



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(ST)24/EA-2/Ahd-South/2019-20/1494070-14944
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-022-2020-21  
दिनांक Date : 19-06-2020 जारी करने की तारीख Date of Issue 25/06/2020  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/WS07/O&A/OIO-01/MK/AC/19-20 दिनांक: 20.08.2019  
, issued by Assistant Commissioner, Div-VII, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Maruti Infrastructure Limited  
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती 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 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-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.

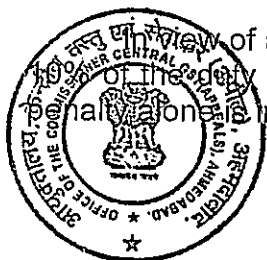
⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

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।



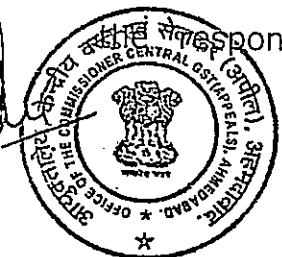
Under the provisions of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

**ORDER-IN-APPEAL**

This appeal has been filed by the Assistant Commissioner of CGST, Division-VII, Ahmedabad South, [hereinafter referred to as 'department'] in pursuance of Review Order No. 20/2019-20 dated 27.11.2019 passed by the Principal Commissioner, CGST, Ahmedabad South against Order-in-Original No. CGST/WS07/O&A/OIO-01/MK/AC/2019-20 dated 20.08.2019 [hereinafter referred to as 'impugned order'] passed by the Assistant commissioner of CGST, Division-VII, Ahmedabad South [hereinafter referred to as 'adjudicating authority'] in case of M/s. Maruti Infrastructure Limited having registered office at Surmount, 802, Opposite Iscon Mega Mall, S.G. Highway, Satellite, Ahmedabad-380015 [hereinafter referred to as 'respondent'].

2. Facts of the case, in brief, are that the respondent is providing services under the categories of Construction Services other than Residential Complex, including Commercial/Industrial Buildings or Civil Structures, Construction of Residential Complex Service, GTA Service and Works Contract Service falling under erstwhile Section 65(105)(zzq), 65(105)(zzzh), 65(105)(zpz) and 65(105)(zzzza) of the Finance Act, 1994 respectively and holding Service Tax registration number AAACM7976LST001. During the course of test audit of the records of the respondent for the period 2010-11 to 2013-14, it was observed that they have provided Works Contract Service to a SEZ unit namely M/s ONGC Petro Additions Limited, Plot No.Z-1&Z-83, Dahej SEZ, Dahej, Bharuch, during the period 2012-13. It was observed by the audit officers that they had provided Works Contract Service as a sub-contractor of M/s Shaili Paradigm Infratech Private Limited, Hyderabad during the financial year 2012-13 and has not paid the Service Tax on the taxable value of services provided by them to M/s ONGC Petro Additions Limited, Dahej claiming the same as exempted service. Further, it was observed that they were required to pay Service Tax amounting to Rs. 19,56,350/- on taxable value of Rs. 3,95,70,172/- but failed to pay the same.

2.1 Show Cause Notice dated 15.06.2016 was issued to the respondent by Joint Commissioner, Central Excise & Service Tax, Audit-II, Ahmedabad. The Service Tax demand of Rs. 19,56,350/- was confirmed by Assistant Commissioner, Division-II, Service Tax, Ahmedabad vide OIO No. SD-02/40/AC/2016-17 dated 27.01.2017. Being aggrieved with the said order, respondent preferred an appeal before Commissioner (Appeals),



Ahmedabad who vide OIA No. AHM-EXCUS-001-APP-276-2017-18 dated 29.01.2018 remanded back the case to the adjudicating authority in order to verify with documents whether service has been received by SEZ or not.

3. The Adjudicating Authority vide the impugned order has dropped the proceedings against the respondent. The findings of the adjudicating authority are as under:

- a. On examination of the relevant work order, invoice and the ledger accounts, it is established that the respondent has provided Service at SEZ unit Dahej i.e. M/s ONGC Petro Additions Limited;
- b. Non-inclusion of name in Form A-1 is a procedural lapse and the exemption benefit cannot be denied on the same ground;
- c. Even if the conditions specified in Notification 40/2012 ST have not been satisfied, the services provided are exempted by virtue of Section 2(m)(ii) of the SEZ Act, 2005 read with Section 26(1)(e) of the SEZ Act, 2005 as SEZ Act, 2005 prevails over Finance Act, 1994 and it has an overriding effect.

