



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, अम्बावाडी 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/833/2023 -APPEAL/1017 - 23

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-07/2023-24**

दिनांक Date : **28-04-2023** जारी करने की तारीख Date of Issue : **02-05-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

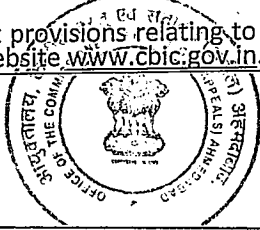
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZA241122032112J DT. 07.11.2022**, issued by
The Superintendent, CGST, Ahmedabad South

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

**M/s. SHK Enterprises Private Limited, A-906-907, Titanium City Centre,
Near Sachin Tower 100FT AnandNagar Road, Satellite, Ahmedabad, Gujarat-380015**

(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 .



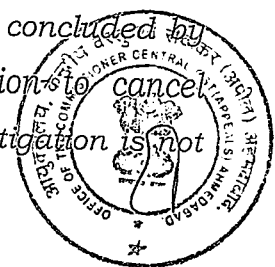
ORDER IN APPEAL**Brief Facts of the Case :-**

This appeal has been filed under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "*the Act*") by **M/s. SHK Enterprises Private Limited**, A-906-907, Titanium City Centre, Near Sachin Tower, 100FT Anandnagar Road, Satellite, Ahmedabad - 380 015 (hereinafter referred to as "**Appellant**") against the Order No. ZA241122032112J dated 07.11.2022 (hereinafter referred to as "**Impugned Order**") passed by the Superintendent, CGST, Ahmedabad South (hereinafter referred to as "**the Adjudicating Authority/Proper Officer**").

2. Facts of the case, in brief, are that the *appellant* is registered under the Central Goods and Services Tax Act, 2017 vide GST Registration GSTIN 24AAPCS2622A1ZR. A Show Cause Notice was issued to the *appellant*, wherein it was proposed that registration is liable to be cancelled for the reasons that "*In case, Registration has been obtained by means of fraud, willful misstatement or suppression of facts*". Thereafter, the registration was cancelled vide *impugned order* under Section 29 of the CGST Act, 2017 for the reasons that "*As per letter F. No. DGGI/AZU/Gr.C/12(4)296/2020-21/5935 dated 11.10.2022 issued by Deputy Director, DGGI, AZU, Ahmedabad, the assessee is found to be non-existent/non operative firm and it had passed on fake/ineligible ITC without supply of goods or services.*"

3. Being aggrieved with the *impugned order* dated 07.11.2022 the *appellant* has preferred the present appeal online on 07.02.2023 and submitted the certified copy of order appealed against on 08.02.2023 (Rule 108 of the CGST Rules, 2017). In the appeal memo the *appellant* has submitted that

- *Registration of appellant has been cancelled on the strength of communication made by the office of DGGI which has not been provided to the Taxpayer.*
- *Communication made by DGGI should not be treated as conclusive to cancel the registration as the investigation has not been concluded by the office of the DGGI till date. Moreover, the direction to cancel registration if any issued by DGGI is premature as investigation is not concluded yet and pending since long.*



- *Ld. Respondent travel beyond to jurisdiction while passing the impugned order on the strength of direction issued by officers functioning under Central Tax.*
- *Ld. Respondent was not justified in passing impugned order without affording sufficient and proper opportunity of hearing. It is a settled principal of law that no action shall be initiated against the assessee without listening to other party and thus the Ld. Respondent shall be ought to have committed a breach of a well accepted doctrine of **audi alteram partem**.*

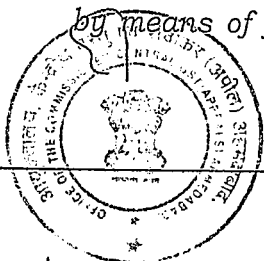
In view of above submissions, the *appellant* has made prayer as under :

- a. *to allow the appeal and direct for restore the registration of the Appellant ;*
- b. *to set aside the impugned order.*

4. Personal Hearing in the matter was held on 17.04.2023 wherein Mr. Rahul Patel, C.A. appeared on behalf of the *appellant* as authorized representative. During PH he has stated that no opportunity of being heard was provided to them before cancellation of their registration, it can be seen from the SCN that the date of PH and date of SCN are same. Further, during PH he has submitted the additional submission and stated that they have nothing more to add to it.

