



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,

7th Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

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टेलीफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/104/Ahd-II/2017-18
Stay Appl.No. NA/2017-18

1528/101532

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-335-2017-18
दिनांक Date : 21-02-2018 जारी करने की तारीख Date of Issue

16/3/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. STC/Ref/04/Shalby/KMM/AC/D-III/17-18 दिनांक: 06/04/2017
issued by Asst. Commissioner, Central Tax, Ahmedabad-South

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

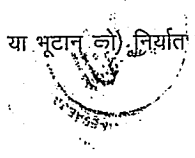
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

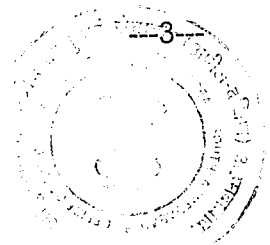
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 हॉस्पिटल कम्पाउण्ड, मेघानी 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(i) (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 Appellate 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।

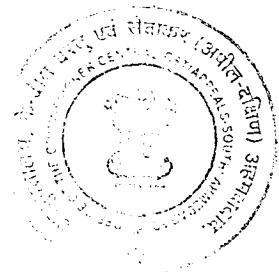
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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

This appeal is filed by M/s. Shalby Limited, Opposite Karnavati Club, SG Road, Ahmedabad-15 [for short -'appellant'] against OIO No. STC/Ref/04/Shalby/KMMohadikar /AC/Div-III/17-18 dated 6.4.2017, passed by the Assistant Commissioner, Division III, Service Tax Commissionerate, Ahmedabad.

2. Briefly, the facts are that the appellant filed a refund claim of Rs. 16,15,985/- on 3.11.2016 on the grounds that the appellant had provided *sponsorship services* to body corporate, who were liable to pay service tax on sponsorship fees paid by them under the reverse charge mechanism. The refund was filed since the appellant by mistake/ignorance, paid service tax on the amount of sponsorship fees received.

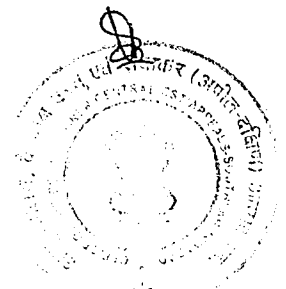
3. The refund application was decided by the adjudicating authority vide the impugned OIO dated 6.4.2017, wherein he held that the refund claim was filed within one year of the date of payment of service tax. However, he rejected the refund on the below mentioned grounds:

- that as per the provisions/definition of *business exhibition services*, the service rendered by the appellant fell within the ambit of *business exhibition service*; that though the appellant had invited the participants as sponsorer of the event the actual nature of service provided was *business exhibition service* and not *sponsorship service*;
- that as per the case of M/s. Tamilnadu Tourism Development Corporation Limited, the activity of allotting the stalls to small traders and artisans to market, promote & showcase their own production in addition of showcasing of the achievements of the client, prima facie fell under business exhibition service;
- that the appellant has not submitted any document, evidence to substantiate that the payment of service has actually made by them against the said service received by them.

4. Feeling aggrieved, the appellant has filed this appeal against the impugned OIO dated 6.4.2017, on the grounds that:

- they had submitted evidence of payment of service tax by both the appellant as well as the sponsors of service; that the service tax was inadvertently paid twice;
- that the appellant fulfils the test of unjust enrichment as they had not passed on the incidence of service tax;
- that the tax is to be paid by the body corporate who were provided the sponsorship services.

5. Personal hearing in the matter was fixed on 18.12.2017 wherein Shri S.L.Kothari, CFO of the appellant and Shri Arvind Modi, CA, appeared on behalf of the appellant and reiterated the grounds of appeal. They submitted that it is not *exhibition service* and also explained that sponsorers had paid the service tax. The appellant filed a additional submission raising the following averments:



(i) that the appellant is approved by the Indian Medical Association; that the doctors who participate were provided CME Hours which are mandatory for Doctors; that CME stands for Continuing Medical Education; that the CME hours can be provided only by an IMA certified conference;

(ii) that on reading section 65(105)(zu) with section 65(40) and section 65(41), it is clear that event management services are the services provided by an event manager in the nature of consultation, planning, promotion, organizing or presentation of arts, entertainment, business, sports, marriage or any other event; that the service receiver and manager cannot be one and the same person;

(iii) that the welcome letter in respect of "Orthodont 2015" clearly revealed that patients the prospective customers were not invited; that Doctors were invited with a view to further educate them in the field of orthopedic medical science; that it was interactive educational conference that focused on furtherance of knowledge in the medical science field;

(iv) that they had invited participation in the nature of sponsorship and not in the nature of event management; that they had not acted as event manager but had organized event to furtherance of knowledge in Orthopedic science by inviting sponsorships;

(v) that they are eligible for refund along with interest.

