

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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DIN- 20240464SW000000A72E

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1141/2024 -APPEAL

13845-51

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 249 /2023-24

दिनांक Date : 28.03.2024 जारी करने की तारीख Date of Issue : 03.04.2024

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. 25/AC/Shanghai Colour Chem/Div-II/A'bad South/JDM/2023-24 dated 27.09.2023 issued by The Assistant Commissioner, CGST Division-II, Ahmedabad-South.

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

Appellant	Respondent
M/s Shanghai Colour Chem, Plot No C-1/88/5, Phase - 1, GIDC, Vatva, Ahmedabad - 382445	The Assistant Commissioner, CGST Division-II, 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.

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.

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

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.

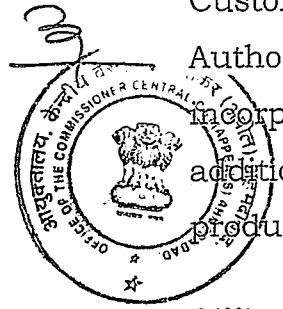


ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Shanghai Colour Chem, Plot No. C-1/88/5, Phase-1, GIDC, Vatva, Ahmedabad-382445 (hereinafter referred as 'appellant') has filed the present appeal against Order-In-Original No. 25/AC/Shanghai Colour Chem/Div-II/A'bad-South/JDM/2023-24, dated 27.09.2023 (hereinafter referred as 'impugned order') passed by the Assistant Commissioner, CGST, Division - II, Ahmedabad South (hereinafter referred as 'adjudicating authority').

2(i). The appellant is engaged in the manufacturing of Synthetic Organic Colouring Matter, Whether Or Not Chemically Defined and Business Auxiliary Services, etc. falling under HSN 3204 and registered with GSTN 24ABGFS9281CIZ3 since 01.07.2017. They mainly manufactures Synthetic Organic Dyes for which they have imported Dyes Intermediates under duty exemption scheme "Advance Authorization" under Notification No.79/2017-Customs dated 13.10.2017 without payment of duty/tax. Advance Authorization is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed/utilized in the process of production of export product, may also be allowed.

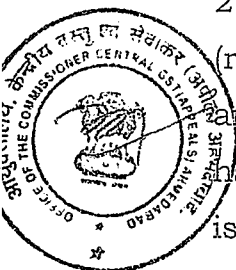
2(ii). Specific intelligence was received that a number of exporters, including M/s Shanghai Colour Chem, are fraudulently claiming refund of IGST paid on the zero-rated export supplies even when the goods are exported towards fulfillment of their export obligations, by filing shipping bill in the manner as provided under Rule 96(1) of the CGST Rules, 2017. Rule 96(10) of the CGST Rules, 2017 states that the person claiming refund of integrated tax on export of goods or services should not have received the supplies against an advance authorization, EPCG, EOUs, merchant exports etc. in terms of Notification No.79/2017-Customs dated 13 October 2017; Notification No.78/2017-Customs dated 13 October 2017, Notification No. 48/20171 CT dated 18.10.2017, No. 40/2017-CT (Rate) or No. 41/2017-1T(Rate) both dated 23.10.2017, as the case may be. Most of the exporters who had received supplies against Advance Authorization are fraudulently claiming refund of IGST paid on their zero-rated export supplies even when the goods are exported towards fulfillment of their export obligation, by filing shipping bill in the manner as provided under Rule 96(1) of the CGST Rules, 2017.



