

 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	टेलीफैक्स : 079 - 26305136	

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)/139/Ahd-I/2017-18 / 1736 to 1740
 Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-385-2017-18
 दिनांक Date : 12-03-2018 जारी करने की तारीख Date of Issue 22/03/18

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/19/DEM/2017-18 दिनांक: 30/10/2017 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Masta Machinery Stores
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) केंद्रीय 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 प्रक्रिया के दौरान हुई हो।

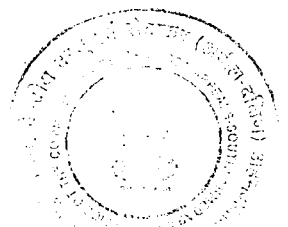
(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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।

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(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.

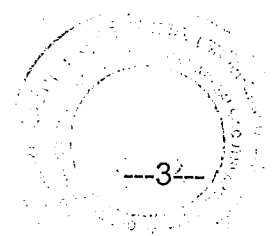
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 हॉस्पिटल 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(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(Appel) 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।

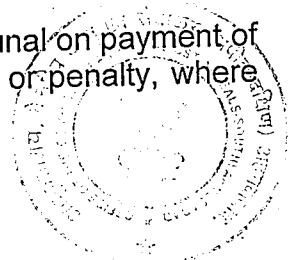
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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 has been filed by M/s. Masta Machinery Stores Private Limited, Plot No. 553, GIDC, Kathwada, Ahmedabad 382430 [for short -'appellant'] against OIO No. MP/19/Dem/2017-18 dated 30.10.2017 passed by the Assistant Commissioner, CGST and Central Excise, Division V, Ahmedabad South Commissionerate [for short -'adjudicating authority'].

2. The facts of the case are that during the course of scrutiny of ER-1 filed by the appellant, it was noticed that the appellant had cleared *plummer block*, valued at Rs. 1,13,67,794/-, without payment of Central Excise duty under notification No. 12/2012-CE [Sr. No. 338]. As further verification revealed that the appellant had not fulfilled all the conditions of the said notification, a show cause notice dated 4.7.2016 was issued to the appellant, *inter alia*, proposing to [a]deny the appellant the benefit of the said notification; [b]demand central excise duty of Rs. 14,20,974/- along with interest. The notice further proposed penalty under section 11AC(1)(a) of the CEA '94 and Rule 25 of the Central Excise Rules, 2002. The excisable goods involved, were also proposed to be confiscated under Rule 25 of the Central Excise Rules, 2002.

3. This notice was adjudicated vide the aforementioned OIO dated 30.10.2017, wherein the adjudicating authority denied the exemption benefit; confirmed the demand along with interest; imposed penalty on the appellant. The adjudicating authority also confiscated the goods and further imposed redemption fine of Rs. 14,20,974/- on the appellant.

4. Feeling aggrieved, the appellant has filed this appeal on the following grounds:

- the impugned order is *ex facie* illegal as none of the submission has been considered while deciding the proposals against the appellant;
- that the order even on merits is unsustainable; that the appellant had supplied the goods which were used for the mega power project which is undisputed; that the substantive condition of the goods being used for the mega power project is satisfied;
- that the appellant has learnt from the contractor [BHEL] and the sub contractor that no objections as was raised vide the aforementioned show cause notice was raised anywhere for supplies of goods for the said mega power project; that similar documents like certificates, undertaking were made available to all such vendors and sub contractors and the concerned goods were supplied to them against such documents;
- that the adjudicating authority did not give any finding on a written communication from BHEL, a copy of which was given to the adjudicating authority, intimating that all the concerned BHEL units were availing duty benefit on Suratgarh project on the basis of such certificates;
- that the benefit of exemption notification should be extended to the appellant when the same is extended to other manufacturer suppliers throughout the country; that they would like to rely on the case of Darshan Boardlam Ltd [2013(287) ELT 401], Ralli Engine Ltd[2004(62) RLT 607]
- that this project was a mega power project which was made under ICB[International Competitive Bidding] a fact certified by Project Authority Certificate dated 2.7.2013; that awarding a contract for supplies to a power project through ICB means that the condition referred to at Sl. No. 338 for supply of machinery was fulfilled; that the Chief Engineer in the PAC has specifically certified that the supply of goods under the contract made to mega power project in India was under the procedure of ICB in accordance with the provisions of paragraph 8.2(f) of the FTP; para 8.2(f) of FTP makes a reference to supply of goods to any project wherein Ministry has permitted import of such goods under zero customs duty;

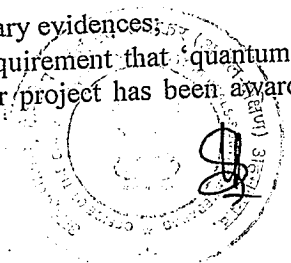
- that a combined & harmonious reading of para 8.2(f) and customs notification No. 12/2012-Cus shows that when goods are supplied to a mega power project in India under ICB it was a project where the supply of power had been either tied up through the tariff based competitive bidding or the mega power project was awarded to a developer on the basis of such bidding;
- that in so far as the objections regarding clause [c] and [d], are concerned, the appellant stated that the conditions did not appear to have been fulfilled in the manner prescribed; that there was however no dispute that these conditions and the requirement laid down there under being satisfied by virtue of the certificates and undertaking issued by responsible and unauthorized persons;
- that the objection that the undertaking should be by a CEO of the project while in this case it was issued by the COO of M/s. Bevecon Wayron P Ltd- thereby leads to a question as to - whether the person issuing the undertaking is important or it is the contents of the undertaking - which is of significance;
- that as an alternative, they were eligible for Sr. No. 336 of the notification which exempted all the goods supplied against the ICB, which was however subject to fulfillment of condition no. 41; that since the condition no. 41 stands fulfilled, they were eligible for availing the benefit of the exemption;
- that the imposition of penalty under section 11AC is unjustified; that there is no suppression or any mis statement; that their action of clearing the goods were bonafide; that no penalty is justified;
- that the confiscation of the goods and imposition of redemption fine is illegal and unauthorized; that they wish to rely on the case of Manjula Showa Ltd [2008(227) ELT 330] and Shiv Kripa Ispat [2009(235) ELT 623];
- that there is no short levy or non levy; that even the demand of interest under section 11A is not maintainable;