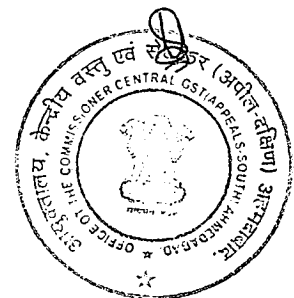
6. I have gone through the facts of the case, the grounds of appeal and the oral submissions made during the course of personal hearing. The question to be decided is whether the appellant is eligible for refund or otherwise.

7. Since the appellant's claim is that they have provided sponsorship services to body corporate, they were not liable to discharge service tax in terms of notification No. 3/2012-ST dated 26.6.2012 [Sr. No.3]. The appellant has admitted to the fact that service tax was paid under *event management service*. The adjudicating authority has held that the services provided by the appellant fell under *Business Exhibition services* and not *Sponsorship services*.

8. The adjudicating authority erred in trying to classify the service by holding it as Business exhibition service. Classification under Business Exhibition service was not a dispute, since I do not find that any show cause notice was issued in this regard. However, what remains to be seen is whether the appellant's claim - that what was provided was a sponsorship service is correct or otherwise. The definition of taxable services namely: Sponsorship Service as per Section 65(105)(zzzn) of the Finance Act, 1994, read with Section 65 (99a), is reproduced below:

(zzzn) to any person, by any other person receiving sponsorship, in relation to such sponsorship, in any manner;

(99a) "sponsorship" includes naming an event after the sponsor, displaying the sponsor's company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in the form of donations or gifts, given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors

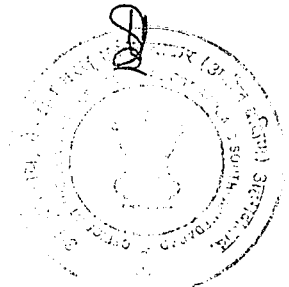


The appellant requested various companies to participate in the conference as a sponsor in the below mentioned categories:

1. Premium Sponsorship : Rs. 70 lac
[includes 3 workshops, premium booth space admeasuring 5 x 3 mt, branding space to display company's products]
2. Diamond Sponsorship : Rs. 50 lac
[includes 3 workshops, 2 booth space admeasuring 5 x 3 mt., branding space to display company's products]
3. Platinum Sponsorship : Rs. 25 lac
[includes 2 workshops, booth space : 5 mt x 3 mt, branding space to display company's products]
4. Gold Sponsorship : Rs 20 lac
[includes 1 workshop, booth space : 5 mt x 3 mt, branding space to display company's products]
5. Others : [Installation of stall, space based on amount of sponsorship]

It is a fact that the appellant discharged service tax under *exhibition service*. The appellant has further stated that *event management services* are the services provided by an event manager in the nature of consultation, planning, promotion, organizing or presentation of arts, entertainment, business, sports, marriage or any other event; that the service receiver and manager cannot be one and the same person. Hence it is stated by the appellant that their service does not fall under *exhibition service*. The appellant has further stated that in the conference, patients the prospective customers, were not invited; that Doctors were invited with a view to further educate them in the field of orthopedic medical science; that it was an interactive an educational conference that focused on furtherance of knowledge in the medical science field; that the appellant is approved by the Indian Medical Association; that the doctors who participate were provided CME [Continuing Medical Education] hours which are mandatory for Doctors; that the CME hours can be provided through an IMA certified conference. Therefore, it is contended that the service would not fall under Business Exhibition Service. I agree with the contention that the service would definitely not fall under the category of either exhibition service, or under Business exhibition service. Further, the appellants have stated that they had invited participation in the nature of sponsorship; that the participants were provided workshops and booth spaces to promote their brands; that the brochure, pamphlet, stall space, branding space all evidences lead to the service being in the nature of sponsorship service. Looking to the nature of service provided and the fact that the service would not fall in the ambit of either exhibition service or business exhibition service, the claim of the appellant that their service would fall within the ambit of sponsorship service, appears to be correct.