As per the above stated additional submission, the *appellant* has stated that –

- i. *This appeal is against a limited issue involving ab initio cancellation of registration by Ld. Respondent without following the procedures laid down in the law and without adhering to the principles of natural justice and audi alteram partem.*
- ii. *Ld. Respondent issued a show cause notice on 19.10.2022 and required the Appellant to appear before him at 12.57 PM on very same day. It, therefore, transpires clearly that ld. Respondent was not willing to allow any opportunity of personal hearing to the Appellant but used the said notice to deceit the system, jurisprudence and the rights of the Appellant. It is absolutely unclear as to why ld. Respondent felt it so necessary, emerging and urgent to cancel the registration and so issued a show cause notice requiring appearance on very same day and that too within a span of hours. In the limited understanding of the Appellant, ld. Respondent really not desired to grant any opportunity of hearing but pre-determined and biased to cancel the registration.*
- iii. *The reasons stated in SCN that “In case, Registration has been obtained by means of fraud, willful misstatement or suppression of facts”. It is*



unclear from the reasons stated as to how and why he has reason to believe that the registration has been obtained by means of fraud etc. They were holding registration under Central Excise Act vide AAPCS2622AED002 w.e.f. 15.04.2013 and under Gujarat Value Added Tax Act, vide 24075107736 w.e.f. 12.03.2013. Hence, in all probabilities, the registrations held by the Appellant under existing regime would have been migrated by the GSTN under GST regime. In such circumstances, what has made ld. Respondent to believe that the registration was obtained by means of fraud etc., is unclear from the SCN as well as impugned order.

- iv. Moreover, allegations as to fraud, willful misstatements or suppression of facts, as referred to in Section 29, are different species of allegations to be leveled in completely different and distinct circumstances. Whereas in case on hand ld. Respondent has not identified which of the allegations are exactly applicable to the case on hand. Hence, it appears that ld. Respondent himself was not clear while issuing a SCN as to which allegations the Appellant shall be required to show cause. Hence, the very SCN is vague and ambiguous. Reliance placed on decision of Hon'ble Apex Court in case of Amrit Foods Vs. CCE 2005 (190) ELT 433 (SC).
- v. In view of above, the SCN is deemed to be vague and ambiguous and also deemed to be violative of principles of natural justice.
- vi. Ld. Respondent has passed impugned order without affording an opportunity of personal hearing in the matter. It is evident from records that the reply was furnished by appellant. Despite of which, Ld. Respondent neither granted an opportunity of personal hearing nor cared to respond to the Appellant in response to the reply.
- vii. Hence, it is necessary to hold that the impugned order was passed in violation of the doctrine of audi alteram partem. Reliance is placed on decision of Hon'ble Apex Court in case of UOI Vs. Hanil Era Textiles Ltd. reported at 2017 (349) ELT 384 (SC). Moreover, ld. Respondent has violated the mandatory requirement contemplated by proviso to sub-section (2) of Section 29 of the Act as no hearing was granted.
- viii. Ld. Respondent passed impugned order for cancellation of registration on sole strength of letter issued by DGGI. However, no such reference was either given in the SCN nor the copy of said letter was furnished to the Appellant. Hence, the impugned order shall be deemed to have travelled beyond the scope of the SCN.
- ix. Ld. Respondent ought to have appreciated that the DGGI had not concluded investigation against the Appellant at the time of issuance of the SCN. Hence, in such circumstance, the registration cannot be



concluded on the basis of preliminary findings of the DGGI. Copy of communication made by DGGI had not been furnished and therefore same cannot be relied upon while deciding the case against the Appellant.

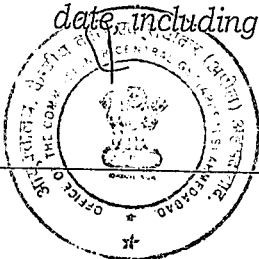
- x. Ld. Respondent had no reason to believe out of his own inquiry, investigation, verification, that the registration held by the Appellant was liable for cancellation for the reasons contemplated in Section 29(2) of the CGST Act. Ld. Respondent had not brought anything on record which indicates suppression, or willful misstatement, or fraud on part of the Appellant while obtaining registration.

