



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



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2020-28/09/2020

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)194/Ahd-South/2019-20 / 15782 TO 15786

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-36-2020-21

दिनांक Date : 28-08-2020 जारी करने की तारीख Date of Issue 28-08-2020

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No MP/20/AC/DIV-III/2019-20 दिनांक: 30.10.2019 issued by Assistant Commissioner, Div-III, Ahmedabad South.

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

M/s Poggen Amp Nagarsheth Powertronics Private Limited,
Plot No. C-A/B, 4402, GIDC Estate, Vatva-382445.

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 issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

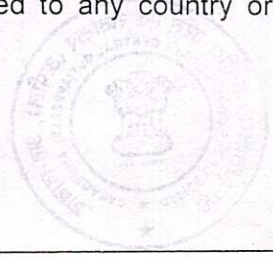
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

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

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) **केंद्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-**

Under Section 112 of CGST act 2017 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 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.

- (22) 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)

(23)

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)

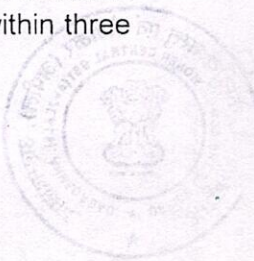
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (xxv) amount determined under Section 11 D;
(xxvi) amount of erroneous Cenvat Credit taken;
(xxvii) 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।

6(I) 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.



ORDER-IN-APPEAL

M/s Poggen Amp Nagarsheth Powertronics Pvt. Ltd., Plot No.C-1/B, 4402, GIDC Estate, Vatva, Ahmedabad-382445 (*hereinafter referred to as 'the appellant'*) have filed the present appeal against Order-in-Original No.MP/21/AC/Div-III/18-19 dated 15.01.2020 issued on 30.01.2020 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST, Division-III, Ahmedabad South (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that during the course of audit under EA-2000 of the records of the appellant by the department, it was observed that the appellant had availed and utilized cenvat credit of input services amounting to Rs.11,39,530/- during the financial year 2014-15 without support of valid documents and after the prescribed time limit specified under Cenvat Credit Rules, 2004 (in short 'CCR') i.e. 6 months from the date of issue of invoice. They were also found to have availed cenvat credit of service tax paid on Courier services (outward) used for sales of goods and since the said services were utilized for clearance of goods beyond the place of removal and has no relation with the manufacturing activity either directly or indirectly, the same were not qualified as input services as defined under the CCR and hence the cenvat credit availed on the said Courier Services were not admissible to them. The amount of such ineligible credit was Rs.1,94,967/-. Further, during audit, it was revealed that the appellant had availed and utilized cenvat credit of service tax amounting to Rs.1,84,531/- on the basis of xerox copies of the invoices as well as on the strength of documents which were belonging to other units (Kheda) & Head office and since the said credit was availed without support of proper documents prescribed under sub-rule (1) of Rule 9 of the CCR, the credit availed was not admissible in terms of the CCR. Based on the above observations of audit, a Show Cause Notice dated 27.03.2018 was issued to the appellant for recovery of the wrongly availed cenvat credit as discussed above. The said Show Cause Notice was decided by the adjudicating authority vide the impugned order wherein he had confirmed the demand along with interest and also imposed penalty on the appellant under Rule 15(2) of the CCR.

3. Aggrieved with the above order, the appellant has filed the present appeal mainly on the following grounds:

- (i) The demand of Rs.11,39,530/- relates to credits availed on 01.09.2014. The ground for the demand is amendment made in Rule 4 of Cenvat Credit Rules, 2004 by Notification No.21/2014-CE (NT) dated 11.07.2014 as per which credit can not be taken after six months from date of invoice. This aspect has been decided in their favour by Delhi High Court decision in the case of Global Ceramics Pvt. Ltd., M/s B.R. Ceramics (P) Ltd. Vs. Principal Commissioner of Central Excise, Delhi-I – 2019 (5) TMI 432 – Delhi High Court. The matter is also covered by Tribunal decisions in the cases of Tin Manufacturing Co. – 2016 6 TMI 226 Tri.All and



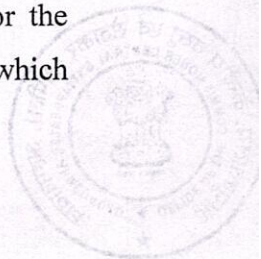
Bharat Aluminium Co. Ltd. Vs. Joint Commissioner of Central Tax, Goods & Services Tax – 2019 (7) TMI 1084 – CESTAT New Delhi.