2(iii). The appellant had procured imported raw materials under Advance Licence without payment of integrated tax. The Advance licences issued in the year 2018-19 & 2019-20 were used for procurement of duty-free inputs and refund obtained of the IGST paid for the exports affected during 2018-19 & 2019-20. Refunds were credited to their account during the above-mentioned period. It therefore appeared that the refund of integrated tax claims was in contravention of rule 96 (10) of the CGST Rules, 2017 and for that they are liable to recovered the ITC amounting to Rs. 53,13,996/- under Section 74(1) of the CGST Tax Act, 2017 read with Section 20 of the IGST Act 2017 alongwith interest under Section 50 of the CGST 2017 and SGST Act, 2017 read with section 20 of the IGST Act, 2017 and penalty under Section 74 read with Section 122(2)(b) of the CGST Tax Act, 2017 and SGST Act, 2017 read with the Section 20 of the IGST Act, 2017. The appellant has paid back the IGST refund amounting to Rs. 53,13,996/- vide DRC-03 dtd. 26.05.2023 for the IGST paid on shipping bills filed after 09.10.2018. However, no interest and penalty has been paid by them in this regard.

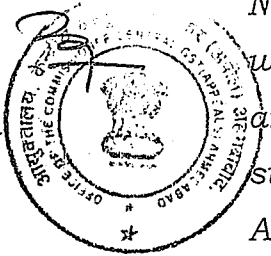
3. Therefore, a show cause notice No. 48/2023-24 dated 18.07.2023 was issued to the 'appellant'. Thereafter, vide impugned order dated 27.09.2023 was issued to the 'appellant' and confirm the demand of (IGST (refund) amounting to Rs. 53,13,996/- and appropriate the same, as the said amount already paid vide DRC-03 dtd. 26.05.2023. However, the appellant has not paid the interest and penalty, accordingly impugned order has been issued on the following grounds:

- that they had procured imported raw materials under Advance Licence without payment of integrated tax. The Advance licences issued in the year! 2018-19 & 2019-20 were used for procurement of duty-free inputs and refund obtained of the IGST paid for the exports affected during 2018-19 & 2019-20 Refunds were credited to their account during the above-mentioned period. It therefore appeared that the refund of integrated tax claims was in contravention of rule 96 (10) of the CGST Rules, 2017;
- that import under Advance license and export with payment of IGST for IGST refund is equal to avail double benefit. Hence, The Provision under rule 96(10) of the CGST Rules, 2017 is brought to prevent exporters from availing of the IGST exemption and subsequently refunding IGST for exports that lead to the liquidation of unrelated ITC;
- the mechanism to get IGST refund on filing of Shipping Bill is meant for speedy and hassle-free refund process for the exporter to ease of doing



business, which has been exploited to get double benefit by some exporters. If there is a loophole in any system, even then it does not permit any one to get illegal benefit from that loophole;

- Since the Hon'ble High Court has ordered that in effect, Notification No 39/2018, dated 4th September, 2018 shall remain in force as amended by the Notification No. 54/2018 by substituting sub-rule (10) of Rule 96 of CGST Rules, with retrospective effect from 23rd October, 2017, it naturally follows that person: claiming refund of integrated tax paid on export of goods should not have received (supplies on which the benefit of Advance Authorization is taken. In the present case the Noticee has availed the benefit of Advance Authorization scheme and hence, the ITC amounting to Rs 53,13,996/-, which was utilized and consequently claimed a: erroneous refund of IGST paid on the exported goods and received by them, was no admissible and requires to be demanded and recovered;
- Since the fact of receiving inputs under Advance Authorization, an consequent ineligibility from claiming IGST refund are known to the Noticee and yet in the anonymity of online processing of refund claims which is automatic in nature the Noticee has claimed refund which amounted to suppression of facts and at the same time, wilful mis-statement also. Further, it was possible to import under Advance Authorization by claiming exemption of only the Customs duties and IGSI could have been paid in which the exporter would be eligible for refund of IGST;
- a mere indication of "Advance Authorization" in the Shipping Bill would not be a sufficient disclosure, unless it has been specifically indicated that IGST exemption was claimed while importing inputs under Advance Authorization. Such a submission was not mentioned in the export documents therefore, tantamount to suppression of facts;
- they have willfully and purposely filed erroneous refund claim and availed refund of IGST with the sole intention to encash their accumulated Input Tax Credit which they were otherwise prohibited in GST law. Despite having knowledge that the refund of IGST paid on export of goods is subject to the conditions as laid down in Rule 96(10) of the CGST Rules, 2017;
- Since, Section 74 is invoked for the demand which is found to be just and proper, I conclude that they are liable for penalty, equivalent to the tax demanded, in terms of Section 74(1) read with Section 122(2)(b) of the Central GST Act, 2017. Further, the Noticee is also liable to pay the interest leviable, in terms of Section 50 of the CGST Act, 2017



