



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,  
सातवीं मंजिल, पोलिटेकनिक के पास,  
आम्बावाडी, अहमदाबाद-380015



☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)28/Ahd-South/2018-19  
Stay Appl.No. /2018-19

6488/0  
6442

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-053-2018-19  
दिनांक Date : 04-09-2018 जारी करने की तारीख Date of Issue

19/9/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. SD-05/07/DKJ/DC/2017-18 दिनांक: 31.05.2017 issued by  
Deputy Commissioner, Div-V, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Arvind B Safal Homes LLP**  
**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।

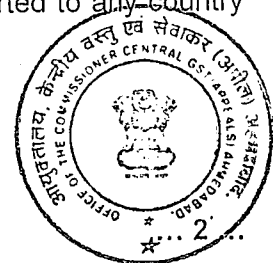
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case,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



(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 मामले 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 हों।

(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.

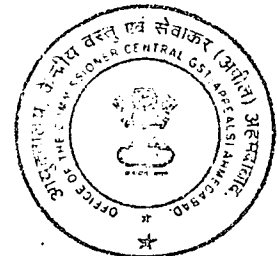
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल 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।

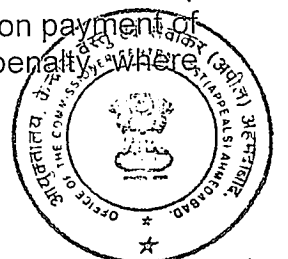
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



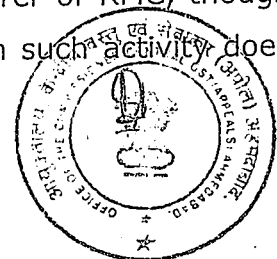
**ORDER-IN-APPEAL**

This appeal has been filed by M/s. Arvind B Safal Homes LLP(Limited Liability Partnership), Khokhara, Mehmedabad, Ahmedabad-380008 (hereinafter referred to as "the appellant") against the Order-in-Original number SD-05/07/DKJ/DC/2017-18 dated 31.05.2017 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Service Tax, Div-V, Ahmedabad (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case are that during the course of test audit of the records of the appellant, it was noticed that the appellant firm came into existence on 24.09.2010 through their partners M/s Arvind Infrastructure Ltd and M/s Safal Homes LLP, for a joint venture having their offices at Rohit Mills Premises, Rohit Circle, Khokhara, Ahmedabad, for constructing Residential units. Further, the appellant entered into Job work agreement with M/s Arvind Infrastructure and with M/s Safal Homes LLP and collecting job work charges from them for supply of ready *Ready Mix Concrete*(hereinafter referred to as "RMC"). Thus the appellant was doing job work for the principals and collecting job work charges for ready RMC. Also, the benefit of Notification No. 8/2005-ST cannot be extended to them as no Central Excise duty has been paid by the Principals. Further, during the course of audit and on scrutiny of Balance Sheet and freight expense ledger, it was also noticed that during 2010-11 to 2011-12, the appellant had incurred freight expense but failed to discharge service tax liability.

In view of the above, a show cause notice, dated 11.04.2016, was issued to the appellant which was adjudicated by the adjudicating authority vide his impugned order wherein he confirmed the demand of Service Tax amounting to ₹ 31,81,214/- under the category of BAS and demand of Service Tax amounting to ₹ 15,436/- under the category of Transportation of goods through Road Services(hereinafter referred to as "GTA services"), under Section 73(1) read with Section 68 of the Finance Act, 1994. He also ordered to recover interest under Section 75 of the Finance Act, 1994 and imposed penalty of ₹ 10,000/- under section 77(1)(a) of the Finance Act, 1994 for their failure to take registration in accordance with the provisions of Section 69 and also imposed penalty of ₹ 10,000/- under section 77(2) of the Finance Act, 1994, for the failure to file correct ST-3 return and imposed equivalent penalty of ₹ 31,96,650/- under Section 78 of the Finance Act, 1994.

