



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 - टेलिफैक्स 07926305136



DIN: 20230964SW000000F734

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/2733/2023 15237 - 41
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-104/2023-24  
दिनांक Date : 28-08-2023 जारी करने की तारीख Date of Issue 04.09.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. 198/ACDiv-I/HKB/2022-23 दिनांक: 26.12.2022 passed by Assistant Commissioner, CGST, Division-I, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s. Sanjay Fulchandbhai Makwana,  
13, Vishnu Narayan Society,  
Bagefirdosh, Jogeshwari Road,  
Amraiwadi, Ahmedabad-380026.

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) 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 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 प्रक्रिया के दौरान हुई हो।

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



- (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 मामले 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 इका 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 होता रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

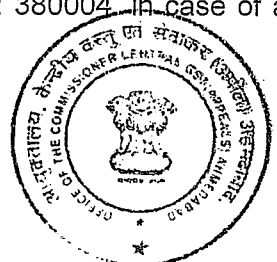
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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 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 filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-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.

- 1<sup>प</sup> 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;  
इए लिया गलत सेनवैट क्रेडिट की राशि;  
बए 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.

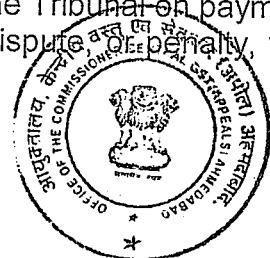
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



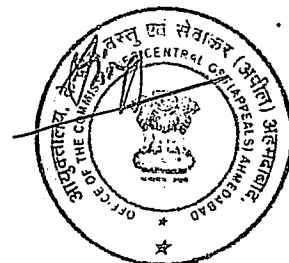
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Sanjay Fulchandbhai Makwana, 13, Vishnu Narayan Society, Bagefirdosh, Jogeshwari Road, Amraiwadi, Ahmedabad - 380026 (hereinafter referred to as "the appellant") against Order-in-Original No. 198/AC/Div-1/HKB/2022-23 dated 26.12.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division I, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AGHPM3615Q. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15, it was noticed that the appellant had earned an income of Rs. 12,16,618/- during the FY 2014-15, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of required documents for assessment for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. V/15-73/DIV-I/Sanjay Fulchandbhai Makwana/2020-21 dated 21.12.2020 demanding Service Tax amounting to Rs. 1,50,374/- for the period FY 2014-15, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1) and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,50,374/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period FY 2014-15. Further (i) Penalty of Rs. 1,50,374/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994; and (iii) Penalty of Rs. 10,000/- under Section 77(2) of the Finance Act, 1994.



3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, along with an application for condonation of delay, inter alia, on the following grounds:

- The appellant is an individual contractor inter-alia engaged in the pure labour supply related to coal. The appellant was under the impression that he is not required to take registration under the Service tax regime.
- The appellant submitted that the appellant is eligible for exemption of Small Scale Service provider as per Notification No. 33/2012-ST dated 20.06.2012, which was not given by the adjudicating authority in the impugned order. The appellant submitted copy of Income Tax Return for FY 2013-14 in support of the same, under which they have filed ITR showing Nil service income for the FY 2013-14.
- Without being prejudice to the above submissions, the appellant submitted that considering the amount received by the appellant is inclusive of Service tax the benefit of cum-tax should have been provided for determining the Service tax liability. The appellant submitted that Service tax is an Indirect Tax. As per the system of taxation, tax borne by the consumer of goods/services is collected by the assessee and remitted to the Government. When no tax is collected separately, the gross amount has to be adopted to quantify the liability treating it as value of taxable service plus service tax payable.
- The extended period of limitation can be invoked only where an escapement of tax has been occasioned by the suppression, omission or failure to disclose wholly or truly all material facts required for verification of assessment by the appellant or when the appellant had an intention to evade the payment of tax. In the present case, the appellant has not suppressed any information from the Department and the Department was at all times, aware of the activities of the appellant. Therefore, an invocation of extended period of limitation by the adjudicating authority is bad in law.
- The appellant submitted that for the reasons set out hereinabove, the entire demand itself is unsustainable as there is no liability of service tax for the period in dispute. Hence, the demand for interest also cannot sustain and no penalty can be imposed on them.

4. On going through the appeal memorandum, it is noticed that the impugned order was issued on 26.12.2022 and received by the appellant on 04.01.2023. However, the present

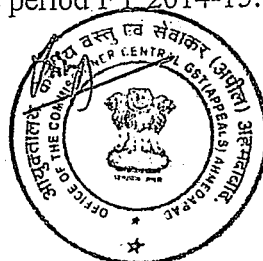


appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 22.03.2023, i.e. after a delay of 18 days from the last date of filing of appeal. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that the appellant works as labour and is not a qualified person and hence he was not in a position to read and comply with requirements of law. The appellant did not receive any professional guidance regarding law within time limit, hence despite being willingness to comply he was not in a position to comply. Therefore, there is delay in filing of appeal.