Discussion and Findings :-

5. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum as well as in additional submission. The issue involved in the present matter is that the GST registration of Appellant is cancelled on the basis of communication received by the adjudicating authority from DGGI, AZU that "the assessee is found to be non-existent/non-operative firm and it had passed on fake/ineligible ITC without supply of goods or services". The appellant in the present appeal has mainly contended that their registration has been cancelled by the *adjudicating authority* without being heard them therefore, it is clear that principle of natural justice has not been followed while passing *impugned order*. Further, I find that the *appellant* has also contended that it has been alleged in the SCN that registration has been obtained by means of fraud, willful misstatement or suppression of facts and therefore is liable to be cancelled, however, the adjudicating authority failed to brought anything on record which indicates suppression, or willful misstatement, or fraud on part of the Appellant while obtaining registration.

6. On going through the copy of SCN I have observed that the SCN is issued on 19.10.2022 and the appellant was asked to appear before proper officer on very same day i.e. 19.10.2022 at 12.57 PM. Further, the appellant was asked to furnish reply within seven working days from the date of service of SCN. I have referred the relevant GST provisions i.e. Section 29 (2) of the CGST Act, 2017. The same is reproduced as under :

***Section 29. Cancellation ¹[or suspension] of registration.-**
(2) The proper officer may cancel the registration of a person from such date including any retrospective date, as he may deem fit, where,-



- (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
- (b) a person paying tax under section 10 has not furnished ³[the return for a financial year beyond three months from the due date of furnishing the said return]; or
- (c) any registered person, other than a person specified in clause (b), has not furnished returns for a ⁴[such continuous tax period as may be prescribed]; or
- (d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
- (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:**
Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard:

In view of aforesaid Section 29 (2) (e) the proper officer has the power to cancel the registration in the matter where registration has been obtained by means of fraud, willful misstatement or suppression of facts. Further, according to the aforesaid proviso to Section 29(2)(e) I find that before cancellation of registration an opportunity of being heard is require to be provided to the person. However, in the present matter I find that the registration is cancelled without being heard the appellant. Further, as per the SCN the opportunity of personal hearing is provided to the appellant however, I find force in the appellant's argument that adjudicating authority was not willing to allow any opportunity of personal hearing to them as SCN issued on 19.10.2022 and required the Appellant to appear before adjudicating authority at 12.57 PM on very same day.

7. In view of above, I find that the registration of the appellant is cancelled on the basis of communication received from the DGGI, AZU; I also find that registration is cancelled without being heard the appellant. On the identical matter, in case of *Balaji Enterprises Versus Pr. Additional Director General, Directorate General of GST Intelligence*, as reported in 2022 (66) G.S.T.L. 156 (Del.), Hon'ble High Court of Delhi has decided the matter as under :

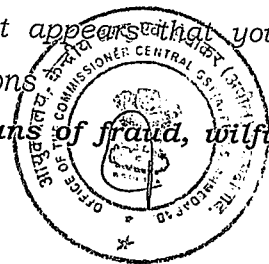
1.1 Via this order, the petitioner's registration has been cancelled.

1.2 The order petition, that the SCN is extracted hereafter, as we have a grave concern about the manner in which the SCN has been framed :

"Show Cause Notice for Cancellation of Registration : Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons

In case, Registration has been obtained by 1. means of fraud, wilful misstatement or suppression of facts.

.....



2. A perusal of the SCN would reveal, that there is next to nothing stated, as to the reason why the concerned authority proposed the cancellation of registration.

2.1 As a matter of fact, the concerned authority, ironically, put the onus on the petitioner to demonstrate that registration has been obtained by fraud, wilful misstatement statement or suppression of facts.

2.2 We would have thought, that in the first instance, the concerned authority would have adverted to some broad facts, which would have demonstrated that the petitioner had employed fraud, wilful misstatement or suppression of facts, while obtaining registration.

2.3 Nothing of this kind has been stated in the SCN.

3. Since, ostensibly, principles of natural justice were sought to be adhered to by the concerned authority, the petitioner was directed to file a reply to the SCN during the given timeframe i.e., seven days, and appear before the concerned authority on the given date and time.

