



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- 20240464SW000000DAA6

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1438/2024-APPEAL / 14379 - 85

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 08 /2024-25

दिनांक Date : 22.04.2024 जारी करने की तारीख Date of Issue : 22.04.2024

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.ZD240124058576E (38/WS03/GST/AC/RSC/2023-24 dated 31.10.2023) issued by The Assistant Commissioner, CGST Division- III, Ahmedabad South Commissionerate.

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

Appellant	Respondent
M/s Associated Colours Industries Private Limited, PLOT NO 8011, GIDC PHASE-II, Vinzol Rail Crossing, Ahmedabad, Gujarat 382445	The Assistant Commissioner, CGST Division- III, Ahmedabad South Commissionerate

- (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](http://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](http://www.cbic.gov.in).



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

M/s. Associated Colours Industries Private Limited, Plot No. 8011, GIDC Phase-II, Vinzol Rail Crossing, Ahmedabad, Gujarat-382445 (hereinafter referred as 'appellant') has filed the present appeal against Order-In-Original No. ZD240124058576E (38/WS03/GST/AC/RSC/2023-24), dated 31.10.2023 (hereinafter referred as 'impugned order') passed by the Assistant Commissioner, CGST, Division - III, Ahmedabad South Commissionerate (hereinafter referred as '*adjudicating authority*').

**2(i).** The 'appellant' holding Goods and Service Tax registration no. 24AAQFP0756N1ZP is engaged in the manufacturing of Synthetic Organic Colouring Matter, whether or not chemically defined falling under HSN 3204 and registered with GSTN 24AAKCA2453NIZI since 01.07.2017. The appellant 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.

**2(ii).** Specific intelligence was received that a number of exporters, including M/s. Associated Colours Industries Pvt. Ltd, 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. 48/2017-CT dtd. 18.10.2017, No. 40/2017-CT(Rate) or No. 41/2017-1T(Rate) both dtd. 23.10.2017, as the case may be. Most of the exporters who had received supplies against Advance Authorisation 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.



3. Therefore, a show cause notice dated 27.07.2023 was issued to the 'appellant'. Thereafter, the impugned order 31.10.2023 was issued to the 'appellant' and confirm the demand of (IGST (refund) amounting to Rs. 58,29,744/- 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 on the proposed demand of tax and penalty of Rs. 58,29,744/- under the provisions of Sections 74(1) of the CGST Act 2017 on the proposed demand of tax, of following reasons:

- *that they had procured imported raw materials under Advance Licence without payment of integrated tax. Advance licences issued in the years 2017 to 2022 were used for procurement of duty free imports from July 2017 to November 2020. Refund was credited to their account during the period from 26.10.2017 to February 2023. It therefore, appeared that the refund of integrated tax claimed was in contravention of rule 96 (10) of the CGST Rules, 2017 and this Show Cause Notice came to be issued for recovery of refund erroneously granted;*
- *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 persons 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 refund of Rs 58,29,744/- was not admissible and for the same reasons, refund of Rs 58,29,744/- taken on exports as a manufacturer exporter is also not admissible and requires to be demanded;*
- *That the Noticee's contention that the demand of is not sustainable as the demand of refund cannot be issued without challenging the order sanctioning the refund is not correct as in these cases of IGST Refunds, the refund was being sanctioned when the Shipping Bills were being filed, no specific orders had been passed by any adjudicating authority and therefore for demand for erroneous refund, no appeal needs to be filed by the Department. In any case, the issue involved here is demand of the wrong utilization of IGST which has been subsequently been encashed by way of refund;*
- *the noticee's contention that the demand is Revenue neutral, is not true as refunds sanctioned under Rule 89(4) of the CGST Rules, "Refund of*



accumulated ITC”, is based on a formulae for calculation of the refund amount on the basis of Net ITC involved ‘only on inputs and input services’ and not capital goods. Thus, restricting the refund claimed, whereas there is no such restriction in refunds under Rule 96 of the CGST Rules, 2017. Hence both refunds are treated differently, hence it cannot be justified;

- Since the fact of receiving inputs under Advance Authorization and 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, willful mis-statement also. Further, it was possible to import under Advance Authorization by claiming exemption of only the Customs duties and IGST could have been paid in which case, the exporter would be eligible for refund of IGST. Therefore, a mere indication of “Advance Authorization” in the Shipping Bill would not be a sufficient disclosure. It should have been specifically indicated that IGST exemption was claimed while importing inputs under Advance Authorization. Such a submission was not mentioned in the export documents and it amounted to suppression of facts. In view of the above, the proposal to recover the erroneously sanctioned refund under Section 74 of the CGST Act, 2017 is correctly made and requires to be sustained;



