



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 07926305065- टेलिफैक्स 07926305136



स्पीड पोस्ट

- क फाइल संख्या : File No : V2(27)163/Ahd-South/2018-19 / 13041 To 13045
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-065-2019-20**
 दिनांक Date : **18-11-2019** जारी करने की तारीख Date of Issue **25.11.2019**
- श्री गोपीनाथ** आयुक्त (अपील) द्वारा पारित
 Passed by Shri. **Gopi Nath**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **MP/05/AC/Div-IV/18-19** दिनांक: **31.10.2018** issued by Assistant Commissioner, Div-IV, CGST, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Indian Oil Corporation Ltd
 Marketing Division, Sabarmati Terminal
 Nr. D Cabin, New Railway Colony
 Sabarmati, ahmedabad 380019

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.



(क) 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।

(A) 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.

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

(B) 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।

(c) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. 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 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 रूपए 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 Indian Oil Corporation Limited, Sabarmati Terminal, Near 'D' cabin, Sabarmati, Ahmedabad [hereinafter referred to as "appellant"] against Order-in-Original No.MP/05/AC/Div-IV/18-19 dated 31.10.2018 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, CGST, Division IV, Ahmedabad South [hereinafter referred to as the adjudicating authority].

2. Briefly, the facts of the case are that 20 show cause notices were issued to the appellant during 1992 to 1997 for demanding of central excise duty, totally amounting to Rs. 8,28,01,789/- as they had failed to submit certificate in respect of re-warehousing of goods removed under AR-3A to the proper officer, as prescribed under Rule 156 B(1)(2) read with 156 A(2) and 173 N of erstwhile Central Excise Rule, 1944. Later on, out of the said demand, the jurisdictional Assistant Commissioner has confirmed the duty of Rs.8,01,28,03/- and imposed penalty of Rs.2 lacs. After many rounds of litigation, including remand proceedings, before Commissioner (Appeals) as well as Hon'ble Tribunal, the issue was lastly decided by the Commissioner (Appeals) vide OIA No.121/2012 dated 31.12.2012 under which the case was remanded to the lower authority in terms of specific observation and given direction to re-examine the matter in detail. Accordingly, the adjudicating authority has finally decided the issue vide impugned order, wherein, he has confirmed duty of Rs.3,87,75,446/-.

3. Aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- The adjudicating authority has confirmed the demand without considering the submissions made by the appellant and provisions of law, judgments on the issue; that no statutory requirement that re-warehousing certificate received from consignee should be attested by office in charge of consignee; that only requirement to submit AR 3A (duplicate) duly endorsed by consignee which the appellant have submitted for all goods.
- It is the departmental official to forward the re-warehousing certificate to the consignee location and therefore, there is no responsibility on the consignor not having fulfilled the requirement between the departmental authority of consignor and the consignee location.
- It is not the case of department that the goods covered in AR 3As were diverted and no such allegations are also made in the notice; therefore, the demanding duty merely for non-submission of original AR3As is not correct.
- The appellant have submitted all documentary evidences to substantiate the goods received by the consignee and also receipt of re-warehousing of the goods covered therein and clearances thereafter under warehousing arrangement etc.

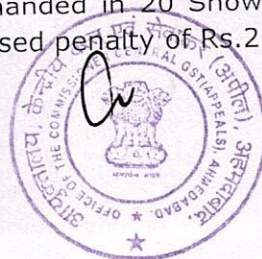


4. Hearing in the matter was held and shri Hitesh Khodiyar, Manager (Finance) of the appellant and Shri H.P.Kanada, Advocate appeared for the same. The Ld. Advocate reiterated the submissions of appeal memo and submitted additional submissions.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memo as well as at the time of personal hearing. The issue to be decided in the matter is relating to confirmation of duty amounting to Rs.3,87,75,446/- in respect of non-submission re-warehousing certificate of goods removed under AR3As by the appellant during 1992 to 1997 under Rule 156A and Rule 156B read with Rule 173 N of erstwhile Central Excise Rule, 2002.