3.1 The petitioner, admittedly, did file a reply.

3.2 This reply is marked as Annexure

4. Within less than a month, the impugned order was passed. Since the impugned order is brief, the relevant portion of the said order is set forth hereafter :

"This has reference to your reply Whereas the undersigned has examined your reply and submissions made at the time of hearing, and is of the opinion that your registration is liable to be cancelled for following reason(s). 1. Suo Motu cancellation of the taxpayer was initiated u/s 29(2) of the CGST Act, 2017 as per letter DGGI/INV/GST/510/2022-Gr R-O/o Pr. ADG-DGGI-ZU- CHEN dated 29-3-2022 received from DGGI, Chennai as an enquiry is pending against the taxpayer in r/o supply of spurious goods.

In view of above, GSTIN is cancelled Suo Motu u/s 29(2) of the CGST Act, 2017 and ...

5. A plain reading of the order would show, that the petitioner's registration was cancelled on account of an enquiry pending against the petitioner, which evidently is being carried out by DGGI, Chennai concerning supply of "spurious goods."

5.1 Furthermore,

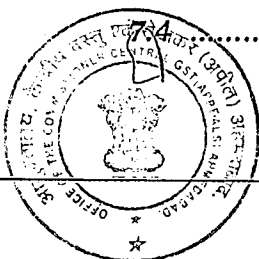
6. Interestingly, the impugned order reveals, that nothing was due from the petitioner on account of tax, interest, penalty or cess.

7. Clearly, the SCN did not advert to the facets, which were referred to in the impugned order, whereby the petitioner's registration has been cancelled.

7.1

7.2

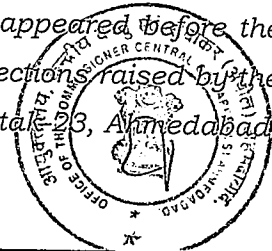
7.3



8.
9. Apart from anything else, there is, certainly, an infraction of the provisions of Rule 25 of the CGST, and that apart, as indicated above, the impugned order has gone beyond the frame of the SCN.
10. Accordingly, the prayer made in the writ petition is allowed.
11. The impugned order is set aside.
12. The respondents/Revenue will restore the registration of the petitioner.
- 12.1 It is made clear though, that this order will not come in the way of the respondents/Revenue issuing a fresh SCN or carrying on investigation against the petitioner, albeit as per law.
13. The writ petition is disposed of in the aforesaid terms.

Further, in a similar matter, in case of *Vinayak Metal Versus State of Gujarat*, as reported in 2022 (64) G.S.T.L. 270 (Del.), Hon'ble High Court of Gujarat has decided the matter as under :

2. For the sake of
3. By this writ-application under Article 226
-
4. The facts,
- 4.1 The writ applicant is registered under the GGST Act, 2017 having its Unique identification No. 24BJVPPG7723B2Z7. The writ applicant firm was served with a show cause notice dated 1-11-2021 issued by the Assistant Commissioner, Ghatak-23, Ahmedabad, in Form GST REG. 17/31. The said show cause notice was issued in exercise of power conferred under Section 29 of the GGST Act, 2017 read with Rule 22(1) of the Rules, 2017 framed thereunder.
- 4.2 The show cause notice simply states the reason for issuance of the notice, which reads as under :
- "Issues any invoice or bills without supply of goods and/or services in violation of the provisions of this Act, or the rules thereunder leading to wrongful availment of input tax credit or refund of tax."**
- 4.3 The writ applicant submitted its reply dated 9-11-2021 within the time period granted in the said notice questioning the authority of the Assistant Commissioner, to initiate proceedings for cancellation of registration.
- 4.4 It is the case of the writ applicant that though, the show cause notice called upon the writ applicant "to appear for personal hearing on the appointed date and time" failing which, the case was to be decided *ex parte* on the basis of available record on merits, the said show cause notice was bereft of any material particulars and the same does even stipulated any next date of hearing for personal hearing.
- 4.5 It is the case of the writ applicant that in absence of proper intimation by the respondent authority, the writ applicant on his own appeared before the concerned Officer thereby drawing attention about the objections raised by the writ applicant. However, the Assistant Commissioner, Ghatak-23, Ahmedabad,



without considering the objections raised by the writ applicant, passed the order dated 18-1-2022 cancelling the registration of the writ applicant firm. The sole reason assigned by the Assistant Commissioner in the said order of cancellation reads thus :

No "1. clarification against SCN is submitted. So cancellation order u/s. 29 read with rule 21 for cancellation of GSTN w.e.f. 10-9-2020 is send by RPAD bearing o/w no. 4828, dated 18-1-2022"

4.5 Being aggrieved by the aforesaid illegal action of the respondent authority cancelling the registration of the writ applicant firm, the writ applicant has approached this Court by way of present writ application.

