

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015	 7 th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
☎ : 079-26305065	टेलिफैक्स : 079 - 26305136	

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/103to105/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-297 to 299-2017-18
दिनांक Date : 30-01-2018 जारी करने की तारीख Date of Issue

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Assistant Commissioner, केन्द्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं MP/16to18/AC/2017-18REF(ST) दिनांक: 06/09/2017, से सृजित

Arising out of Order-in-Original No. MP/16to18/AC/2017-18REF(ST) दिनांक: 06/09/2017 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

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

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

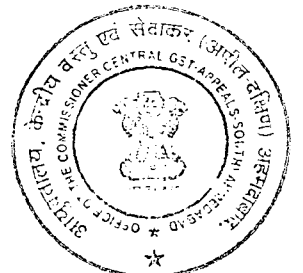
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

... 2 ...



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

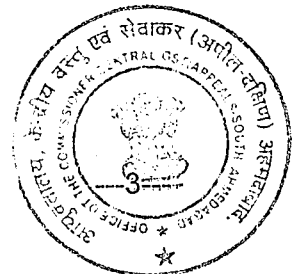
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(l) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



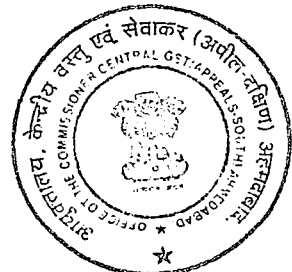
ORDER-IN-APPEAL

M/s. Bodal Chemicals Limited, Unit-IV, Plot No. 252, 253, C-1/254, Phase-II, GIDC, Vatva, Ahmedabad-382445 (hereinafter referred to as the 'appellants') have filed the present appeals against the following Orders-in-Original (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioner, Central Tax, Division III, Ahmedabad South (hereinafter referred to as 'adjudicating authority');

Sr. No.	Order No. & date	Appeal No.	Period Covered	Amount of refund claimed (₹)	Amount sanctioned (₹)	Amount rejected (₹)
1	MP/16 to 18/AC/2017-18 Ref(ST) dated: 06.09.2017	V2(32)103/Ahd-1/2017-18	July 16 to Sep 16	57,319/-	53,020/-	4,299/-
2	MP/16 to 18/AC/2017-18 Ref(ST) dated: 06.09.2017	V2(32)104/Ahd-1/2017-18	Oct 16 to Dec 16	71,029/-	58,724/-	12,305/-
3	MP/16 to 18/AC/2017-18 Ref(ST) dated: 06.09.2017	V2(32)105/Ahd-1/2017-18	Jan 17 to Mar 17	65,404/-	59,887/-	5,517/-
Total				1,93,752/-	1,71,631/-	22,121/-

2. The facts of the case, in brief, are that the appellants are engaged in the manufacture of Dyes Intermediates under Chapter 29 of C.E.T.A. 1985. The appellants are registered with the Central Excise department for the manufacture of the same and having Central Excise Registration No. AAACD5352MXM004. The appellants are also holding Service Tax Registration No. AAACD5352MST009.

3. The appellants had filed Service Tax refund claims for the total amount of Rs. 1,93,752/- for the period of July 2016 to March 2017 as detailed above, under notification No. 41/2012-ST dated 29.6.2012 read with Section 11B of the Central Excise Act, 1944, in respect of service tax paid on services used for export of goods, which pertained to the exports of excisable goods. The services involved were Terminal Handling Services, Port Services, Clearing and Forwarding Agent Services (Agency Charges) and Transport of Goods by Rail Services.



4. The adjudicating authority vide the aforementioned impugned orders sanctioned the claimed amount of Rs. 1,71,631/- out of Rs. 1,93,752/- and rejected the amount of Rs. 22,121/- on the grounds that-

(a) As per condition prescribed in para 1(c) of the Notification No. 41/2012-ST dated 29.6.2012, the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2;

(b) The condition of para 1(c) of the Notification No. 41/2012-ST dated 29.6.2012 has not been fulfilled by the appellants in some cases and therefore, total amount of Rs. 22,121/- was liable for rejection on the basis of provisions of para 1(c) of the said notification.