6. At the outset, I observe that the chronological incidence taken place in the matter is as under:

- [i] The matter was first adjudicated by the jurisdictional Assistant Commissioner, vide order dated 31.03.1998, wherein, he had confirmed the demand of Rs.8,01,28,083/- and dropped the demand of Rs.26,73,706/-.
- [ii] The appeal filed by the appellant was decided by the Commissioner (Appeals), vide OIA dated 18.01.2001, wherein, he had confirmed the demand of Rs.2,13,43,385/- and for the remaining amount, the matter was remanded to the adjudicating for re-examination/verification.
- [iii] The appeal filed by the appellant against the demand upheld by Commissioner (Appeals) was decided by the Hon'ble CESTAT, vide order dated 08.06.2009. The case was further remanded to the adjudicating authority by the Hon'ble CESTAT for considering the case again and the appellant was also directed to submit all evidence against which the goods were received by the consignee.
- [iv] On remand proceedings, vide OIO dated 30-11-2009/08-12-2009 and corrigendum issued thereof, the Assistant Commissioner has confirmed the amount of Rs.2,27,79,325/-.
- [v] Against the OIO dated 30-11-2009/08-12-2009, the appellant as well as the department had filed appeal before Commissioner (Appeals). The Commissioner (Appeals), vide OIA dated 06.07.2010, has set aside the OIO dated 30-11-2009/08-12-2009 and again remanded the case to the adjudicating authority with a direction to re-examine the AR3As duly countersigned by the Central Excise Officer of the consignee in respect of demand of Rs.5,73,48,758/- and also to re-examine the AR3As in respect of which entry no. and date of re-warehousing certificate not mentioned in respect of demand of Rs.2,27,79,325/-.
- [vi] The Department approached Hon'ble Tribunal by questioning the power of remand by the Commissioner (Appeals). Vide order dated 09.08.2011, the Hon'ble Tribunal has allowed the power of remand by the Commissioner (A) and directed the adjudicating authority to decide the case afresh.
- [viii] Vide OIO dated 15.05.2012, the Assistant Commissioner has confirmed the demand of Rs.8,28,01,789/- demanded in 20 Show Cause Notices issued on 1992 to 1997 and also imposed penalty of Rs.2,00,000/-.



[ix] Commissioner (Appeals), vide OIA dated 31.12.2012, has upheld the recovery of Rs.42,02,083/- in respect of AR3As not traceable and in respect of remaining amount, he again remanded the matter to the adjudicating authority. He also dropped the penalty imposed.

[x] The department again filed an appeal before Hon'ble Tribunal against OIA dated 31.12.2012 and vide order dated 09.07.2015, the Hon'ble Tribunal had also upheld the OIA with a direction to the adjudicating authority to decide the matter according to OIA.

[xi] Accordingly, the adjudicating authority has finally confirmed the demand of Rs. 3,87,75,446/-.

7. I find that the adjudicating authority has confirmed the demand of Rs.3,87,75,446/- in respect of non-submission of re-warehousing of goods removed under AR-3As in following counts.

S No	No. of AR 3As	Amount of duty confirmed	Reasons for confirmation
1	16	46,97,922/-	Entire amount was paid by the appellant
2	37	42,02,083/-	Commissioner (A), vide OIA dated 31.12.2012 had already confirmed the demand.
3	482	2,98,75,441/-	The appellant neither produced original nor photo copies of AR3As duly countersign by the jurisdictional consignee's Superintendent or Inspector.

7.1 In the appeal memorandum, I find that the appellant has not disputed the confirmation of Rs.46,97,922/- in respect of 16 AR3As referred to above. Since the confirmation of demand and payment made by them is accepted, I do not find to discuss the matter further and accordingly, I uphold the order of adjudicating authority in this regard.

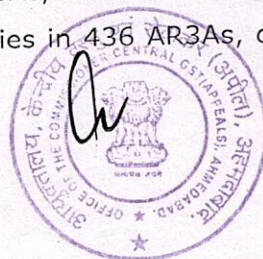
7.2 As regards 37 AR3s for Rs.42,02,083/-, the appellant has submitted that the said amount was recovered by way of adjustment from them by the lower authority, vide OIO No.97/AC/13-Ref dated 17.08.2013, while adjudication of refund amount of Rs.2.22 Crore. They further submitted that in the meantime, they could trace out 27 AR3s involving Rs.33,01,787/- and filed a refund claim as per Commissioner (Appeals) order dated 31.12.2012; that as per Commissioner (Appeals) order dated 31.12.2012, if any proof of re-warehousing in respect of 37 AR3As is received by the appellant, they can file a refund claim later on. I find that the refund claim was rejected by the lower authority vide OIO dated 13.05.2015 as the appellant had submitted Xerox copies of AR3A in question. The Commissioner (Appeals), vide OIA dated 17.02.2016, has remanded this issue to the lower authority to examine the evidences submitted by the appellant. I find that the adjudicating authority has not discussed anything regarding the status of the said refund claim in the impugned order and confirmed the demand only on the basis of



duty confirmed by the Commissioner (Appeals). I find that this office has sought a clarification in this regard, vide letter dated 03.07.2017, however, no communication is received from the adjudicating authority till date. In the circumstances, I feel that the confirmation of demand in respect of 37 AR3As, involving Rs.42,02,083/- can be upheld only after knowing the present status of the refund claim filed by the appellant in respect of 27 AR3As mentioned supra. Therefore, this matter needs to be re-examined by the adjudicating authority further. Therefore, I remand this issue to the adjudicating authority to pass a speaking order afresh, after looking into the facts discussed above.