4. Being aggrieved with the impugned order the appellant preferred appeal for the interest and penalty portion of the order before the appellate authority on 27.12.2023 on the following grounds:-

- Rule 96(10) is inconsistent with Section 16(3)(b), of the IGST Act. Appellant has exported goods by using other goods and other Services also and what will happen to the GST paid by, the appellant if refund is not giving by ignoring Sec.16(3)(b) and following rule 96(10). It is well decided that provision of Act is always prevails over the provision of Rule. Appellant is relying upon the judgment of M/s. Zenith Spinners Ltd 2015(326) ELT 97 (Guj HC). Thus the learned assessing authority has erred in passing the order dated 27.09.2023 and therefore order is required to be set aside in the present appeal;

- Appellant is doing export under the LUT in all the years and it cannot be said that the goods imported against AA is completely used by the appellant for making IGST paid Export. Goods purchases against AA Licenses are also used in making LUT export made by the appellant and therefore there is no violation Rule 96(10) and refund is rightly availed by the appellant;

- Learned assessing authority has wrongly invoked Sec. 74 to demand tax without considering evidences submitted by the appellant. It is proved on the basis of all other evidences and submission that all transactions are recorded in the books of account and therefore Section 74 is not applicable to the case of the appellant;

- Appellant is disputing the demand raised by the learned assessing authority of Rs. 5313996/- towards tax as well demand of interest and penalty in the present appeal. Appellant has paid Rs. 5313996/- by DRC 03 dated 26.05.2023 under protest against the demand order and requested to refund Rs. 5313996/- the same along with interest if appellant succeeded in the present appeal;

- that the appellant made request to consider the credit ledger while passing the appeal order. It can be derived from the credit ledger that Credit ledger was always having positive balance. The Hon'ble Supreme Court in the case of Eicher Motors Ltd v union of India 1999 (106) ELT 3 (SC) has held that the credit is as good as tax paid. Said principle was also reiterated in the case of Collector of Excise Vs Dai Ichhi Karkaria Ltd 1999 (112) ELT 353 (SC). It is well settled principle established in case of M/s. D K Patel & Co [35 STC 63(GHC)] that set off is nothing but tax paid to the government. Therefore, ITC lying in credit ledger is required to be considered as payment of tax to the



government while calculating the liability of interest u/s.50 of the GST Act, 2017;

- Assessing authority has wrongly imposed penalty u/s.74 read with sec. 122(2)(b) of the GST Act,2017. The facts and circumstance discussed herein above is required to be considered before imposing penalty u/s. 122(2)(b) of the GST Act,2017. Appellant's two audit has been concluded and thus intension to evade or to avoid the liability of tax payment as per facts narrated herein above are not there. Section 122(2)(b) of the GST Act 2017 is not applicable to the appellant's case and liable to be set aside in the present appeal;

In view of the above the appellant pray that the order passed by the learned assessing authority dated 27.09.2023 may please be set aside or modified.

Personal Hearing :

5. Personal Hearing in the matter was held on 07.03.2024. Shri Samir I. Siddhapuria, Advocate appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has submitted that "basis issue is that the refund sanction order issued by Customs is still in existence and not challenged therefore the SCN and OIO demanding the refund is not legal and proper. Provision of Section 54 are independent and Rule 96(10) are procedural, therefore 96(10) couldn't overrule Section 54. Penalty and demand is raised under Section 74 which is not a fact as no misleading information or mis-declaration as suppression is established as all the action has been withheld based on information given to the department at the time of export and various statutory returns. He further reiterated the written submission and requested to allow appeal".

He further requested 10 days time for detailed written additional submission which granted. However till date the appellant has not submitted the written additional submission to this office.

