



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: 20231164SW0000999ACB

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3539/2023 / 7/68 - 2
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-159/2023-24
दिनांक Date : 30-10-2023 जारी करने की तारीख Date of Issue 07.11.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Gyan Chand Jain, Commissioner (Appeals)
- ग Arising out of OIO No. 410/DC/Pankaj/DIV-6/a/BAD-South/PMT/2022-23 दिनांक: 17.03.2023
passed by The Deputy Commissioner (Tech.), CGST, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant
M/s. Pankaj Bhagvandas Gohel,
9,2, Regent Park, Judges Bunglow,
Bodakdev, Ahmedabad-380054.

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, 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 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 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 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 रु.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 contented in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

1^प 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.

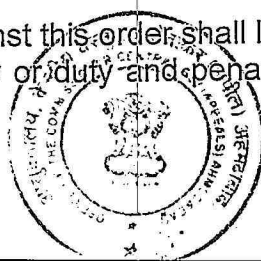
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 Pankaj Bhagvandas Gohel, 9,2, Regent Park, Nr. Judges Bunglow, Bodakdev, Ahmedabad-380054 against Order in Original No. 410/DC/Pankaj/Div-6/A'bad South/PMT/2022-23 dated 17.03.2023 [hereinfter referred to as "*impugned order*"] passed by the Deputy Commissioner(Tech.), CGST, Ahmedabad South[hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant are registered with the service tax bearing service tax registration No. ABKPG1181BDSD001. Upon perusal of the data received from Central Board of Direct Taxes (CBDT) it was noticed that the Assessee had declared different values in Service Tax Return(ST-3) and income Tax return(ITR/Form 26AS) for the financial year 2015-16. On Scrutiny of the data received from CBDT, it was noticed that the Assessee has declared less taxable value in their service Tax Return for the F.Y. 2015-16 as compared to the service related taxable value declared by them in their income Tax Return(ITR/Form 26AS) as detailed below:

Table-A

(Amount in Rs)

Sr. No	F. Y.	Total Gross value provided(STR)	Sale of Service	Total Value for TDS (including 194C, 194 IA, 194J, 194H)	Higher Value(Value diff in TDS & STR)	Rate of duty	Resultant Sevice Tax to be paid
1	2015-16	2171166/-	2477000/-	2541650/-	370484/-	15%	55573/-

3. Show Cause Notice vide F.No. V/WS06/O&A/SCN-510/2020-21 dated 26.12.2020 (in short 'SCN') was issued to the appellant, wherein it was proposed to:

- Demand and recover service tax amounting to Rs. 55573/- under the proviso to sub Section (1) of Section 73 of finance Act, 1994;
- Demand and recover interest at the appropriate rate under the provision of Section 75 of Finance Act, 1994;
- Impose penalty under provision of Section 77(1)(c), and 77(2) of the Finance Act, 1994;



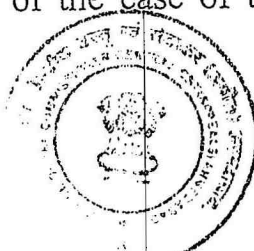
➤ Penalty under the provisions of Section 78 of the finance act, 1994.

4. The said SCN was adjudicated vide the impugned order confirming the followings:

- Service Tax demand of Rs. 55,573/- (Rupees Fifty Five Thousand Five Hundred and Seventy Three only) under proviso to Sub-section (1) of Section 73 of Finance Act, 1994; read with relaxation provisions of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation and amendment of Certain Provisions) Act, 2020 (No. 38 of 2020) promulgated on 30.09.2020 (time limit extended upto 31st December, 2020) by invoking extended period of time limit;
- charge and recover the interest on confirmed amount at the appropriate rate under section 75 of the Finance Act, 1994 from the due date of payment of Service Tax to till the actual date of payment;
- impose penalty under the provisions of the section 77 (1)(c) of the Finance Act, 1994,
- I impose penalty of Rs. 10,000/- (Ten Thousand Only) under the provisions of the section 77(2) of the Finance Act, 1994 for failure to follow provisions of the Finance Act, 1994,
- Penalty of Rs 55,573/- (Rupees Fifty Five Thousand Five Hundred and Seventy Three only) under section 78 of the Finance Act, 1994, i.e., equal to the Service Tax amount confirmed at (i) above, for the Service Tax not levied or not paid or short levied or short paid by way of suppressing the facts and contravention of the provisions of the Act and the Rules made there under, with intent to evade payment of Service Tax;

5. Being aggrieved with the impugned order, the appellant have filed the present appeal on following grounds:

- That the learned Deputy Commissioner (Technical, CGST, Division -VI, Ahmedabad- South has erred both in law and on the facts to levy of Service-tax amounting to Rs.55,573/- and interest thereon with penalty of Rs. 55,573/- without considering the facts of the case of the appellant, and therefore it requires to be deleted.



