



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलीफैक्स 07926305136



DIN : 20230164SW0000222772

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2105/2022 / ३३४७ - ६३
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-145/2022-23
दिनांक Date : 24-01-2023 जारी करने की तारीख Date of Issue 25.01.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST-VI/Ref-15/DAP/ABPL/2021-22 दिनांक: 21.02.2022 passed by
Assistant Commissioner, CGST, Division VI, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Adani Power (Mundra) Limited
Adani Corporate House, Shantigram,
S.G. Highway, Ahmedabad - 382421

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:

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

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

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो 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.

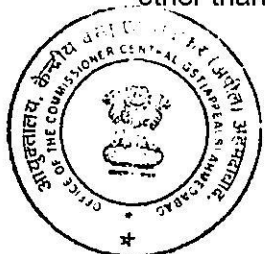
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

22प सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

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

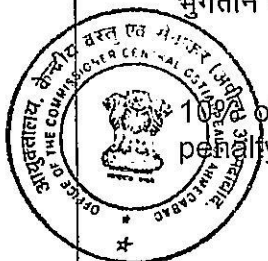
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cccxxviii) amount determined under Section 11 D;
(cccxxix) amount of erroneous Cenvat Credit taken;
(cccxxx) amount payable under Rule 6 of the Cenvat Credit Rules.

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

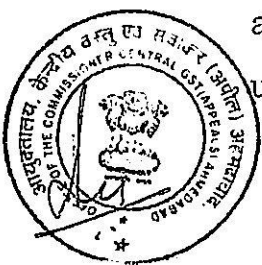
The present appeal has been filed by M/s. Adani Power (Mundra) Limited, Adani House, Shantigram, S.G. Highway, Ahmedabad – 382421 (hereinafter referred to as the “appellant”) against Order in Original No. CGST-VI/Ref-15/DAP/ABPL/2021-22 dated 21.02.2022 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, Division – VI, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant had filed a refund claim for an amount of Rs.33,18,144/- on 22.11.2021 under Notification No.12/2013 for the 3rd Quarter of F.Y. 2020-21. On verification of the refund claim certain discrepancies were observed. Therefore, the appellant were issued Show Cause Notice bearing No. CGST/WS06/REF-23/APML/2021-22 dated 13.01.2022 proposing to reject the refund claim. The SCN was adjudicated vide the impugned order and the refund claim filed by the appellant was rejected.
3. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :
 - i. The adjudicating authority has erred in holding that the declaration issued by the service provider is not pertaining to the present claim. It ought to have been appreciated that the declaration was purposefully issued by the service provider to communicate and assert the conducive fact that the benefit of refund was not availed by them.
 - ii. The service provider is a third party and may not be aware of such a minute detail as to whether the scheme of arrangement was occasioned by the High Court or the NCLT.
 - iii. Their name has been clearly mentioned in the said declaration which is sufficient to appreciate the sanctity of the declaration. The adjudicating authority failed to appreciate the declaration/NOC provided by the service provider that it has not claimed any refund of



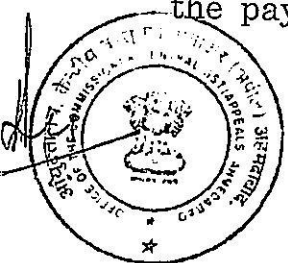
the service tax charged on the invoices issued to them during the period 2013-14 and 2014-15.

- iv. The adjudicating authority has erred in rejecting the refund claim on the ground that they had failed to prove that the incidence of tax was borne by them and they had not availed cenvat credit of the tax charged on the invoices of the service provider.
- v. The fact that the burden of tax was borne by them is evident from the combined perusal of the invoices, ledger accounts and bank statements furnished with the refund claim. Further, the service tax paid is separately shown as service tax receivable as refund in the books of accounts as transpiring from the Chartered Accountant's Certificate dated 19.01.2022 submitted by them, which also specifically mentions that they had not availed cenvat credit of the service tax charged.
- vi. The allegation and contention of unjust enrichment are completely misplaced. The refund claim is arising from Notification No.12/2013 which deals with exemption by way of refund of tax paid to the service providers by the SEZ Developer/Unit. The service provider has testified by way of declaration that the refund shall be claimed by them (appellant) which goes without saying that the burden of tax was borne by them.
- vii. The claim of refund is of tax paid by them to the service provider, the question of charging the same to other person by them does not arise. They are the service recipient and hence the question of shifting the burden of tax to other person does not arise.
- viii. In the absence of any contrary evidences, the adjudicating authority must not question the veracity of the certificate issued by the Chartered Accountant.
- ix. Nowhere in Notification No.12/2013 it was required to furnish books of accounts including ledgers as to whether the cenvat credit was availed by them or not. Hence, the very requirement of the adjudicating authority was beyond the scope of the said Notification and, thus, *ultra vires*. All the documents and evidences as required under the said Notification were furnished by them and the



adjudicating authority ought to have restricted himself to the procedures laid down in the Notification.