9. I further find that the amount of refund claimed is Rs. 16,15,985/- while the OIO in para 10 disputes the amount paid. The impugned OIO in para 10(b) states that as per ACES the said assessee made the payment of Service tax only amounting to Rs. 15,22,671/- [amount of Rs. 1,41,392/- by challan no. 07329 dtd 6.11.2015; Rs. 5,17,124/- by challan no. 00426 dftd 7.12.2015 and Rs. 8,64,155/- by challan no. 3095 dtd 6.1.2016]. The appellant has produced a sheet signed by the authorized signatory claiming that the entire amount stands paid. The

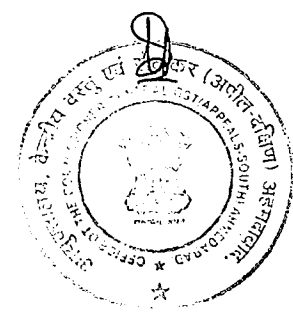


scanned copy of the said sheet is as follows:

Name of the Service Receiver	Date of Receipt of Payment	Service Tax Amount	Date of Payment of Service Tax	Challan No	Document supported received by counter party	Remark
Shalby Limited Annexure-B						
Shyama Orthopedic Hospital	17-Oct-15	350.00	06/11/2015 & 05/09/2015	07329 & 05948	Confirmation Awaited	
Knee & Shoulder Hospital	12-Oct-15	350.00	06-Nov-15	07329 & 05948	Confirmation Awaited	
Krishna Meditech Industries	16-Oct-15	700.00	06-Nov-15	07329 & 05948	Confirmation Awaited	
Tarcent Pharmaceuticals Ltd	17-Oct-15	27,440.00	06-Nov-15	07329 & 05948	Confirmation Awaited	
Kail Suroz Endoscopy Pvt Ltd	22-Oct-15	27,440.00	06-Nov-15	07329 & 05948	Declaration	
Springworld Healthcare System	30-Oct-15	18,900.00	06-Nov-15	07329 & 05948	Confirmation Awaited	
Pfizer Limited	27-Oct-15	137,700.00	06-Nov-15	07329 & 05948	Confirmation Awaited	
Suruchi Hospitals	04-Nov-15	1,740.00	05-Dec-15	00426	Confirmation Awaited	
Dynamic Technomedicals	07-Nov-15	3,625.00	05-Dec-15	00426	Confirmation Awaited	
Maven Meditech Private Limited	07-Nov-15	5,075.00	05-Dec-15	00426	Confirmation Awaited	
Zimmer India Pvt Ltd	10-Nov-15	290,000.00	05-Dec-15	00426	Declaration and Challan	
Wipro GE Healthcare Pvt Ltd	23-Nov-15	131,443.30	05-Dec-15	00426	Confirmation Awaited	
Sunafi Indix Ltd	24-Nov-15	71,050.00	05-Dec-15	00426	Confirmation Awaited	
Caris Injectable Ltd	24-Nov-15	14,210.00	05-Dec-15	00426	Confirmation Awaited	
Johnson & Johnson Ltd	01-Dec-15	886,463.00	05-Jan-17	03095 & 05948	Confirmation	Out of Rs. 886463 payable is paid through party by challan no 03095 of Rs. 054155/- and party by Rs. 23390/- by challan no 05948
		<u>3,615,986.00</u>				

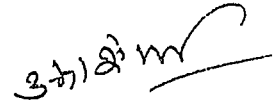
S. S. Patel
CP-Subdit Patel
Authorised signatory

From the above, it is evident that there is no dispute as far as payment of Rs. 15,22,671/- is concerned. Hence, it is ordered that the appellant be granted the refund of Rs. 15,22,671/-, the payment of which is not disputed by the department. In respect of the rest of the amount i.e. Rs. 93,314/- which the appellant claims to have paid and which is disputed by the department, I think that in the interest of justice, it would be prudent if the matter is remanded back to the adjudicating authority to re-examine the claim for the disputed amount and refund of the said be allowed, if the payment is correct. The appellant is also directed to produce all the documents, to substantiate his plea that the said amount has been paid by them.



10. In view of the foregoing, the impugned OIO dated 6.4.2017, is set aside and the appeal is allowed partly in favour of the appellant and partly by way of remand, in terms of directions mentioned supra.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
11. The appeal filed by the appellant stands disposed of in above terms



(उमा शंकर)

आयुक्त (अपील्स)

Date: 21.02.2018

Attested



(Vinod Lukose)

Superintendent (Appeal-I)

Central Excise, Ahmedabad.

BY R.P.A.D

M/s. Shalby Limited,
Opposite Karnavati Club,
SG Road, Ahmedabad -15

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad.
2. The Principal Commissioner, Central Tax, Ahmedabad South
3. The Addl./Joint Commissioner, (Systems), Central Tax, Ahmedabad South
4. The Dy. / Asstt. Commissioner, Central Tax, Division- V, Ahmedabad South
5. Guard file.
6. P.A

