



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: 20231064SW0000444A4A

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3517/2023) १७५३१ - ७५
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-145/2023-24
दिनांक Date : 16-10-2023 जारी करने की तारीख Date of Issue 20.10.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Gyan Chand Jain**, Commissioner (Appeals)
- ग Arising out of OIO No. 198/AC/AMARDEEP KAUR SATNAMSINGH BOPARAY/Div-III/A'bad-
South/JDM/2022-23 दिनांक: 24.02.2023 passed by Assistant Commissioner, CGST, Division-II,
Ahmedabad South.
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. AMARDEEP KAUR SATNAMSINGH BOPARAY,
51, Sonupark Society,
Nr. Nigam Society,
Vatva, Ahmedabad-382440.

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 :

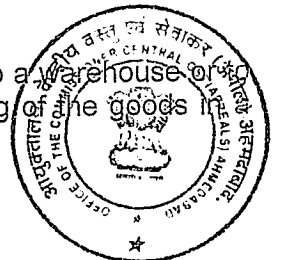
Revision application to Government of India:

(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 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 from another factory or from one warehouse to another during the course of processing of the goods in 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 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.

1प 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.

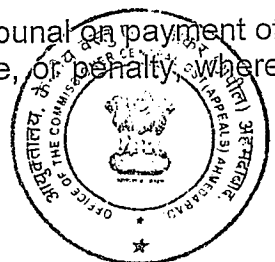
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 Amardeepkaur Satnamsingh Boparay, 51, Sonupark Society, Nr. Nigam Society, Vatva, Ahmedabad - 382440 (hereinafter referred to as the "*the Appellant*") against Order in Original No. 198/AC/AMARDEEPKAUR SATNAMSINGH BOPARAY/Div-II/A'bad-South/JDM/2022-23 dated 24.02.2023 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division II, 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 holding PAN No. BECPB5372R. As per the information received from the Income Tax Department, it was noticed that the Appellant had earned substantial income of Rs. 10,82,900/- from service provided during F.Y. 2015-16; however they failed to obtain Service Tax Registration and also failed to pay service tax on such income. The Appellant were called upon to submit copies of relevant documents for assessment for the said period, however, they neither submitted any required details/documents nor did offer any clarification/explanation regarding gross receipts from services rendered/income earned by them.

3. Subsequently, the Appellant were issued Show Cause Notice bearing No. WS0205/TPD-2015-16/32/2020-21 dated 28.12.2020, wherein it was proposed to:

a) Demand and recover an amount of Rs. 1,57,020/- for the F.Y. 2015-16 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 (hereinafter referred to as '*the Act*').



b) Impose penalty under the provisions of Section 77 (1), 70 and 78 of the Act.

3. The SCN was adjudicated exparte vide the impugned order wherein:

a) The demand of service tax amounting to Rs. 1,57,020/- for the period 2015-16 was confirmed under provision to Section 73(1) read with Section 68 of the Act along with interest under Section 75 of the Act.

b) Penalty amounting to Rs. 10,000/- was imposed under 77(1) of the Act for failure to include the supply services in their registration under the provision of Section 69 of the Act.

c) Penalty amounting to Rs. 10,000/- was imposed under 70 of the Act read with Rule 7(c) of Service Tax Rules, 1994 for each non/late filing of ST-3 Return.

d) Penalty amounting to Rs. 1,57,020/- was imposed under 78(1) 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:

➤ The Appellant have submitted that during the F.Y. 2015-16, they were engaged in providing service namely "ageing of printed cloth"/ textile processing job work to textile processing unit. Ageing of cloth is a process in which printed fabric is exposed to a hot moist atmosphere. It is applied to treatment of printed fabric in moist steam in absence of air. Ageing is also used for the development of certain colors in dyeing. Ageing is a post-treatment process for printed fabrics that involves exposing them to a warm, moist atmosphere. This process Ensure the colorfastness of the colorant, Removes stiffness from the textile



fibers, Enhance the absorption of dyes or pigments on the fabric etc. Copies of the bills are also submitted in this regard.

➤ Section 66D of the Act specifies the Negative list of services i.e. the Services on which Service Tax is not applicable. Section 66D has been inserted in the Act by Finance Act, 2012 and has been notified to be effective from 1st July, 2012 vide Notification No. 19/2012-ST dated 5th June, 2012. A Negative List of Service under the Service Tax implies two things:

- A list of services which will not be subject to service tax
- Other than the services mentioned in the negative list, all the services will be taxable which fall within the definition of "service".

➤ So once the activity falls within the meaning of any service provided in service tax negative list, the activity is out of service tax applicability. As they are engaged in ageing of printed cloth/ job work for textile processing unit. job work is covered under the definition of manufacturing in clause (f) of section 2 of the Central Excise Act,1944 and as per negative list [section 66D(f)] of Finance Act,1994, service tax is not applicable on manufacturing activity.

➤ Being the activity of ageing of printed cloth / job work for textile processing unit covered under manufacturing activity, the appellant has not taken service tax registration.