- x. The adjudicating authority erred in rejecting the refund claim on the arbitrary grounds that the amount paid to the service provider pertains to the underlying refund claim is not ascertainable.
- xi. They had submitted copies of the bank statements as evidence of payment made to the service provider along with copy of ledger of service provider. Every payment entry made in the ledger is tagged with the invoice number of which the payment is made. The invoices recorded in the ledger are identifiable from the invoice number as available on the copy of the invoices submitted along with the refund claim.
- xii. The adjudicating authority has erred in rejecting the refund claim on the ground that they had failed to prove that the services were exclusively used for the Authorized Operations of SEZ.
- xiii. The services availed by them are of Air Transport of Passengers, which is duly listed in the list of services meant for the Authorized Operations of the SEZ in Circular No.12/19/2013-SEZ dated 19.07.2014.
- xiv. Reliance is also placed upon OIA No. AHM-EXCUS-001-APP-049 & 050-2018-19 dated 31.08.2018 wherein the Commissioner (Appeals) had after verification of the facts concluded in their favour that they are not involved in any other activity which is not Authorized Operations as per SEZ Rules.
- xv. The adjudicating authority erred in rejecting the refund claim on the grounds of limitation. The adjudicating authority has failed to appreciate that the refund claim is under Notification No.12/2013 which is not governed by the provisions of Section 11B.
- xvi. One of the conditions laid down in Para 3 (III) of the said Notification is that the claim of refund shall be filed within one year from the end of the month in which the actual payment of service tax is made by the SEZ unit/Developer to the service provider. In the present case, the payment of service tax was made by them on 21.12.2020 and



10.12.2020 which is evident from the bank statements and ledgers submitted by them.

- xvii. As per the condition of the said Notification, the refund claim was to be filed by 31.12.2021 and the refund claim was filed by them on 22.11.2021 as mentioned in the impugned order.
- xviii. The adjudicating authority erred in law in rejecting the refund claim without appreciating the statutory and constitutional mandate of exemption.
- xix. They are governed by the provisions of the SEZ Act, 2005 and entitled for exemption in unconditional and non-qualifying manner. It is not disputed in the refund claim that the services were procured by them as SEZ and thus all such services were subjected to the provisions of SEZ Act, 2005 and hence entitled for exemption.

4. Personal Hearing in the case was held on 05.01.2023. Shri Rahul Patel, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum.

5. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing as well as the materials available on records. The issue before me for decision is whether the impugned order, rejecting the claim of the appellant for refund of an amount of Rs.33,18,144/- in the facts and circumstances of the case, is legal and proper.

6. It is observed from the materials available on record that the refund claim filed by the appellant was rejected basically on grounds which can be broadly categorized as : A) grounds of non submission of proper documents; B) Unjust enrichment; and C) Limitation in terms of Section 11B of the Central Excise Act, 1944.

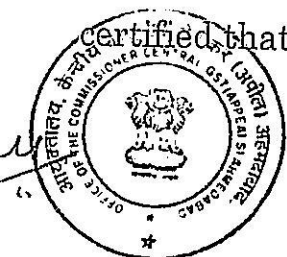
7. Regarding the issue of non submission of proper documents, it is observed that the appellant had submitted before the adjudicating authority copies of the Bank Statements, Ledger Account, Invoices,



Declaration from the service provider regarding non claiming of refund and Certificate from Chartered Accountant that the appellant had not availed cenvat credit and had not passed on the incidence of service tax to their customers. The appellant had also submitted a certificate of Chartered Accountant to the effect that the specified services were used exclusively for Authorized Operations of the Mundra Power Plant.