4. The Principal Commissioner, CGST, Ahmedabad-South has reviewed the impugned order vide Review Order No. 20/2019-20 and directed to file an appeal under Section 84(1) of Service Tax Act, 1994. He authorized Assistant Commissioner, CGST, Division-VII, Ahmedabad-South to file an appeal.

5. The grounds of appeal preferred by the department are as under:

- a. The respondent is not eligible for ab-initio exemption under Notification 40/2012-ST as form A-1 produced by them does not specify the name of M/s Shaili Paradigm Infratech Limited and the adjudicating authority has erroneously concluded that non-availability of Form A-1 was a merely procedural lapse. The condition imposed in the said notification is mandatory and required to be fulfilled prior to availing the exemption. In the instant case, the condition has not been fulfilled hence M/s Shaili Paradigm Infratech Limited is not eligible for exemption under Notification 40/2012 ST. The same stands true for the respondent as well.
- b. In order to avail exemption benefit, the respondent should fulfil the conditions specified in Notification 25/2012 ST as well as Notification 40/2012 ST.



6. Personal Hearing in the case was held on 19.03.2020. Ms. Bhagyashree Dave, Chartered Accountant, attended hearing on behalf of the respondent. She reiterated submissions made in cross objection.

6.1 In the cross-objections filed by the Respondent, it has been argued that they had provided service of Works Contract in the capacity of sub-contractor to SEZ unit i.e. ONGC and the department also agreed with the fact that services were consumed within the SEZ. Since, they are situated in Domestic Tariff Area (DTA) and provided Works Contract Services to unit situated in SEZ, by virtue of Section 2(m)(ii) read with Section 26 of the SEZ Act, 2005, no Service Tax is applicable on said services. As the provisions of SEZ are having overriding effect, hence the respondent is eligible for the exemption by virtue of Notification 40/2012 ST.

6.2 As per provisions of Section 26 read with Section 51 of the SEZ Act, 2005, exemption to services provided to a SEZ is always available to assessee and Notification No. 40/2012-ST and Notification No. 25/2012-ST have only operationalized the exemption provided. They relied on judgements of Hon'ble CESTAT, Ahmedabad in case of Reliance Ports and Terminals Limited v/s Commissioner of Central Excise & Service Tax, Rajkot [2015(40) STR 200(Tri.-Ahmedabad)] and Intas Pharma Limited v/s Commissioner of Service Tax [2013(32) STR 543 (Tri.-Ahmedabad) and other judgements.

7. I have carefully gone through the facts of the case on record, grounds of appeal and the submissions made by the respondent, both oral as well as written. It is observed that the issue to be decided in this case is whether the Respondents are eligible for exemption claimed on Works Contract Service provided in Special Economic Zone, which they considered non-taxable and excluded from taxable value. The demand pertained to period 2012-13.

7.1 It is observed that the department's contention is that respondent is not eligible for exemption under Notification 40/2012-ST as Form A-1 produced by them does not specify the name of M/s Shaili Paradigm Infratech Limited and hence they did not fulfill mandatory conditions of the said notification.

7.2 The relevant portion from Notification 40/2012 ST is reproduced below:



(b) -----

(c) for the purpose of claiming exemption, the Unit of a SEZ or developer shall obtain a list of services that are liable to service tax as are required for the authorised operations approved by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ;

(d) for the purpose of claiming ab initio exemption, the unit of a SEZ or developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, in addition to the list specified under condition (c); the unit of a SEZ or developer who does not own or carry on any business other than the operations in SEZ, shall declare to that effect in Form A-1;

(e) the unit of a SEZ or developer claiming the exemption shall declare that the specified services on which exemption and/ or refund is claimed, have been used for the authorised operations;

(f) -----

8. It is further observed that the Commissioner (Appeals), Ahmedabad had vide OIA dated 29.01.2018 remanded back the case to the adjudicating authority in order to verify whether service has been received by SEZ or not. The adjudicating authority, vide the impugned order has clearly observed in Para 29.3 and Para 30 of the order that M/s Maruti Infrastructure Limited has provided services at SEZ unit Dahej.