3. Being aggrieved, the appellant have filed the present appeal before me. The appellant argued that they were the manufacturer of RMC, though on job work basis, the question of levying service tax on such activity does



not arise. The appellant relies upon the following decisions in support of the contentions.

1. 2017(51) S.T.R.462(Tri. - Del.) Ramdarshan Rolling Mills versus Commissioner of Central Excise & S.T., Indore
2. 2016(46)S.T.R 426(Tri.-Mumbai) Endurance Systems India (P) Ltd. Versus Commr. of C.Ex. & Cus., Aurangabad
3. 2016(46) S.T.R. 357(Tri. - Del.) Walltracts India Pvt. Ltd. Versus Commissioner of Central Excise, Delhi-II
4. Commissioner V. New Era Handling Agency-2016(44) STR J278(SC)

Furthermore, in respect of demand of GTA Service, it is submitted that mere difference of figures cannot be the sole basis for demand. Further, the appellant informed that they are registered with the department and has filed return. Therefore the question of imposition of penalty under section 77 also does not arise. The appellant prays for personal hearing in this appeal.

4. A personal hearing in the matter was held on 27.08.2018 and Shri Shridev J Vyas, Advocate of the appellant appeared for the same and reiterated the grounds of appeal.

5. I find that the main issue is whether the appellant is liable to pay service tax on job work charges received from M/s Arvind Infrastructure Ltd., A'bad and M/s Safal Homes, A'bad for supply of ready RMC to them. Further, it is clearly mentioned in the para 11.6 of the impugned order that the appellant vide their letters dated 06.12.2012 and 24.05.2013 accepted the fact that their service fall under the BAS. Thus the appellant were well aware of the provisions of Service Tax. In this connection I reproduce below the relevant notifications on the issue and the definition of BAS as under:

**(i) Notification No. 8/2005-ST dated 01.03.2005**

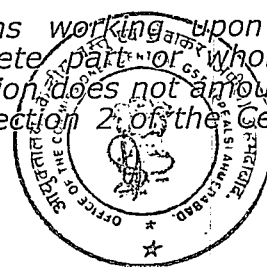
Job work — Service tax exemption to goods produced on behalf of client

*In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of production of goods on behalf of the client referred in sub-clause (v) of clause (19) of section 65 of the said Finance Act, from the whole of service tax leviable thereon under section 66 of the said Finance Act :*

*Provided that the said exemption shall apply only in cases where such goods are produced using raw materials or semi-finished goods supplied by the client and goods so produced are returned back to the said client for use in or in relation to manufacture of any other goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as amended by the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), on which appropriate duty of excise is payable.*

*Explanation. - For the purposes of this notification, -*

*(i) the expression "production of goods" means working upon raw materials or semi-finished goods so as to complete part or whole of production, subject to the condition that such production does not amount to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944);*



(ii) "appropriate duty of excise" shall not include 'Nil' rate of duty or duty of excise wholly exempt.

**(ii) Notification No. 19/2005-ST dated 07.06.2005**

**Service tax — Amendments to Notification Nos. 13/2003-S.T., 14/2004-S.T., 15/2004-S.T., 24/2004-S.T. and 8/2005-S.T.**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby directs that the following notifications of the Government of India in the Ministry of Finance (Department of Revenue) as specified in column (2) of the Table below, shall be amended or further amended, as the case may be, in the manner specified in the corresponding entry in column (3) of the said Table, namely :-

**Table**

S. No.	Notification number and date	Amendments
(1)	(2)	(3)
5.	8/2005-Service Tax, dated the 1st March, 2005 [G.S.R. 142 (E), dated the 1st March, 2005]	In the said notification, - (i) for the words "production of goods on behalf of the client", the words "production or processing of goods for, or on behalf of, the client" shall be substituted; (ii) in the proviso, for the words "produced", occurring at two places, the words "produced or processed" shall be substituted; (iii) in the Explanation, in clause (i), - (a) for the words "production of goods", the words "production or processing of goods" shall be substituted; (b) for the words "production" occurring at two places, the words "production or processing" shall be substituted.

This notification shall come into force on the 16th day of 2. June, 2005.