5. Feeling aggrieved, the appellants have filed these appeals against the rejection of the amount of Rs. 22,121/- out of 1,93,752/-, on the grounds which are inter alia mentioned that:

(a) The adjudicating authority has partly rejected the amount only on the ground of procedural para 1(c) of the Notification No. 41/2012-ST dated 29.6.2012. The substantive benefit arising out of a notification should not be denied on procedural infractions.

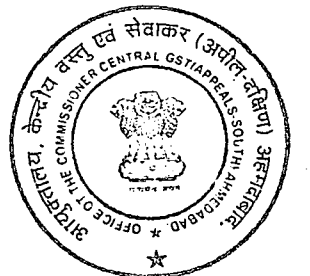
(b) The entire rebate claim has to be considered instead of considering the amount shipping bill wise.

(c) The procedure prescribed under para 2 and 3 of the Notification No. 41/2012-ST dated 29.6.2012 are mutually exclusive and the said para 1(c) has been incorporated only to simplify and make the rebate easily available to the exporters.

(d) It was not possible at the time of shipping bill to ascertain the para under which the rebate could be claimed.

(e) The said para 1(c) of the said Notification has been challenged before the Hon'ble High Court of Gujrat at Ahmedabad in the special civil application No. 9381/2015, in the case of Kalpesh Corporation. The said special civil application has been admitted by the Hon'ble Court and is pending for final decision.

(f) The appellants have relied upon the decision of the Hon'ble Supreme Court in the case of Dharnendra Trading Company.



(g) They do not have any objection if the amount as per para 2 which is lesser than the amount as claimed under in para 3 is sanctioned to them.

(h) Therefore, the impugned orders may be set aside and rejected amount of rebate claims may be allowed.

6. Personal hearing was conducted on 22/01/2018, Shri N K Tiwari, Consultant, appeared on behalf of the appellants and reiterated the contents of appeal memorandum. He also requested that since the case of Kalpesh Corporation on the similar issue (in the special civil application No. 9381/2015) has been admitted by the Hon'ble Court and is pending for final decision, the appeals may be remanded and kept in abeyance.

7. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. The issue to be decided by me is that whether the appellants are eligible for refund of Rs. 22,121/- which was rejected vide the impugned orders.

8. Before dwelling on to the dispute, I would like to reproduce the relevant paras of Notification No. 41/2012-ST dated 29.6.2012 for ease of reference:

“.....

(1)(c) the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2;

.....

(2) the rebate shall be claimed in the following manner, namely:-

.....

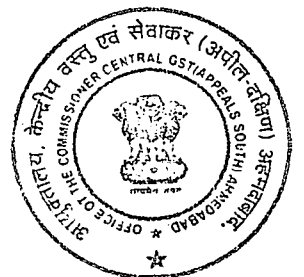
(d) the exporter shall make a declaration in the electronic shipping bill or bill of export, as the case may be, while presenting the same to the proper officer of customs, to the effect that--

(i) the rebate of service tax paid on the specified services is claimed as a percentage of the declared Free On Board(FOB) value of the said goods, on the basis of rate specified in the Schedule;

(ii) no further rebate shall be claimed in respect of the specified services, under procedure specified in paragraph 3 or in any other manner, including on the ground that the rebate obtained is less than the service tax paid on the specified services;

(iii) conditions of the notification have been fulfilled;

[Handwritten signature]



(e) service tax paid on the specified services eligible for rebate under this notification, shall be calculated by applying the rate prescribed for goods of a class or description, in the Schedule, as a percentage of the FOB value of the said goods;

.....

(3) the rebate shall be claimed in the following manner, namely:-

(a) **rebate may be claimed on the service tax actually paid on any specified service on the basis of duly certified documents;**

(b) the person liable to pay service tax under section 68 of the said Act on the taxable service provided to the exporter for export of goods shall not be eligible to claim rebate under this notification;

(c) **the manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made there under, shall file a claim for rebate of service tax paid on the taxable service used for export of goods to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture in Form A-1;**

.....”

