 and notification no.14/2022 dated 05.07.2022;
- that the value of goods and services were determined under Section 15 of CGST Act, 2017, which is even made applicable to IGST Act vide Section 20 of IGST Act, 2017 deals with valuation;
- that Free on Board means the of goods at the time of Board, and CF means Cost Freight, i.e. value of goods at the time of delivery to recipient's port, which includes the cost of transportation. As per the agreements entered with the customers, different exporters (suppliers) adopt different transactions and raise invoices for agreed transaction. In the case of CF Contracts, freight expenses are borne by the exporters (suppliers) and an invoice is raised. In turn, the recipient of goods pays the amount mentioned in the invoice raised by the exporter. As far as the recipient is concerned. He is least bothered about the cost of freight, instead he pays an entire consideration to his supplier (exporter);



- that the value of the supply of goods or services is the transaction value, which is defined under Section 15 of CGST Act. Further section 7 of IGST Act. Section 7 of IGST Act, 2017 treats exports and imports as inter-state suppliers, the valuation should be strictly made as per the provisions of GST. It is clear from the above that in case of export of goods under C&F contracts, the actual price paid by the recipient to the supplier (exporter) for the said supply is the transaction value, which is nothing other than the value of the supply. As far as C&F contract is concerned, the recipient pays the price mentioned in the invoice including sea freight charges to his exporter for the supply of goods;
- that the Learned Assistant Commissioner has considered the zero-rate value as referred at the ICEGATE website for ascertaining the refund claim., that there is no provision under the GST laws for referring value appearing in the website for purpose of assessment of refund claim. The verification on ICEGATE website for the purpose of ascertain authenticity of shipping bill pertaining to refund not considering the zero-rated value for assessment of refund;

As far as circular mention above is concern, nowhere mention that FOB value to be compared with taxable value mentioned in export invoice for sanction of refund claim. As far as expenditure incurred to the extent of Freight shall be part of value of supply in terms of Section 15 of CGST Act 2017;

- That they rely upon the judgement by Additional Commissioner, Appeals, GST & Central al Excise, Ahmedabad in our case itself for the period of August 2021 with respect to same issue was held that value of supply of goods shall be transaction value as per Section 15 of CGST Act, 2017. Further, it was held that pursuant to Rule 89 of CGST Rule 2017 provision of refund of unutilized ITC envisage value of the goods not FOB. Hence, refund sanctioning authority is directed to sanction eligible refund amount to the appellant;
- The appellant prayed to set aside the impugned order dated 09.05.2023 to extend of partially rejected refund amounting to Rs. 12,22,460/-

Personal Hearing:

3. Personal Hearing in the matter was fixed/held on 15.09.2023, 29.09.2023 and 16.10.2023 wherein Mr. Ranjeet Gehlot, C.A. was appeared on behalf of the 'Appellant' as authorized representatives. During the hearing they have submitted that the issue is already clarified by CBIC vide Circular No. 197/GST dated 17.07.2023 and requested to allow appeal.



DISCUSSION AND FINDINGS :

4. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that in this case appeal was filed against impugned order wherein the refund amounting to Rs.12,22,460/- was held inadmissible and rejected by the adjudicating authority. I further notice that the adjudicating authority referring to para 47 of the Circular No. 125/44/2019-GST dated 18.11.2019 has taken the turnover of zero rated supply of goods at Rs.7,15,23,111/-; adjusted total turnover at Rs. 8,71,83,579/- and Net ITC at Rs.68,05,574/- and thus arrived the admissible refund amount at Rs.55,83,114/-. For better appreciation of facts I reproduce Para 47 of Circular No.18.11.2019 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.*

5(i). 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. 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. In the subject case, I find that invoice value (transaction value) of goods cleared for export during the relevant month was Rs. 8,71,83,579/- whereas FOB value as per shipping Bill was Rs. 7,15,23,111/-. Accordingly, as per aforesaid Circular the FOB



value of goods which is lower among the two values need to be taken into account for determining admissible refund amount. Therefore, I find that the adjudicating authority has correctly taken FOB value of goods as turnover of zero rated supply of goods for determining the admissible refund amount which is in accordance with the above Circular.

5(ii). However, I find that as per Circular NO.147/03/2021-GST dated 12-3-2021 the value of zero rated supply to be considered in numerator and denominator in the formula prescribed under Rule 89 (4) of CGST Rules, should be the same and there cannot be different criteria for computing numerator and denominator i.e. for the value of turnover of zero rated supply of goods in the formula. In this regard I refer to para 4 of above Circular providing clarification 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, should 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 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.

6(iii). This issue is further clarified vide Circular No. 197/09/2023 dated 17.07.2023. In this regard I refer to para 3 of above Circular providing clarification as under:

3. Manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules consequent to Explanation inserted in sub-rule (4) of Rule 89 vide Notification No. 14/2022- CT, dated 05.07.2022.