9. It is observed that the finding of the adjudicating authority has not been challenged in the departmental appeal. Hence, it is apparent that the Respondent, as sub-contractor of M/s Shaili Paradigm Infratech Private Limited, Hyderabad, has provided services under Works Contract in the unit located in SEZ. Further, there is also no dispute that the services were consumed inside SEZ. Besides that, the Respondent assessee has also produced Form A-1 in compliance of Notification condition. The only dispute pertains to non-mention of name of M/s Shaili in the form A-1 based on which exemption is proposed to be denied. It is further observed that the matter was remanded only for verification whether the services were provided in SEZ or not? The adjudicating authority's findings are in favour of the Respondent and have not been challenged. Hence, it becomes *fait accompli*.

10. It is further observed that the Hon'ble Tribunal, Ahmedabad in case of Reliance Ports and Terminals Limited V/s Commissioner of Central Excise & Service Tax, Rajkot vide 2015(40) STR 200(Tri.-Ahmedabad) held that no Service Tax is payable on the services provided by a service provider to a SEZ unit. Hon'ble Tribunal has observed that "From the provisions contained Section 26(1)(e) of the SEZ Act, read with Rule 30(10) of the SEZ Rules,



2006, it can be seen that no Service Tax is payable on the services provided by a service provider to a SEZ unit. Further, Sec. 51 of the SEZ Act also makes an over-riding provision that SEZ Act shall have effect even if there is anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any other law. It is accordingly held that Notification No. 9/2009-S.T. and amended Notification No. 15/2009-S.T. have been only issued to operationalize the exemption/immunity available to SEZ unit under Sec. 26(1)(e) of the SEZ Act, 2005."

11. It is further observed that in case of M/s Intas Pharma Limited v/s Commissioner of Service Tax vide 2013 (32) STR 543 (Tri. Ahmedabad), the Hon'ble Tribunal has observed that "On true and fair construction of Notifications 9/2009 and 15/2009 issued under Section 93(1) of the Act, considered in the light of the overarching provisions of Sections 7 and 26(e) of the 2005 Act, the conclusion appears compelling that neither Notification 9/2009 nor 15/2009 disentitle immunity to Service Tax enjoined by the provisions of the 2005 Act. It therefore appears that Notification Nos. 9/2009 and 15/2009 merely contour the process by which the benefit of exemption/immunity to tax is operationalised. Notification Nos. 9/2009 and 15/2009 have provided a facilitative regime whereby a developer or units of SEZ, as recipients of taxable service are enabled the facility of claiming refund of Service Tax, remitted by taxable service providers in relation to the taxable services provided to a unit in a SEZ. On this harmonious construction, the immunity to Service Tax provided under Section 7 or 26 of the 2005 Act cannot be so interpreted as to be eclipsed the procedural prescriptions of Notification No. 9/2009 or 15/2009. These Notifications are calibrated to enable recipients of taxable services (exempt from liability to tax under the provisions of the 2005 Act), to claim refund of the Service Tax, wherever assessed and collected by Revenue or remitted otherwise by the taxable service provider, inadvertently. Considered in the light of this analysis, the substituted provisions, of clause/sub-paragraph 'c' of Notification No. 15/2009 cannot be inferred to have imposed any disability on the recipient of services consumed wholly within the SEZ, from seeking refund of Service Tax remitted on such transactions, by the providers of such services".

12. It is further observed that the department has relied upon the judgments of Hon'ble Supreme Court in case of M/s Ginni Filaments Limited

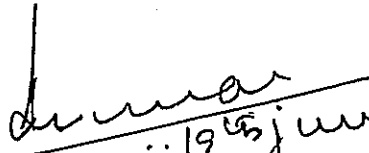




[2005 (181) ELT 0145 (SC)] and M/s Eagle Flask Industries Limited [2004 (171) E.L.T. 296 (S.C.)] to contend that the exemption under a notification is available only subject to fulfillment of conditions. I find in this regard that there is no dispute about provision of services by appellant in SEZ which is not taxable as per the legal provisions of SEZ Act, 2005. Further, the jurisdictional Tribunal, Ahmedabad has laid down the ruling that the provisions of SEZ Act has overriding effect on other statues.

13. In view of the discussions made above, the appeal filed by the department is rejected.

14. The appeals stand disposed off in above terms.

  
(Akhilesh Kumar)  
19 June, 2020  
Commissioner( Appeals)

Attested



(Anilkumar P.)

Superintendent (Appeals)

Central Excise, Ahmedabad



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Copy to :

- 1 The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
- 2 The Principal Commissioner CGST and Central Excise, Ahmedabad-South.
3. The Deputy /Asstt. Commissioner, Central Excise, Division-VII, Ahmedabad-South.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-South.
- ✓ 5. Guard file
6. PA File

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