7.3 Lastly, for 482 AR3As involving demand of Rs.2,98,75,441/-, I find that though the adjudicating authority has stated in the impugned order that the appellant has not furnished any original/photo copies of AR3As in question, duly countersigned by the jurisdictional consignee's Superintendent or Inspector, the appellant has vehemently contended that [i] in 7 AR3As involving Rs.13,43,603/-, they have paid duty on the shortage quantity; [ii] in 10 AR3As involving Rs.10,52,274/- the jurisdictional Range Superintendent has confirmed re-warehousing of goods; [iii] in 27 AR3As involving Rs.34,36,112/-, original/Xerox copies were signed by the Consignee and jurisdictional Superintendent/Inspector; and remaining 438 AR3As involving Rs. 2,40,43,452/-, they had submitted original/Xerox copies/collateral evidences signed by the consignee. The appellant has furnished Xerox copies of AR3As in support of their argument. In this regard also, this office has requested to the adjudicating authority, vide letter dated 03.07.2019, to clarify the matter. However, till date no reply is submitted.

7.3.1 Looking into the submissions made by the appellant, I feel that the demand of Rs.13,43,603/- in 7 AR3As is not sustainable as they had paid the amount and Rs.44,88,386/- in 37 AR3As is also not sustainable as they submitted original/Xerox copies of AR3As duly signed by the Superintendent/Inspectors. I find that in earlier round, the Commissioner (Appeals) had accepted the Xerox copies AR3As, duly certified by the jurisdictional central excise officer as proof of re-warehousing and the acceptance of such Xerox copies was not agitated by the department. In the circumstances, the adjudicating authority should have accepted such documents as proof of re-warehousing. However, I find that these facts were not considered by the adjudicating authority though the appellant has furnished all such details. Therefore, this issue is also required to be re-examined by the adjudicating authority on the basis of documents furnished by the appellant and if the submissions made by the appellant in respect of 7 and 37 AR3As supra is found in order, the appellant is eligible for relief. In view of above, I remand the matter to the adjudicating authority. In respect of 438 AR3As, I find that as per appellant's submission they had submitted original/Xerox copies in 436 AR3As, duly signed by



the consignee and collateral evidences in 2 AR3As. I find that earlier also, the Commissioner (Appeals) has remanded the case in respect of AR3As which were only signed by the consignee and not counter signed by the department officer in charge. I find that as per provision of Rule 156 A of erstwhile CER 1944, the Officer-in-charge of the warehouse of destination shall countersign the application received by him and send it to the Officer-in-charge of the factory or warehouse of removal and provisions of 156 B of rule ibid, If the application endorsed with the re-warehousing certificate is not received by the Officer-in-charge of the factory or warehouse of removal, the consignor shall, on demand by the proper officer, pay the duty leviable on such goods. Therefore, the appellant is bound to furnish AR3As in original or Xerox copies duly certified by the officer in charge. In this matter, I find that the appellant has furnished copies of AR3As duly signed by the consignee only which is not acceptable as per provisions of above referred rule. Hence, the duty involved in respect of goods removed on such AR3A is recoverable. However, I give one more time/chance to the appellant to trace out the required AR3As in original or Xerox copies duly countersigned by the central excise officer in charge of consignee's end or any collateral evidence to the effect of goods re-warehoused at consignee's end and furnish before the adjudicating authority within one month on receipt of this order. Therefore, I remand this matter also to the adjudicating authority to decide afresh on the basis of submissions made by the appellant. Needless to mention that opportunity of natural justice should be given to the appellant to present their case. Since the matter is very old, the entire process should be completed within two months from the date of this order.

8. In view of above discussion, I uphold the demand of Rs. 46,97,922/- as mentioned at 7.1 above and for the remaining demand, I remand the case to the adjudicating authority as discussed at para 7.2, 7.3 and 7.3.1 above.

9. The appeal stands disposed of in above terms.

(Gopi Nath)

Commissioner (Appeals)

Date : .11.2019



Attested

(Mohan V.V)

Superintendent

Central Tax (Appeals) Ahmedabad

By R.P.A.D.

To,

M/s Indian Oil Corporation Limited,
Sabarmati Terminal, Near 'D' cabin, Sabarmati,
Ahmedabad

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Principal Commissioner of Central Tax, Ahmedabad - South.
3. The Addl. Commissioner, Central Tax (System), Ahmedabad South.
4. The Asstt./Dy Commissioner, CGST Division-IV, Ahmedabad - South.
5. Guard File.
6. P.A. File