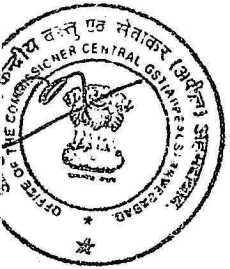
- the sub rule (9) of rule 96 of Central GST Rules, 2017 was inserted with effect from 23.10.2017, vide Notification No. 75/2017-C.T dated 29.12.2017, to restrict persons claiming refund of integrated tax paid on export of goods from receiving supplies on which the integrated tax was not paid. There were subsequent amendments also made but the intention to restrict the double benefit, of receiving duty free inputs and claiming refund on exports was a central condition in rule 96 ibid. As already noted, in GST regime, the refunds are automatic / machine driven and Shipping Bills filed are considered as refund claim. There being minimum intervention in sanction of refund claim on export of goods, the subject refunds involve suppression of facts with an intention to claim undue benefit. In view of these facts, I find that extended period under Section 74 is liable to be invoked for demanding the integrated tax refund wrongly claimed by them;

4. Being aggrieved with the impugned order, the appellant preferred appeal of the order before the appellate authority on 25.01.2024 on the following grounds:-

- the Appellant submits that the impugned order, confirming the demand of tax of Rs. 58,29,744/-, along with Interest and Penalty, is cryptic, non-speaking and has been passed mechanically, without considering the legal submission filed by the Appellant;
- appellant is duly entitled for refund, in terms of Rule 96A of CGST rules, for refund of accumulated ITC, in case if goods were exported without payment of tax, under Bond/LUT. Thus, demand to that extent is not sustainable being "Revenue Neutral", as appellant is duly entitled for refund under Rule 96A of CGST Rules;
- Without prejudice to other submissions, it is submitted that demand of IGST of Rs. 20,93,499/- for the period Prior to 09.10.2018 is not sustainable, as Notification No. 54/2018-CT, is effective from 09.10.2018 and not from 23.10.2017. Therefore, for the period 09.10.2018 till 28.02.2023, appellant has availed the refund of IGST of Rs. 25,70,362/- only, in violation of Rule 96(10);
- that Notification Number 54/2018 CT dated 09.10.2018 has specific effective date for implementation as the date of publication in Official Gazette which is 09.10.2018. Thus Notification 54/2018 would not have retrospective effective and therefore demand for the period prior to 09.10.2018 would not be sustainable in law;

Notifications for Rule 96(10) of CGST Rules, 2017. has also been revalidated by Circular No. 125/44/2019-GST, dated 18.11.2019, wherein vide Para No. 52, CBIC has clarified that- "The net effect of these changes is that any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13.10.2017, before the issuance of the notification No. 54/2018 - Central Tax dated 09. 10.2018, shall be eligible to claim refund of the Integrated tax paid on exports.";

- Circulars and Notifications issued under GST, are binding upon the revenue authorities. Therefore, the demand proposed of IGST refund of Rs. 58,29,744/-, in the impugned Order, in contrary to the Circular No. 125/44/2019-GST, dated 18.11.2019, and Notification No. 54/2018-Central tax, dated 9th October 2018, is Void-ab-Initio and therefore, liable to be set aside;
- that Notification No. 54/2018-CT, dated 09.10.2018, read with vide Para No. 52 of Circular No. 125/44/2019-GST, dated 18.11.2019, the demand of refund of IGST, in terms of Rule 96(10), for the period prior to



09.10.2018, is not sustainable in law, and exporter is duly eligible to claim refund of IGST paid on export of goods prior to 09.10.2018, if the said exporter himself has imported goods under Advance Authorisation Scheme, by availing benefit under Notification No. 79/2017-customs both dated 13.10.2017;

- that the Hon'ble Gujrat HC in case of Zaveri and company Vs UCJI. SCA No. 15091 of 2018 has held that Notification NO. 54/2018 dated 9.10.2018 is prospective;
- that utilization of ITC cannot be challenged without challenging the availment and eligibility of ITC under Section 16 of CGST Act, 2017. However, nowhere in the notice, department has disputed the availment and eligibility of Credit availed by the appellant in terms of Section 16 of CGST Act, 2017;
- No suppression of facts from the department, thus demand under Section 74 of CGST Act, 2017, is not sustainable in the present case. For this reason, penalty under Section 122 is also not imposable;

Interest is not applicable in the present case, as in any case appellant is duly eligible to claim refund in terms of Rule 89(4) of CGST Rules, 2017, if export is made under Bond/LUT, without payment of IGST, instead of export of goods with payment of IGST;

In view of the above, the appellant pray to set aside the impugned Order-in-Original, and drop the demand of Tax of Rs. 58,29,744/- along with Interest and Penalty as confirmed in the impugned order.