4.1 Before taking up the issue on merits, I proceed to decide the Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay given in application as genuine, I condone the delay of 18 days and take up the appeal for decision on merits.

4.2 Personal hearing in the case was held on 21.08.2023. Shri Jaykishan K. Vidhwani, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated submissions made in appeal memorandum. He submitted that the show cause notice in respect of first half of the FY 2014-15 has been issued beyond the statutory period of five years and the same is time-barred. He submitted that the appellant provided labour services to corporate, where the liability to pay tax <sup>was</sup> on the recipient on reverse charge basis. He further submitted that as may be seen from the ITR for the previous year, the income of the appellant was less than Rs. 10,00,000/- therefore, the appellant is eligible for threshold exemption during the Financial Year 2014-15. Accordingly, he requested to set aside the impugned order. For second half of Financial Year 2014-15, he requested time of ten days for additional submissions.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum; during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2014-15.



6. It is observed that the main contentions of the appellant are that (i) he is an individual contractor inter-alia engaged in the pure labour supply related to coal and he was under the impression that he is not required to take registration under the Service tax regime. The appellant is eligible for exemption of Small Scale Service provider as per Notification No. 33/2012-ST dated 20.06.2012 for the FY 2014-15; (ii) the show cause notice in respect of first half of the FY 2014-15 has been issued beyond the statutory period of five years and the same is time-barred; and (iii) they are eligible for cum-tax value benefit under Section 67(2) of the Finance Act, 1994.

6.1 It is also observed that the adjudicating authority has confirmed the demand of service tax vide the impugned order passed ex-parte.

7. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

*"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.*

*3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."*

7.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of



which service tax is sought to be levied and collected. This, in my considered view, is not a valid ground for raising of demand of service tax.

8. I also find that the appellant have contended that the demand for the first half of FY 2014-15 is barred by limitation. In this regard, I find that the due date for filing the ST-3 Returns for the period April, 2014 to September, 2014 was 14<sup>th</sup> November, 2014 (as extended vide Order No. 02/2014-ST dated 24.10.2014). Therefore, considering the last date on which such return was to be filed, I find that the demand for the period April, 2014 to September, 2014 is time barred as the notice was issued on 21.12.2020, beyond the prescribed period of limitation of five years. I, therefore, agree with the contention of the appellant that, the demand is time barred in terms of the provisions of Section 73 of the Finance Act, 1994. Therefore, the demand on this count is also not sustainable for the period from April, 2014 to September, 2014, as the same is barred by limitation. In this regard, I also find that the adjudicating authority has not taken into consideration the issue of limitation and confirmed the demand in toto.

9. As regard the benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 admissible to the appellant or not, I find that the total value of service provided during the Financial Year 2013-14 was NIL as per the Income Tax Return submitted by the appellant for the FY 2013-14, which is relevant for the exemption under Notification No. 33/2012-ST dated 20.06.2012 for the FY 2014-15. Therefore, I hold that the appellant are eligible for benefit of exemption up to Rs. 10,00,000/- during the FY 2014-15 and they are liable to pay Service Tax on remaining amount of Rs. 2,16,618/- for the FY 2014-15.

10. The demand needs to be re-quantified considering the fact that the demand for period April, 2014 to September, 2014 is barred by limitation and the appellant are eligible for benefit of threshold exemption upto Rs. 10 lakh during the FY 2014-15.

11. Considering the facts of the case as discussed hereinabove and in the interest of justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority for re-calculation of the demand and also for the consideration of the claim of the appellant for cum tax benefit in service tax payable amount on the remaining income.


12. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant by way of remand.



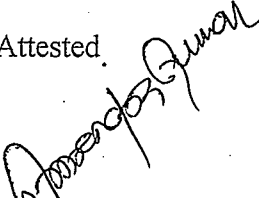


13. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

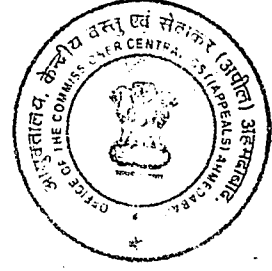
The appeal filed by the appellant stands disposed of in above terms.

  
(Shiv Pratap Singh)  
Commissioner (Appeals)

Attested

  
Superintendent(Appeals),  
CGST, Ahmedabad

Date :



**By RPAID / SPEED POST**

To,  
M/s. Sanjay Fulchandbhai Makwana,  
13, Vishnu Narayan Society,  
Bagefirdosh, Jogeshwari Road,  
Amraiwadi, Ahmedabad – 380026

Appellant

The Assistant Commissioner,  
CGST, Division-I,  
Ahmedabad South

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division I, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South  
(for uploading the OIA)

- 5) Guard File
- 6) PA file