- (ii) The demand on credit availed on Courier Service has been made on the presumption that the said courier services were in respect of finished goods which is not correct as the said courier services were in relation to documents and not finished goods. The matter is directly covered by the decisions of Ahmedabad Tribunal in the cases of M/s Amul Industries Pvt. Ltd. Vs. C.C.E.&S.T., Rajkot [2018 (2) TMI 473 – CESTAT Ahmedabad, Modern Petrolfilms Dty Div. Vs. C.C.E.&S.T., Vadodara and Associated Power Structures Pvt. Ltd. Vs. C.C.E.&S.T., Vadodara [2017 (9) TMI 206 – CESTAT Ahmedabad and case law reported at 2017 (8) TMI 1217 – CESTAT Ahmedabad;
- (iii) The demand on credit of Rs.1,84,531/- availed has been made on the ground that the credit was availed on the basis of Xerox copies, documents in name of their other factory or head office and on debit notes. As regards documents being Xerox copies, the original documents are now available which can be verified. Debit note is also a permissible document and it contains all required details and this also can be verified. In respect of documents which are in the name of their other factory or head office, it is permissible to allow the credit by exercising the discretion vested in the Department under proviso to Rule 9(2) of the CCR as the document was in the name and credit was not availed at other factory;
- (iv) When demand is not maintainable, interest cannot be demanded nor penalty can be imposed. Further, the extend period is not available to the department for the demand as all the information is available to the department as per records maintained by them and there is also no legal requirement to make any disclosures for every credit availed; and
- (v) The submissions made by the appellant are not dealt with in the impugned order. The order is therefore non-speaking order.

4. Personal hearing in the matter was held on 20.08.2020. Shri S.J. Vyas, Advocate, appeared on behalf of the appellant and re-iterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of hearing. The issue to be decided in the case is the admissibility of cenvat credit availed by the appellant in respect of service tax paid on various services which the department has sought to deny on different grounds discussed in para 2 above. The demand pertains to the period April, 2013 to Financial Year 2016-17.

6. It is observed that the first demand on cenvat credit of Rs.11,39,530/- availed by the appellant has been disallowed on the grounds that the same was availed without valid documents and after the stipulated time limit of six months prescribed under Rule 4 of the CCR 2004 for availing credits. However, it is observed that neither the SCN nor the impugned order brings out as to what were the discrepancies in the documents on which



credit was taken so as to consider them as invalid so as to deny the credit. It is simply stated in the impugned order that the documents were not valid. It is further observed that the Annexure-A to the SCN also did not refer to any kind of discrepancy in the documents. That being so, it is to be assumed that the credit in question has been disallowed for the reason of availing it beyond the stipulated time limit provided under Rule 4 of the CCR. It is the contention of the appellant that the issue in this regard has been stand settled in their favour in view of Hon'ble Delhi High Court decision in the case of Global Ceramics Pvt. Ltd. and M/s B.R. Ceramics (P) Ltd. Vs. Principal Commissioner of Central Excise, Delhi-I – 2019 (5) TMI 432 – Delhi High Court. The adjudicating authority has not considered the above submission of the appellant and has stated that the case law relied is not applicable to the case. It is noticed that the Hon'ble High Court of Delhi in their decision in the case cited above, though in the context of import, has observed that the amendment to Rule 4(1) CCR prescribing a time limit for claiming Cenvat Credit will not apply to the consignments in the present case where the import took place prior to the date of the amendment. The issue being similar, the ratio of the said judgment seems to be quite applicable in the case and for that reason, the appellant's contention merits consideration, especially when the amendment stipulating time limit for availing credit is made effective from 01.09.2014. Hence, the adjudicating authority should have recorded his findings on the merits as well as on the judicial pronouncement of Hon'ble High Court.