Discussion and Findings :

6(i). I have carefully gone through the impugned order and the reply submitted by the appellant and the documents / records in the matter and therefore I proceed to adjudicate the said demand. The appellant is engaged in the manufacturing of Synthetic Organic Coloring Matter, Whether Or Not Chemically Defined and Business Auxiliary Services, etc. falling under HSN 3204 and registered with GSTN 24ABGFS9281CIZ3 since 01.07.2017. They

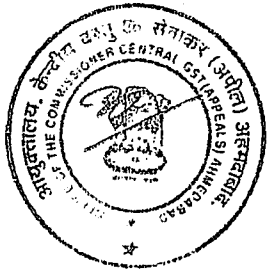
mainly manufactures Synthetic Organic Dyes for which they have imported Dyes Intermediates under duty exemption scheme "Advance Authorization" under Notification No.79/2017-Customs dated 13.10.2017 without payment of duty/tax. As per the specific intelligence it was revealed that the appellant had availed the refund of IGST paid on Zero Rated Supplies after availing benefit of Notification no. 79/2017-Customs dated 13.10.2017 for the exports affected during 2018-19 and 2019-20. Whereas, in terms of Rule 96(10) of the Central Goods and Service Tax Rules, 2017 the taxpayer availing refund of IGST paid on Zero rated Outward Supplies should not have availed the benefit of Notification no. 79/2017- Customs dated 13.10.2017.

6(ii). In this connection, I refer Rule 96(10) of CGST Rules that was substituted on 04.09.2018 with retrospective effect from 23.10.2017. Rule 96(10) as substituted on 04.09.2018 (with retrospective effect from 23.10.2017) and further amended on 09.10.2018 reads as follows:-

" (10)The persons claiming refund of integrated tax paid on exports of goods or services should not have-

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (1), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme [Deemed Exports] or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320(E), dated the 23rd October, 2017 [0.1 % scheme/ or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E), dated the 23rd October, 2017 (0.1 % scheme) has been availed; or

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272 (E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates



to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.]

6(iii). It is observed that Rule 96(10) of CGST Rules was substituted on 04.09.2018 with retrospective effect from 23.10.2017. The amendment made under Notification No.16/2020- Central Tax dated 23.03.2020 was made effective from 23.10.2017 wherein the option for claiming refund in terms of clause (b) of sub-rule (10) to Rules 96 of the CGST Rules is restricted to those exporters who avail the exemption of BCD only and have paid IGST on the Inputs, at the time of import. The effective date has been given as 23.10.2017 which is made retrospective, though the Explanation was inserted in the notification only on 23.03.2020. In the instant case I find that all the invoices on which appellant had claimed IGST refund are after the date of 23.10.2017, hence not eligible for IGST refund as per refund rules 2017.

8(i). The Hon'ble High Court of Gujarat, in SCA No.15833 of 2018 in the case of Cosmo Films Ltd Vs Union of India and 3 other(s), in para 8.15, has held that-

Recently, vide Notification No.16/2020-CT dated 23.03.2020 an amendment has been made by inserting following explanation to Rule 96(10) CGST Rules, 2017 as amended (with retrospective effect from 23.10.2017)

“Explanation.- For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.”

By virtue of the above amendment, the option of claiming refund under option as per clause (b) is not restricted to the Exporters who only avails BCD exemptions and pays IGST on the raw materials thereby exporters who wants to claim refund under second option can switch over now. The amendment is made retrospectively thereby avoiding the anomaly during the intervention period and exporters who already claimed refund under second option need to payback IGST along with interest and avail ITC.”