(Emphasis supplied)

9. Under the Notification No. 41/2012-ST dated 29.6.2012, two procedures have been specified for claiming the refund of service tax. The first procedure, as stipulated in Para 2 of the said Notification allows rebate of service tax paid on eligible input services as a percentage value of the declared Free on Board(FOB) value of the export goods on the basis of rate specified in the schedule, which is to be claimed from Customs authorities. The other procedure as stipulated in Para 3 is that the rebate may be claimed on the service tax actually paid on any specified service on the basis of duly certified documents, which is to be claimed from Excise authorities. However, the foremost condition as stipulated in Para 1(c) of the Notification is that the rebate cannot be claimed under the procedure as per Para 3, wherever the difference between the amount of rebate under the procedure of rebate as per Para 2 i.e. as a percentage on FOB value of goods and rebate on the basis of documents as per Para 3, is less than twenty per cent of the rebate available under the procedure as per Para 2. It is evident that if the difference between the amount of rebate calculated as per procedure laid down under Para 2 and at the rebate claimed as per the procedure laid down under Para 3, is less than 20% of the rebate available under Para 2, the rebate cannot be claimed under Para 3.

10. On going through column no. 8 of the table A (para 7.1), B (para 7.2) & C (para 7.3) of the impugned orders, it is observed that in respect of 10 shipping bills, the difference between the amount of rebate calculated as per procedure laid down under Para 2 and at the rebate claimed as per the procedure laid down under Para 3, is less than 20% of



the rebate available under Para 2. Therefore, the rebate cannot be claimed under Para 3 in respect of such shipping bills amounting to Rs. 22,121/-.

11. I find that the adjudicating authority has sanctioned the rebate wherever all the conditions of the Notification has been fulfilled, as such, the appellants' contention that they have been denied the benefits of the said Notification, is not sustainable.

12. Further, the appellants contended that the procedure prescribed under para 2 and 3 of the Notification No. 41/2012-ST dated 29.6.2012 are mutually exclusive and the said para 1(c) has been incorporated only to simplify and make the rebate easily available to the exporters. I find that the Notification No. 41/2012-ST dated 29.6.2012 does provide two options for claiming Rebate of Service Tax and the exporter can chose whichever procedure is beneficial to them, however, they cannot ignore the conditions laid down in the Notification for claiming the rebate.

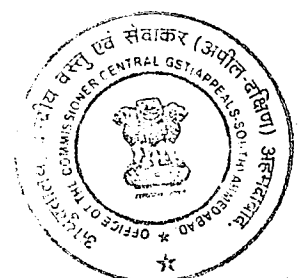
13. The appellants have relied upon the decision of the Hon'ble Supreme Court in the case of 'Assistant Commissioner of Commercial Taxes vs. Dharnendra Trading Company, Etc on 5 May, 1988 [1988 AIR 1247, 1988 SCR (3)946]'. But, I find that the following case law is more relevant to the situation in question. The Hon'ble Supreme Court in judgement, reported at 2011(270) E.L.T. 465(S.C.), while dismissing the appeal filed by M/s Saraswati Sugar Mills has held that-

"An exemption notification has to be strictly construed. The conditions for taking benefit under the notification are also to be strictly interpreted. When the wordings of notification is clear, then the plain language of the notification must be given effect to. By way of an interpretation or construction, the Court cannot add or substitute any word while construing the notification either to grant or deny exemption. [para 7]

While interpreting the Rules, which are framed under the Statute, they should be read as a part of the Statute itself and require to be interpreted as intra vires to the Act under which they have been issued. [para 8]

The meaning of the expression 'component' in common parlance is that 'component part of an article is an integral part necessary to the constitution of the whole article and without it, the article will not be complete'. [para 13]"

14. In view of the facts and discussion herein above, I find that the adjudicating authority has rightly rejected the rebate claims to the extent where the condition prescribed in the Notification No. 41/2012-ST dated 29.6.2012, has not been fulfilled.

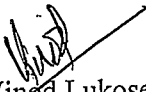


15. In view of the foregoing, the impugned orders are upheld and the appeals are rejected.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
16. The appeals filed by the appellants stand disposed of in above terms.

उमा शंकर
(उमा शंकर)
आयुक्त (अपील्स)

Attested


(Vinod Lukose)
Superintendent (Appeals)
Central Tax, Ahmedabad

BY SPEED POST TO:

M/s. Bodal Chemicals Limited,
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Phase-II, GIDC, Vatva, Ahmedabad-382445.

Copy to:

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Commissioner, Central Tax, Ahmedabad South.
- (3) The Assistant Commissioner, Central Tax Division-III, Ahmedabad South.
- (4) The Asstt. Commissioner(System), Central Tax HQ, Ahmedabad.
(for uploading the OIA on website)
- (5) Guard file