7. In the case of credit availed on service tax paid courier services, the credit has been denied on the ground that the same were utilized beyond the place of removal for sales of goods and hence did not fall within the meaning of 'input services' as defined under the CCR. However, the appellant contended that the courier services were in relation to documents and not the finished goods. They have also relied upon a number of judgments in support of their contention. On this aspect also, the adjudicating authority has not considered the submissions of the appellant and has confirmed demand holding that the services were availed beyond the place of removal and the case laws cited by the appellant are not applicable to the case. Since the appellant has questioned the very basis of the demand by contending that the services were utilized for dispatch of documents and not for sale of goods, the actual facts in the matter should have been verified and ascertained by the adjudicating authority before arriving at a decision. The admissibility of credit in the matter is ascertainable only after such a verification, which the adjudicating authority has failed to do.

8. With regard to demand on the cenvat credit of Rs.1,84,531/- availed, it is observed that the credit has been disallowed on the ground that the said credit was availed on Xerox copies of documents and documents which are belonging to other units/head office. It is



the submission of the appellant that in respect of credit availed on Xerox copies, the original documents are now available with them which can be verified. If the original documents are now available, the principles of natural justice demands that the same needs verification before deciding the issue. Therefore, the credit against such documents has to be decided only after verification of the said documents. Regarding the credit availed on the strength of documents which are belonging to other unit/head office, the appellant has contended that considering the facts that the documents are in their name and that no credit was availed at other factory/unit, it is permissible to allow the credit by exercising the discretion vested in the Department under proviso to Rule 9(2) of the CCR. I find force in this argument of the appellant. The basic purpose of Rule 9(2) of the CCR is not to deny credit where substantial requirement for availing credit are complied with. The Rule empowers the Deputy Commissioner/Assistant Commissioner to allow credit in cases where the documents contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service]. Therefore, if the details required under the said Rule is met by the appellant, then their request for allowing credit needs consideration, provided there is no dispute with regard to receipt and use of such services/goods in the appellant's factory.

9. In view of the discussion made above, I find that the case merits to be remanded to the adjudicating authority to decide it afresh. It is more so also considering the fact that the impugned order is non-speaking and arbitrary as it fails to address the contentions/submissions raised by the appellant in its proper perspective. It is seen that the very same submissions made in the present appeal were also made by the appellant before the adjudicating authority and he has not bothered to consider the same. Even the case laws relied by the appellants were rejected without properly examining the applicability of the same to the facts of the case or by distinguishing the facts. It is pertinent to note that the Central Board of Excise & Customs vide their Master Circular 1053/2/2017-CX., dated 10-3-2017 issued from F.No. 96/1/2017-CX.I has clearly laid down the manner in which adjudication proceedings has to be done by the concerned authorities. The importance of a speaking order and the need to address the contentions raised in reply to the SCNs are specifically laid down under Para 14.5 & 14.06 of the said Circular which reads as under:

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.

Needless to say, the adjudication order in remand proceedings must be a speaking order, by following principles of natural justice, giving clear findings of the adjudicating authority and he shall discuss each point raised by the defense and shall give cogent reasoning in case of rebuttal of such points. While adjudicating the case, the adjudicating authority must consider the points discussed in para 6,7 and 8 above and may do the necessary verification of documents wherever required. The appellants are also directed to cooperate with the adjudicating authority by producing before him the relevant documents and other evidences, if any, in support of their contentions.

10. Accordingly, the impugned order passed by the adjudicating authority is set aside and the appeal of the appellant is allowed by way of remand to the original authority.

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

The appeal filed by the appellant stands disposed off in above terms.

Akhilesh Kumar
28th August, 2020
(Akhilesh Kumar)
Commissioner (Appeals)

Date: 28.08.2020.

Attested:

Anilkumar P.

(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.

BY SPEED POST TO:

M/s Poggen Amp Nagarsheth Powertronics Pvt. Ltd.,
Plot No.C-1/B, 4402,
GIDC Estate, Vatva,
Ahmedabad-382445.

Copy to:

- 1) The Principal Chief Commissioner, CGST , Ahmedabad Zone.
- 2) The Principal Commissioner, CGST, Ahmedabad South.
- 3) The Assistant Commissioner, CGST & C.Ex., Div-III, Ahmedabad South.
- 4) The Asst. Commissioner (System), CGST, Ahmedabad South.
(for uploading the OIA)
- ✓ 5) Guard File.
- 6) P. A. File.