**(iii) Notification No. 12/2012-ST dated 17.03.2012**

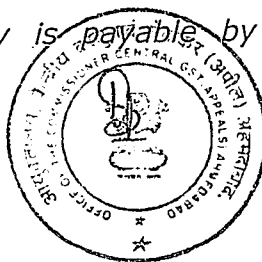
List of Services exempted from Service tax after enactment of Finance Bill, 2012 — Negative list

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66 B of the said Finance Act, namely :-

30. Carrying out an intermediate production process as job work in relation to -

(a)-.....

(c) any goods on which appropriate duty is payable by the principal manufacturer; or



**"Business Auxiliary Service" falling under Section 65(105)(zzb) of the Finance Act, 1994, is defined as under :**

*"Business Auxiliary Service" means any service in relation to, -*

*(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or*

*(ii) promotion or marketing of service provided by the client; or*

*[\* \* \* \*]*

*(iii) any customer care service provided on behalf of the client; or*

*(iv) procurement of goods or services, which are inputs for the client; or*

**[Explanation -** For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

**(v) production or processing of goods for, or on behalf of the client;**  
**or**

*(vi) provision of service on behalf of the client; or*

*(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, [but does not include any activity that amounts to "manufacture" of excisable goods].*

**Explanation -**

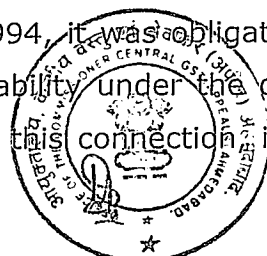
(a) .....

(b) ['excisable goods' has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944(1 of 1944);

(c) 'manufacture' has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944(1 of 1944)]

6. Thus on plain reading of the notifications and the definition of BAS, the law is quite clear on the issue that job work activity falls under BAS and if the job worked goods have suffered excise duty, then the benefit of the notification 8/2005-ST can be availed and service tax has not to be paid, and vice-versa. In this connection, various judgments are also mentioned in impugned order by the adjudicating authority, which clearly show the service tax liability of the appellant. Further I find that RMC is an excisable product and is chargeable to excise duty under Chapter 38 of the CETA, 1985 and in para no. 10.4 it is clearly mentioned that the audit team has verified the fact that the Principals i.e. M/s Arvind Infrastructure Ltd., A'bad and M/s Safal Homes, A'bad has not paid excise duty on the RMC. Further, I find that the appellant has not submitted any supporting documents regarding payments of central excise duty on RMC by the principal manufacturer.

7. Regarding the issue of non-payment of service tax on GTA, I find that the appellant was falling in the specified category of person liable to pay tax as recipient of taxable service in terms of sub clause (v) of clause (d) of sub rule (1) of Rules 2 of the Service Tax Rules, 1994, it was obligatory on the part of the taxpayer to discharge service tax liability under the category of Transport of Goods by Road (GTA) Services. In the connection it is clearly



mentioned in their grounds of appeal that mere difference in the figures cannot be the sole basis for demand but the appellant failed to submit proper justification of said difference in value before me. Hence, I find that the adjudicating authority has rightly confirmed the demand.

Thus, in view of the above, it is very much clear that if the principal manufacture was availing exemption from payment of central excise duty on RMC, the benefit from payment of service tax cannot be given to the appellant. I find that this was a case of deliberate suppression of facts and evasion of duty, which categorically proves the intention of the appellant about concealing their income and evasion of taxes. Accordingly I find that the invocation of extended period is justified. Thus, without much ado, I conclude that the adjudicating authority has rightly confirmed the demand.

8. In view of above discussions, I up held the impugned order passed by the adjudicating authority and reject the appeal filed by the appellant.

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

9. The appeals filed by the appellant stand disposed off in above terms.

*उमाशंकर*

(उमा शंकर)

CENTRAL TAX (Appeals),  
AHMEDABAD.

ATTESTED

*Vinod Lukose*  
(VINOD LUKOSE)  
SUPERINTENDENT,  
CENTRAL TAX (APPEALS), AHMEDABAD.

BY R.P.A.D

To,  
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Copy to:-

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

