



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: 20230964SW0000946757

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2696/2023 / 5247-51
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-107/2023-24
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. CGST-VI/Dem-222/Nilesh/AC/DAP/2022-23 दिनांक: 17.01.2023 passed
by Assistant Commissioner, CGST, Division-VI, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Nilesh Kantilal Upadhya HUF,
F-12, Pooja Apartment,
Opp. Niharika Bunglows,
Himmatlal Park,
Ambawadi, Ahmedabad.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

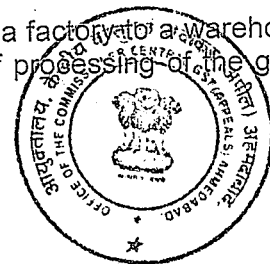
Revision application to Government of India:

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

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

(ii) यदि माल की हानि के मामले में जब ऐसी 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 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 होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 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 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.

10 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 दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

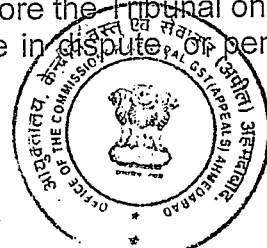
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

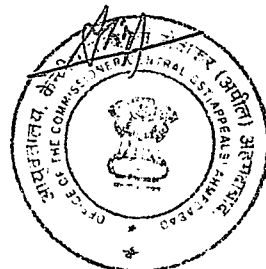


ORDER IN APPEAL

The present appeal has been filed by M/s. Nilesh Kantilal Upadhyia HUF, F-12, Pooja Apartment, Opp. Niharika Bunglows, Himmatlal Park, Ambawadi, Ahmedabad (hereinafter referred to as the "appellant") against Order in Original No. CGST-VI/Dem-222/NILESH/AC/DAP/2022-23 dated 17.01.2023 hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad South (hereinafter referred to as "adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were not registered with Service Tax department. They are holding PAN No. AAGHN2559D. As per the information received from the Income Tax department, the appellant had earned substantial service income from services during F.Y. 2014-15 & 2016-17, however they did not obtain service tax registration and did not pay service tax on such income from service. The appellant were called upon to submit the documents, however, the appellant failed to submit the required details / documents. Therefore, the appellant were issued Show Cause Notice bearing No. V/WS06/O&A/SCN-268/2020-230/WS0603 dated 24.09.2020, wherein it was proposed to:

- a) Demand and recover an amount of Rs. 4,01,496/- under proviso to Sub Section (1) of Section 73 of the Finance Act, 1994; read with relaxation provisions of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020(No.2 of 2020) promulgated on 30.03.2020 by invoking extended period of time limit along with interest under section 75 of the Finance Act 1994 (hereinafter referred to as 'the Act').
 - b) Impose penalty under the provisions of Section 70, 77 (1) and 78 of the Act.
3. The SCN was adjudicated vide the impugned order wherein:
- a) The demand of service tax amounting to Rs. 4,01,496/- was confirmed along with interest.



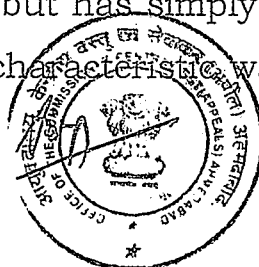
- b) Penalty amounting to Rs. 4,01,496/- was imposed under section 78(l) of the Act.
- c) Penalty amounting to Rs. 10,000/- was imposed under section 77(l) (a) of the Act.
- d) Penalty amounting to Rs. 80,000/- was imposed under section 70 of the Act.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- That the agricultural produce is restricted to unprocessed goods is factually incorrect. The term agricultural produce has been defined at section 65B(5) of the Finance Act as:

"agricultural produce " means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market"

The above definition nowhere states that only unprocessed goods fall within the ambit of 'agricultural produce'. On the contrary, the said statute clearly stipulates that processing which does not alter the essential characteristics but makes it marketable for primary market is covered under the definition of 'agricultural produce'. In the instant case, the appellants have undertaken the activities of storage, processing and grading. It is an undisputed fact that storage and grading would not in any manner alter the essential characteristics of a product. The mere activity of storage brings in no change in the product and that of grading simply segregates the different qualities of the product but brings no physical change in the product. On the remaining aspect of processing, primarily it is submitted that the adjudicating authority has given absolutely no finding on the nature of process undertaken but has simply jumped to the conclusion that the essential characteristics was altered. The



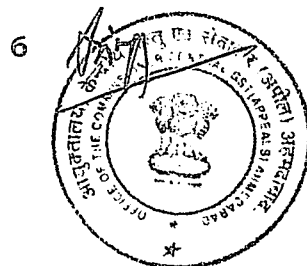
appellants have merely undertaken the processes of cleaning and bulk packing of the seeds and no alteration of the essential characteristics of the product has been affected in this process, The impugned order itself mentions that the goods have been sold to seed companies as 'seeds' which leaves no room for doubt that the product has not undergone any change in the essential characteristics and is still covered under the ambit of 'seed'. Thus, the conclusion of the adjudicating authority to the effect that the goods are not agricultural produce is erroneous.