5. Personal hearing in the case was held on 22.2.2018, wherein Ms. Shilpa Dave, Advocate, appeared on behalf of the appellant. The Learned advocate reiterated the grounds of appeal. She further stressed on [a] that since the benefit of sl. No. 338 was denied they were eligible for the benefit of 336, the conditions of which they fulfilled; and [b] that other similarly placed sub contractors of BHEL were given benefit under the said exemption.

6. I have gone through the facts of the case, the grounds of appeal and the oral averments raised during the course of personal hearing. I find that the issue to be decided is whether the appellant is eligible for the benefit of exemption notification claimed by them or otherwise.

7. The appellant has claimed that the Government of Rajasthan through RRVUNL [Rajasthan Rajya Vidyut Utpadan Nigam Limited] envisaged a Mega Power project at Suratgarh, Rajasthan; that RRVUNL entered into an agreement with BHEL as the main contractor and M/s. Bevecon Wayors P Ltd as the sub-contractor, who in turn approached the appellant for supply of Plummer block for use in the said mega power project. The appellant supplied these goods by availing the benefit of exemption under notification No. 12/2012-CE [Sr. No. 338]. The adjudicating authority has however held that the appellant is not eligible for the benefit of the exemption notification on the grounds that:

- their claim for the benefit of exemption is not supported by documentary evidences;
- that on going through the PAC it is evident that - the essential requirement that 'quantum of power has been tied up through tariff based competitive bidding or project has been awarded through tariff based competitive bidding' has been struck down;



- that for the appellant, to now come up with a averment that he will now claim the benefit under a new condition at the time of personal hearing is unfair, unjust, improper and bad in the eye of law;
- that the appellant has failed to establish that they had fulfilled all the conditions of the notifications under which the duty exemption has been claimed and availed.

8. On going through the grounds of appeal and in-fact even in the oral submissions, it was argued that the adjudicating authority had not given his findings on the defence made by the appellant in the impugned OIO. In-fact, I find that all the grounds raised before me were raised even before the original adjudicating authority. However, it is evident that no findings have been made on the defence made by the appellant except that they have not been able to establish that they had fulfilled all the condition of the notification.

9. Board vide its Circular No. 1053/2/2017-CX., dated 10-3-2017, has dealt on how an adjudication order should be passed. The relevant paras are quoted below for ease of reference:

14.5 Adjudication order : The adjudication order must be a speaking order. A speaking order is an order that speaks for itself. A good adjudication order is expected to stand the test of legality, fairness and reason at higher appellate forums. Such order should contain all the details of the issue, clear findings and a reasoned order.

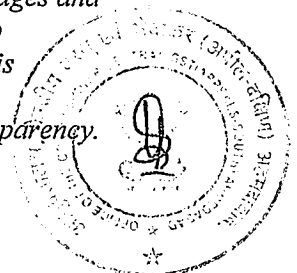
14.6 Analysis of issues : The Adjudicating authority is expected to examine all evidences, issues and material on record, analyse those in the context of alleged charges in the show cause notice. He is also expected to examine each of the points raised in the reply to the SCN and accept or reject them with cogent reasoning. After due analysis of facts and law, adjudicating authority is expected to record his observations and findings in the adjudication order.

[emphasis added]

10. Since the adjudicating authority has not given any findings on the issues raised by the appellant, the impugned OIO cannot be termed as a speaking order. The Hon'ble Supreme Court in the case of Kranti Associates Private Limited [2011(273) ELT 345], on the importance of issuing a speaking order, has held as follows:

51. Summarizing the above discussion, this Court holds :

- In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- A quasi-judicial authority must record reasons in support of its conclusions.*
- Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- Reasons facilitate the process of judicial review by superior Courts.*
- The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the Life blood of judicial decision making justifying the principle that reason is the soul of justice.*
- Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*
- Insistence on reason is a requirement for both judicial accountability and transparency.*



(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

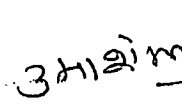
(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

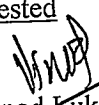
11. In view of the foregoing, since no reasoning is given in the impugned OIO on the averments raised by the appellant, it would be difficult for me to give my findings in the matter. Therefore, it would be prudent to remand it back to the adjudicating authority to pass a **speaking order** in the matter, discussing in detail **each and every issue** raised by the appellant and giving a specific finding on the issues. The adjudicating authority is also directed to decide the matter within **six weeks** from the receipt of this order. Needless to state, that the adjudicating authority will adhere to the principles of natural justice, while deciding the matter.

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


(उमा शंकर)
आयुक्त (अपील्स)

Date : .2.2018

Attested


(Vinod Lukose)
Superintendent,
Central Tax,
Ahmedabad.

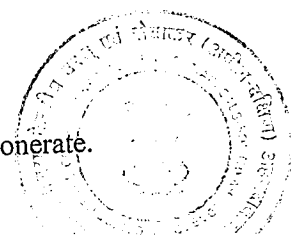
By RPAD.

To,

M/s. Masta Machinery Stores Private Limited,
Plot No. 553, GIDC,
Kathwada,
Ahmedabad 382 430

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.



3. The Deputy/Assistant Commissioner, Central Tax, Division-V, Ahmedabad South Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.
6. P.A.