5. We have heard

6. Recently, this Court had an occasion to deal with the issue of the procedural lapse on behalf of the State Authorities while dealing with the matters related to cancellation of registration under the GGST Act, 2017. The present matters are squarely covered by the decision of this Court in the case of Aggrawal Dyeing and Printing Works decided on 24-2-2022 in Special Civil Application No. 18860 of 2021 and allied matters.

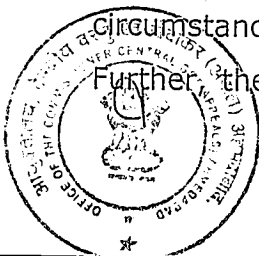
7. On bare perusal of the contents of the show cause notice as well as the impugned order, we find that the said show cause notice is absolutely vague, bereft of any material particulars and the impugned order is also vague and a non-speaking order. It cannot be disputed that with cancellation of registration, the dealer is liable to both civil and penal consequences. To say the least, the authority ought to have at least referred to the contents of the show cause and the response thereto, which was not done. Not only the order is non-speaking but cryptic in nature and the reason of cancellation not decipherable therefrom. In such circumstances, the principles of natural justice stand violated and the order needs to be quashed as it entails penal and pecuniary consequences. We therefore, quash and set aside the show cause notice dated 1-11-2021 as well as the consequential order dated 18-1-2022. We also quash and set aside the show cause notice dated 11-10-2021 and consequential order dated 31-12-2021 cancelling registration in Special Civil Application No. 5482 of 2022 and show cause notice dated 16-11-2021 and consequential order dated 7-12-2021 in Special Civil Application No. 5485 of 2022. We further remit these matters to the respondent No. 2 for de novo proceedings in accordance with law. In view of the fact that we have quashed the order of cancellation of GST registration, the respective GST registration stands revived.

8. It is expected of respondent Authority to abide by direction issued by this Court in Special Civil Application No. 18860 of 2021 and allied matter.

9. In light of the aforesaid, the matters stand as disposed in above terms.

In view of above, I am of the view that the facts and circumstances of present case is very much identical to the facts and circumstances of case of Balaji Enterprises [2022 (66) G.S.T.L. 156 (Del.)].

Further the facts and circumstances of case of Vinayak Metal [2022 (64)



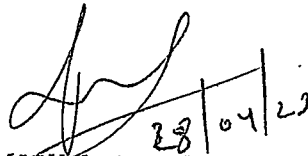
G.S.T.L. 270 (Del.)] are also very much similar to the facts and circumstances of present case.

8. By respectfully following the above judgments, I am of the view that the impugned order is not proper and legal as cancelled the registration without being heard the appellant and thereby violated principle of natural justice in terms of the provision of Section 29(2)(e) of the CGST Act, 2017.

9. In view of foregoing discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, I allow the appeal of the "*Appellant*". Concurrently it is also made clear, that this order will not come in the way of the Respondent/Revenue issuing a fresh SCN or carrying on investigation against the appellant, as per law.

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

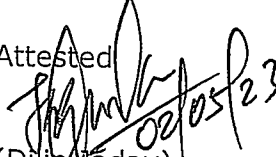
The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

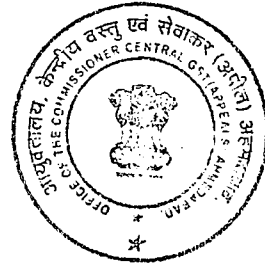
Date: 28.04.2023

Attested


(Dilip Jadhav)

Superintendent (Appeals)

By R.P.A.D.



To,
M/s. SHK Enterprises Private Limited,
A-906-907, Titanium City Centre,
Near Sachin Tower, 100FT Anandnagar 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/Asst Commissioner, CGST, Division-V Odhav, Ahmedabad South.
5. The Superintendent, Range – I, Div. V Odhav, Ahmedabad South.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File. / P.A. File