- One of the reasons for concluding that the appellant did not mentioned the term 'agricultural produce' in their invoices but had used the words 'agricultural seeds' is not appropriate and cannot be taken as a basis to debar the goods from the ambit of 'agricultural produce'.
- The adjudicating authority has mentioned that the goods are not covered under the ambit of 'agricultural produce' since the seeds have been sold to seed companies and as such the same were not used for food, fibre and fuel. The adjudicating authority has conveniently ignored the words 'raw material and other similar products' from the definition of agriculture under Section 65B(3). The same is reproduced under:

The "agriculture" means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;

Thus, seed can be used for raw materials or as sowing seeds or similar applications also as per the definition. A seed would not have any application other than food, fibre, fuel or raw material. Supply of seeds to seed companies do not in any way establish that the goods are not 'agricultural produce'

The appellant submits that the activities undertaken by the



appellants are squarely covered under Section 66D(d) of the Act which specifies the negative list of services which are not liable to service tax produce. The relevant text of the statute is reproduced under:

(d) services relating to agriculture or agricultural produce by way of-

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;

(ii) supply of farm labour;

(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) loading, unloading, packing, storage or warehousing of agricultural produce;

(vi) agricultural extension services;

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce

In view of the above it is submitted by the appellant that the activities undertaken are cleaning, packing, loading, unloading, grading etc. are covered under the negative list under section 66D(d) of the Act. And thus the appellants are not liable to pay service tax and as such the impugned order confirming the demand of service tax is erroneous and bad in law.

➤ The appellant submit that they are not liable to pay service



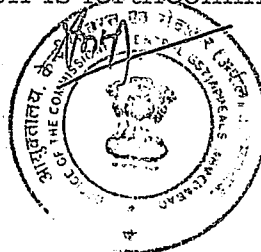
tax and therefore provision of Penalty under Section 70, 77(1), 78 of the Act, will not be applicable.

➤ Further it is submitted by the appellant submit that as the service tax is not leviable, interest under section 75 of the Act cannot be imposed.

5. Personal Hearing in the case was held on 21.08.2023 Shri Ashish Kumar Jain and Shri John F. Christian, Consultants appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. They submitted that the appellant rendered services such as cleaning, packing, loading, unloading, grading, etc. in relation to agricultural produce. The same falls under the negative list under section 66 (d) (iii) & (v) of the Act. They requested to allow one week time for making additional submissions with further supporting documents.

6. I have gone through the facts of the case, submission made in the Appeal Memorandum, the submission made at the time of personal hearing and oral submissions made at the time of personal hearing. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming demand of service tax amount of Rs. 4,01,496/- along with interest and penalties, considering the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period F.Y. 2014-15 & 2016-17.

7. It is observed that the demand of service tax was raised against the appellant on the basis of the data received from Income Tax department. It is stated in the SCN that the nature of the activities carried out by the appellant as a service provider appears to be covered under the definition of service; appears to be not covered under the Negative List of services as per Section 66D of the Act and also declared services given in 66E of the Act, as amended; appears to be not exempted under mega exemption Notification No. 25/2012-ST dated 20.06.2012 as amended. However, nowhere in the SCN it is specified as to what service is provided by the appellant, which is liable to service tax under the Act. No cogent reason or justification is forthcoming for raising the



demand against the appellant. It is also not specified as to under which category of service, the non payment of service tax is alleged against the appellant. The demand of service tax has been raised merely on the basis of the data received from the Income Tax. However, the data received from the Income Tax department cannot form the sole ground for raising of demand of service tax.

7.1 I find it pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was 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."

7.2 However, in the instant case, I find that no such exercise, as instructed by the Board has been undertaken, and the SCN has been issued only on the basis of the data received from the Income Tax department. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped.

8. Coming to the merit of the case it is observed in the definition of "agricultural produce" which means "any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market". As per the definition of it is nowhere stated that only unprocessed goods fall within the ambit of 'agricultural produce'. The appellant has undertaken the

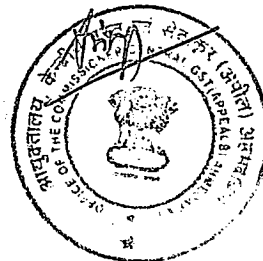


activities of storage, processing and grading. Storage and grading would not in any manner alter the essential characteristics of a product. The mere activity of storage brings in no change in the product and that of grading simply segregates the different qualities of the product but brings no physical change in the product. The appellants have merely undertaken the processes of cleaning and bulk packing of the seeds and no alteration of the essential characteristics of the product had been affected in this process. In the para 6.8 of the impugned order itself mentions that "the notices has sold its products to seed companies" as agricultural seeds which leaves no room for doubt that the product has not undergone any change in the essential characteristics and is still covered under the ambit of 'seed'. From the above it is evident that goods are agricultural produce and I find that the appellant is just doing its storage processing and grading and these activities are exempted from service tax.

9. I observed that the appellant is engaged in the activity of storage & processing of agricultural seeds and grading. I find that as per subclauses (iii) and (v) of clause (d) of Section 66 of the Act, "services relating to agriculture or agricultural produce by way of (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market, and (v) loading, unloading, packing. In view of the above provision I am of the opinion that storage, processing and grading of agricultural produce were covered by Negative List, therefore the appellants are not chargeable to tax.

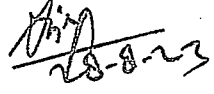
10. Since the demand of service tax is not sustainable on merits there does not arise any question of interest or penalty in the matter.

11. Accordingly, in view of my foregoing discussions, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal filed by the appellant



12. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

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

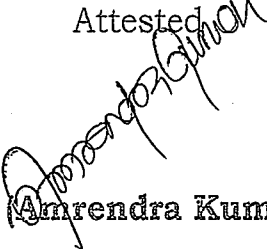


(Shiv Pratap Singh)

Commissioner (Appeals)

Dated: 28.09.2023

Attested



(Amrendra Kumar)

Superintendent(Appeals)

CGST.Ahmedabad.



BY RPAD/ SPEED POST

To

M/s. Nilesh Kantilal Upadhyia HUF,
F-12, Pooja Apartment,
Opp. Niharika Bunglows,
Himmatlal Park, Ambawadi, Ahmedabad

Appellant

The Assistant Commissioner
CGST & Central Excise
Division VI, Ahmedabad.

Respondent

Copy to :

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