➤ The total turnover for the F.Y. 2015-16 is as under:

| Sr. No. | Particulars | Amount (in Rs.) | Remarks |
|---------|---------------------------------------|-----------------|--|
| 1 | Income from Sale of Service/ Job work | 10,82,900/- | Exempted as per Entry No. 30(II)(a) of Notification No. 25/2012-ST |

➤ The Appellant were not having any other income other than the services as stated above. In support of the same they have

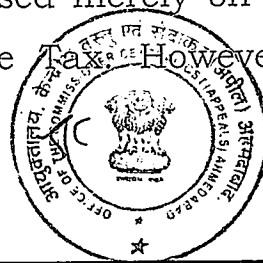


submitted Income Tax Returns for the FY 2015-16; Form 26AS for FY 2015-16; Profit & Loss Account for the FY 2015-16; & copy of invoices issued by the appellant during the FY 2015-16.

5. Personal Hearing in the case was held on 09.10.2023. Shri Suresh G. Prajapati, Advocate, appeared on behalf of Appellant for the hearing and reiterated the contents of the written submissions as well as oral submission made in appeal memorandum and requested to set aside the impugned order.

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 the material available on record. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming demand of service tax amount of Rs. 1,57,020/- 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. 2015-16.

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 Department. 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 in pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that:

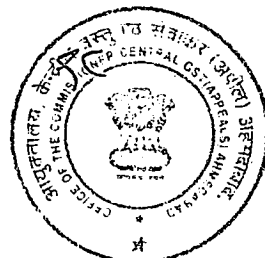
"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

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 that the main contention of the Appellant is whether they were liable to pay service tax despite the fact that income had been received by them by doing job work from "ageing of printed cloth"/ textile processing job work to textile processing unit. Job work is defined under Rule 2(n) of Cenvat Credit Rule, 2004 which reads as under:

"job work" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in

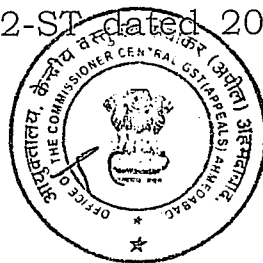


the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly;

9. On perusing the sample invoices submitted by the Appellant, I find that they would receive materials from textile processing unit and after "ageing of printed cloth"/ textile processing job work would return to them. The Appellant contended that the income of Rs. 10,82,900/- booked in P & L account or 26AS received from the only unit M/s Samir Synthetic Mills is related to only the income received from Job Work process done and therefore that income is exempted from the service tax as per Sr. No. 30 (c) of the Notification No. 25/2012-ST dated 20.06.2012.

10. It is also observed that the adjudicating authority has passed the impugned order ex-parte. The adjudicating authority did not taken care to investigate the matter whether the income received by the Appellant is taxable or otherwise. Without investigation how can they reach on the belief that the nature of the activities carried out by the Appellant as a service provider appeared to be covered under the definition of service; appeared 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; appeared to be not exempted under mega exemption Notification No. 25/2012-ST dated 20.06.2012 as amended.

11. Service tax cannot be chargeable on the Appellant in cases of income received by them from doing job work. I have perused samples invoices submitted by the Appellant it is quite clear that the work which is attributable to manufacture of Goods as per section 2(f) of the Central Excise Act, 1944 is exempted in terms of Entry No. 30 (a) of Notification No. 25/2012-ST dated 20.06.2012. For ease of reference, I hereby produce the relevant text of the Notification No. 25/2012-ST dated 20.06.2012, as amended, which reads as under:



"Notification No. 25/2012-Service Tax dated 20th June, 2012

G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do. hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1 ...

2... ..

.....

30. Carrying out an intermediate production process as job work in relation to –

(a) agriculture, printing or textile processing;

(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);

(c) any goods excluding alcoholic liquors for human consumption, on which appropriate duty is payable by the principal manufacturer; or

(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;"

12. In view of the above discussion, I am of the considered opinion that the activity carried out by the Appellant is not liable to pay Service Tax. Since the demand of Service Tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.

13. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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



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

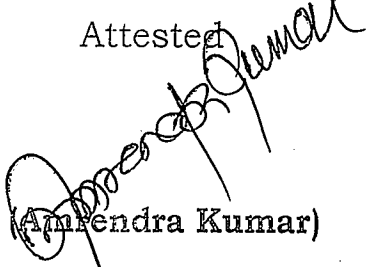


(Gyan Chand Jain)

Commissioner (Appeals)

Dated: 16.10.2023

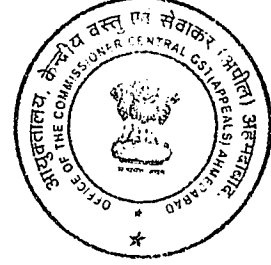
Attested



(Anand Kumar)

Superintendent(Appeals)

CGST Ahmedabad.



BY RPAD/ SPEED POST

To

M/s Amardeepkaur Satamsingh Boparay,
51, Sonupark Society,
Nr. Nigam Society,
Vatva, Ahmedabad-382440.

Appellant

The Assistant Commissioner
CGST & Central Excise
Division II, Ahmedabad South.

Respondent

Copy to :

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