8(ii). In view of the above, I find that when exemption of IGST is being availed on the goods imported under Advance Authorization, as no IGST is paid on the imported goods, there is no question of taking credit either. Therefore, the IGST, which is being paid on the goods exported towards discharge of export obligation under the respective scheme, is on account of the accumulated input tax credit (ITC) that has accrued on account of



procurement of other input materials, Capital Goods & services. However, refund of such IGST paid on the goods exported is not admissible since by doing so, the said notice has availed benefit of exemption of IGST on imported goods, and at the same time encashing the accumulated ITC accrued on account of other goods & services. This simultaneous availment of benefit of refund as well as exemption under the aforementioned Customs notifications is contrary to the provisions of law. This is to ensure that the exporter does not utilise the Input Tax Credit availed on other domestic supplies received for making the payment of integrated tax on export of goods.

9(i). Further, as per impugned order it is observed that the appellant submitted that there is no breach of Rule 96(10) after re-assessment of bill of entry in consonance with circular no. 16/2023-Cus dated 07.06.2023 and further requested to keep the proceedings pending till further development and government instructions. In this regard, it is observed that the issue of regularization of Pre import Conditions came after the judgment of Hon'ble Supreme Court in Civil Appeal No(s). 290 of 2023, where the Supreme court upheld the constitutional validity of the imposition of 'pre-import' condition and directed the department to permit them to claim refund or input credit (Whichever applicable and/or wherever customs duty was paid). For doing so, the respondents shall approach the jurisdictional Commissioner, apply with documentary evidence within six weeks from the date of judgment. The claim of refund/credit, shall be examined on their merits, on a case by case basis. For the sake of convenience, the revenue shall direct the appropriate procedure to be followed, conveniently, through a circular, in this regard. In this regard, a circular no. 16/2023-Cus dated 07.06.2023 has been issued by the department. The para 6.2 of the said circular stated that in the case such Input Tax Credit is utilized for payment of IGST on outward zero-rated supplies, then the benefit of refund of such IGST paid may be available to the said registered person as per the relevant provisions of the CGST Act, 2017 and the rules made thereunder, subject to the conditions and restrictions provided therein.

9(ii). In the instant case the appellant had claimed IGST refund of Rs. 53,13,996/- which has been taken into account for this demand in terms of Notification No.16/2020-CT dated 23.03.2020. Therefore, the appellant is not eligible to the refund claim on which they have not paid IGST during the time of procurement of raw material. The amount of erroneously taken refund is Rs. 53,13,996/- and the same is required to be reversed/paid back along with applicable interest and penalty.

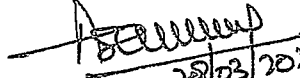


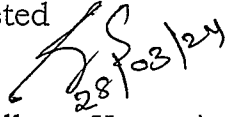
10. Further, considering the facts of the present case and the evidences produced by the appellant, the case laws relied upon by the appellant would not be applicable in the present case. In the instant case none of the case laws relied upon are on Rule 96(10) of the CGST Rules and therefore not relevant. Hence, the contention of the appellant is not legally sustainable as per existing provisions of law.

11. In view of the above, I uphold the demand of (IGST (refund) amounting to Rs. 53,13,996/- under the provisions of Sections 74(1) of the CGST Act read with the provisions of Section 20 of the IGST Act, interest under the provisions of Sections 50 of the CGST Act read with the provisions of Section 20 of the IGST Act and penalty of Rs. 53,13,996/- under the provisions of Sections 74(1) of the CGST Act read with the provisions of Section 122(2)(b) of the CGST Act and Section 20 of the IGST Act.

12. In view of the above discussions, I do not find any infirmity in the in the impugned order passed by the adjudicating authority. Accordingly, I find that the impugned order of the adjudicating authority is legal and proper and hence upheld and the appeal is rejected.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the 'Appellant' stand disposed off in above terms.


(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 28 .03.2024

Attested

(Sandheer Kumar)
Superintendent
CGST (Appeals)
Ahmedabad



By R.P.A.D.
To,
M/s. Shanghai Colour Chem,
Plot No. C-1/88/5, Phase-1,
GIDC, Vatva, Ahmedabad-382445

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/Assistant Commissioner (RRA), CGST, Ahmedabad South.
5. The Dy/Assistant Commissioner, CGST, Division-II, Ahmedabad South.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File. / P.A. File.