7.1 I have perused the documents submitted by the appellant and find that the service provider had in clear terms stated that they have not filed any refund claim of the service tax charged by them on the Transport of Passenger by Air services provided to the SEZ developer M/s. Adani Power Ltd. (now Adani Power (Mundra) Ltd.). The invoices issued by the service provider are also in respect of Air Transport of Passengers. In this regard, it is observed that the Specified Officer, AP&SEZ, Mundra had vide letter F.No. MPSEZ/P&C/5/74/2006 VOL -II dated 03.06.2013 informed the appellant that Transport of Passengers by Air has been approved in the default list of specified services w.e.f. 01.07.2010. Therefore, the service received by the appellant i.e. Air Transport of Passengers is part of the approved list of Specified Services used by the appellant. Therefore, there cannot be any dispute on the issue of the services, in respect of which refund of service tax has been claimed, being used in the Authorized Operations of the appellant, which is in the SEZ. Accordingly, they are eligible for the benefit of *ab initio* exemption or refund of the service tax paid in terms of Notification No.12/2013-ST dated 01.07.2013. The appellant have also submitted a certificate issued by a Chartered Accountant to the effect that the said services, in respect of which refund is being claimed, were exclusively used in the authorized operations of the SEZ.

8. Regarding the issue of unjust enrichment, it is observed that the appellant are the service recipients of the Air Transport of Passengers and have paid the service tax charged by the service provider. They have also submitted a certificate from the Chartered Accountant to the effect that the service tax has not been collected from their customers. It has also been certified that the appellant have not availed cenvat credit of the service tax



charged by the service provider. A certificate issued by the Chartered Accountant carries substantial weight as the same is issued by a person qualified in the matter and the certificate is issued after examining the books of accounts. Considering the certificate of the Chartered Accountant, it is evident that the appellant had not passed on the incidence of service tax and consequently, the question of unjust enrichment does not arise.

8.1 Additionally, it is also pertinent to mention that the refund claim filed by the appellant is in terms of Notification No.12/2013-ST dated 01.07.2013. The said Notification clearly specifies the conditions to be fulfilled to be eligible for refund of the service tax paid. As the refund of service tax paid in respect of the services received and utilized by a SEZ is in terms of the specific provisions of the said Notification, the provisions pertaining to unjust enrichment in terms of Section 11B of the Central Excise Act, 1944 have no applicability in the case of refund of service tax in terms of the said Notification.

9. Regarding the issue of the refund claim being barred by limitation in terms of Section 11B of the Central Excise Act, 1944, it is observed that the refund claim has been filed under Notification No.12/2013-ST dated 01.07.2013. As per Condition No. 3 (III) (e) of the said Notification, the claim for refund shall be filed within one year from the end of the month in which the actual payment of service tax was made by the Developer or SEZ unit to the registered service provider or such extended period as may be allowed by the Assistant/Deputy Commissioner of Central Excise. This condition makes it abundantly clear that the period of limitation prescribed in Section 11B of the Central Excise Act, 1944 is not applicable to refund claims preferred in terms of the said Notification. As regard the payment of service tax to the service provider, the appellant have contended that the payment was made on 10.12.220 and 22.12.2020 and the refund claim was filed on 22.11.2021. The appellant have submitted a statement showing the various payments made to the service provider in respect of which refund of service tax is being claimed by them. They have also submitted copies of the Bank Statements. From the dates of payment of service tax made by the appellant

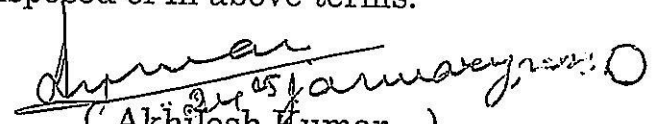


to the service provider and the date of filing of refund claim, it is evident that the appellant had filed the refund claim before expiry of one year from the date of payment of service tax to the service provider. Consequently, the refund claim filed by the appellant is not barred by limitation.

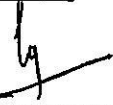
10. In view of the facts discussed hereinabove, I am of the considered view that the adjudicating authority has erred in rejecting the refund claim filed by the appellant. Consequently, I set aside the impugned order and allow the appeal filed by the appellant with consequential relief.

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

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


(Akhilesh Kumar)
Commissioner (Appeals)
Date: 24.01.2023.

Attested:


(N.Suryanarayanan. Iyer)
Assistant Commissioner (In situ) (Appeals),
CGST, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Adani Power (Mundra) Limited,
Adani Corporate House, Shantigram,
S.G. Highway, Ahmedabad – 382421

Appellant

The Assistant Commissioner,
CGST, Division- VI,
Commissionerate : Ahmedabad South.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
(for uploading the OIA)
4. ~~Guard File.~~
5. P.A. File.