#### Virtual Hearing :

5. Virtual Hearing in the matter was held on 20.03.2024. Smt. Madhu Jain, Advocate appeared on behalf of the 'Appellant' as authorized representative. During Virtual Hearing she stated that before 09.10.2018, as per circular benefit Circular No. 125/44/2019 GST dated 18.11.2019 is allowed. Some of the exports are of pre-GST era, therefore provisions of 96(10) not applicable in such cases. Details submissions have been provided in written submissions. Further it's revenue neutral case therefore interest and penalty are not justified. She further reiterated the written submissions and requested to allow appeal.



**Discussion and Findings :**

**6(i).** I have carefully gone through the impugned order, the reply submitted by the notice and the documents / records in the matter and therefore I proceed to adjudicate the said demand. The issue to be decided in the instant case is that whether the appellant was entitled to the refund of integrated tax paid on goods exported as they had utilized inputs imported under Advance Authorization.

**6(ii).** The 'appellant' holding Goods and Service Tax registration no. 24AAQFP0756N1ZP is engaged in the manufacturing of Synthetic Organic Colouring Matter, whether or not chemically defined falling under HSN 3204 and registered with GSTN 24AAKCA2453NIZI since 01.07.2017. The appellant 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. Further it is observed 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. 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.

In the instant case, appellant has contended that a registered person shall be eligible to claim refund of IGST paid on export of goods till 08.10.2018 if the said registered person has imported goods under Advance Authorization Scheme by availing benefit under Notification No. 79/2017-Customs dated 13.10.2017 and therefore the appellant is duly eligible to claim refund of the integrated tax paid on exports.

**7(ii).** In this connection, it is observed that Rule 96(10) of CGST Rules 2017 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.]



**7(iii).** 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 the period 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-

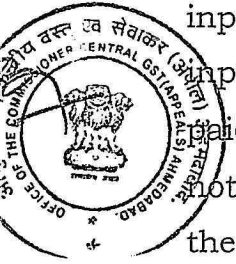
*“Recently, vide Notification No.16/2020-CT dated 23.03.2020 an amendment has been made by inserting following explanation to Rule 96(10) of CGST Rules, 2017 as amended (with retrospective effect from 23.10.2017)*

*“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, 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.** In the instant case, the appellant had claimed IGST refund of Rs. 58,29,744/- 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.



10. The Government has introduced self assessment system under a trust based regime which casts the onus of proper assessment and discharging of the tax on the said noticee. Section 59 of the Central Goods and Services Tax Act, 2017 provides that every registered person shall self assess the taxes payable under this Act. In view of the aforesaid narrations, I find that the appellant have contravened the following provisions of law:

- Rule 96(10) of the Central Goods and Services Tax Rules, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with Section 20 of the Integrated Goods and Service Tax Act, 2017 in as much as they had filed the refund of IGST paid on Zero Rated Supplies after availing the benefit of Notification no. 79/2017-Customs dated 13.10.2017.
- Notification No.16/2020-CT dated 23.03.2020 under which an amendment has been made by inserting the following explanation to Rule 96(10) of 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.”*

11. 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.

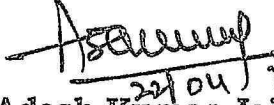
12. In view of the above, I uphold the demand of (IGST (refund) amounting to Rs. 58,29,744/- under the provisions of Sections 74(1) of the CGST Act read with the provisions of Section 20 of the IGST Act and Rule 96(10) of CGST Rules, interest under the provisions of Sections 50(1) of the CGST Act read with the provisions of Section 20 of the IGST Act and penalty of Rs. 58,29,744/- under the provisions of Sections 74(1) of the CGST Act 2017.



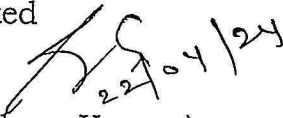
13. In view of the above discussions, I do not find any infirmity in the in the impugned order passed by the adjudicating authority. Accordingly, I find that the impugned order of the adjudicating authority is legal and proper and hence upheld and the appeal is rejected.

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: 22.04.2024

Attested

  
 (Sandheer Kumar)  
 Superintendent  
 CGST (Appeals)  
 Ahmedabad



By R.P.A.D.

To,

M/s. Associated Colours Industries Private Limited,  
 Plot No. 8011, GIDC Phase-II, Vinzol Rail Crossing,  
 Ahmedabad, Gujarat-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 Commissionerate.
4. The Dy./Assistant Commissioner (RRA), CGST, Ahmedabad South Commissionerate.
5. The Dy./Assistant Commissioner, CGST, Division-III, Ahmedabad South Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File. / P.A. File