3.1 Doubts have been raised as regarding calculation of “adjusted total turnover” under sub-rule (4) of rule 89 of CGST Rules, in view of insertion of Explanation in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022-Central Tax dated 05.07.0222. Clarification is being sought as to whether value of goods exported out of India has to be considered as per Explanation under sub-rule (4) of rule 89 of CGST Rules for the purpose of calculation of “adjusted total turnover” in the formula under the said sub-rule.

3.2 In this regard, it is mentioned that consequent to amendment in definition of the “Turnover of zero-rated supply of goods” vide Notification No. 16/2020-Central Tax dated 23.03.2020, Circular 147/03/2021-GST dated 12.03.2021 was issued which inter alia clarified 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”, needs 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.



3.3 On similar lines, it is clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, the value of goods exported out of India to be included while calculating "adjusted total turnover" will be same as being determined as per the Explanation inserted in the said sub-rule.

Applying the above clarification, the value of turnover of zero rated supply of goods i.e. value of export 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(i). 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 i.e. value of export comes at numerator as well as in total adjusted turnover at denominator. In the present appeal, the value of zero rated turnover i.e. value of export was taken as FOB value as per shipping bill. However, the 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 wrong and not in consonance with statutory provisions, as the CBIC has conspicuously clarified vide aforesaid Circular dated 12.03.2021 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".

7(ii). Therefore, I am of the considered view that the same value of zero rated supply of goods i.e. value of export (FOB Value) taken as turnover of zero rated supply of goods in present matter need to be taken in adjusted total turnover also.



8(i). In the subject case, the appellant has filed refund claim taking into account turnover of zero rated supply at Rs. 8,71,83,579/- being invoice value of export goods ; adjusted turnover at Rs. 8,71,83,579/- and Net ITC at Rs.68,05,574/-. However I find that as per existing rules the appellant had to take FOB value i.e. Rs. 7,15,23,111/- for considering turnover of zero rated supply of goods and for adjusted turnover. However, as per formula prescribed under Rule 89 (4) of CGST Rules the value of zero rated turnover of goods i.e. value of export comes at numerator as well as in total adjusted turnover at denominator, in both the cases, considered FOB value or invoice value, the admissible refund amount comes to Rs. 68,05,574/-.

8(ii). On scrutiny of the documents I find that the appellant has turnover of 100% export and no single sales in local area like across the India. However the adjudicating authority has considered turnover value of zero rated supply at Rs. 7,15,23,111/- being FOB value of export goods. Apparently, the adjudicating authority has considered FOB value of export goods for arriving turnover of zero rated supply of goods but considered the invoice value of zero rated supply of goods for arriving total adjusted turnover. This has resulted in adopting two different values as turnover of zero rated supply of goods which I find is not in consonance with the clarification issued vide above Circular. Therefore, as per above Circular in this case the FOB value of export goods taken for turnover of zero rated supply of goods need to be taken for turnover of zero rated supply of goods for arriving total adjusted turnover in the formula and not the value as per invoice value.



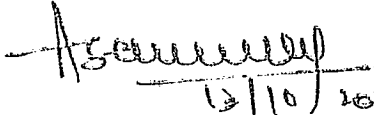
9. In view of facts of the case, submission made by the appellant and discussion made herein above, I hold that the adjudicating authority has rightly considered the turnover of zero rated supply goods based on FOB value being lower value in accordance with Circular No. 125/44/2019-GST dated 18.11.2019 read with Notification No. 14/2022-CT dated 05.07.2022. However, I hold that the adjudicating authority has wrongly taken the invoice value (transaction value) of turnover of zero rated supply of goods in total adjusted turnover of goods instead of considering the FOB value in terms of Circular No. 147/03/2021-GST dated 12.03.2021. Accordingly, I hold that the adjudicating authority has wrongly arrived the admissible refund at Rs.55,83,114/- and thereby

rejected the refund claim amounting to Rs.12,22,460/-. Therefore, I hold that the impugned order passed by the adjudicating authority rejecting refund of Rs.12,22,460/- is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order to the extent of rejection of refund claim of Rs.12,22,460/- and allow the appeal filed by the appellant to that extent only.

10. Accordingly, I allow the appeal of the "Appellant" with a direction to the proper officer to consider the submissions of *appellant* and process the refund application after due verification of documents/details of *appellant* as directed in Para 9 above. The 'Appellant' is also directed to submit all the relevant documents/submission before the refund sanctioning authority and the refund Sanctioning Authority shall verify the facts again as directed in Para 9 above and pass order accordingly.

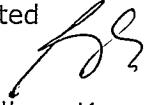
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

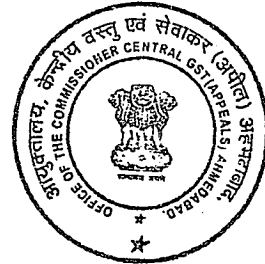
The appeal filed by the *appellant* stands disposed of in above terms.


(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: 17.10.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,
M/s. Maxim Exports,
708, Mauryansh Elanza,
Near Parekhs Hospital,
Shyamal Crross Road,
Satellite, Ahmedabad-380 015.

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 Dy/Asstt. Commissioner, CGST, Division-VIII, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