- That as per the provisions of Section 73(1) the notice is to be served within one year from the relevant date and as such the show cause notice issued by Id. Dy.Commissioner (Technical), CGST, Ahmedabad - South is barred by time limitation and hence the order passed on invalid notice may please be quashed.
- That the extended time limit U/s 73(1) of the Finance Act 1994 is not applicable in the case of appellant and hence the show-cause notice issued on 26.12.2020 for the period from 01.04.2015 to 31.03.2016 is barred by time limit prescribed, and hence the order passed on the basis of illegal and invalid show-cause notice may please be cancelled.
- That the learned Dy. Commissioner, CGST, Division -VI, Ahmedabad - South has not appreciated the reply filled by the appellant on 14.12.2022 and 19.01.2023 without appreciating the facts of the case the unwanted levy of service-tax including interest and penalty thereon may please be deleted.
- That the Dy. Commissioner, CGST, Division -VI, Ahmedabad - South has wrongly imposed penalty U/s 78 of Rs. 55,573/- and Rs. 10,000/- u/s 77 of the Service Tax Act, 1994 and therefore it requires to be deleted.
- The service Tax is payable on receipt basis, however the demand raised on the basis of difference of turnover in ST-3 returns and Income Tax return does not amount to:
 - (I) Fraud
 - (II) Collusion
 - (III) Misstatement
 - (IV) Concealing information with the wilful intent to defraud revenue
 - (V) Not following any provisions of law.Hence extended time limit of section 73(1) is not allowed and therefore the Show cause notice issued itself is bad in law and whole proceedings requires to be quashed.
- Without prejudice to the above the assessee's turnover during the year was less than 50Lacs and therefore the assessee is liable to pay service tax on receipt amount only, therefore the service tax liability imposed by the Dy Commissioner (Technical), CGST, Ahmedabad South is required to be deleted.



- Without prejudice to the above the Dy. Commissioner, CGST, Division -VI, Ahmedabad - South has imposed interest u/s 75 and penalty u/s 77 and 78 of The Service Tax act, 1994 which is not legal and valid as per the proviso of sec. 78 of the act, and hence the other penalties imposed under various sections may please be dropped.
- The interest and penalty are consequential the above, levy of service tax and hence the levy of interest and penalty under various heads may please be deleted.
- Your appellatant craves leave to add, amen or alter any of the grounds till the appeal is finally heard and decided.

6. Personal Hearing in the case was held on 11.10.2023. Jaimin Bharatbhai Shah, Chartered Accountant, appeared on behalf of the appellatant for the hearing. He reiterated the contents of Appeal Memorandum and requested to allow their appeal.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during hearing and the facts available on records. The issue to be decided in the present appeal is whether the demand for Service Tax amounting to Rs.55,573/- confirmed vide the impugned order alongwith interest and penalties is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16.

8. It is observed that the appellatant is holding Service Tax registration and during the said period and were engaged in providing services viz. Business support Services. It is further observed from the case records that the SCN proposing demand and recovery of Service tax on the differential amount alongwith interest and penalty in the instant case was issued as per the data received from Central Board of Direct Taxes (CBDT) as per the following:

Table-A

(Amount in Rs)

Sr. No	F. Y.	Total Gross value provided(STR)	Sale of Service	Total Value for TDS (including 194C, 194 IA, 194J, 194H)	Higher Value(Value e diff in TDS & STR)	Rate of duty	Resultant Service Tax to be paid
1	2015-16	21,71,166	24,77,000	25,41,650	3,70,484	15%	55,573

8.1 The said SCN was adjudicated vide the impugned order and the demand as proposed vide the SCN dated 26.12.2020 were confirmed and interest and penalty as detailed in above paras, were confirmed on the ground that the Assessee has failed to produce the documentary proof to substantiate the claim.

9. I Find that the main contention hereinabove is different Taxable amounts as reflected in Service Tax Return, Income Tax Return and form 26AS. For the amount as declared in the Income Tax Return, the appellant in his appeal memorandum have submitted that During the year under consideration the assessee has provided the services to various parties and in consideration of the same the assessee has charged Professional Service charge of Rs. 24,77,000/- (including service tax), The assessee has not collected separate service tax on certain amounts and paid the service tax as it was received including service tax. The Service Tax number was allotted in ST-2 form by the department on 28/03/2016 i.e. last days of the financial year 2015-16. Therefore obviously the Assessee has not collected separate service tax from any of his parties. Even the service tax has not been received by the Assessee from his parties and therefore the Assessee has paid service tax as per Section 67(2) of Finance Act 1994. The Assessee has taken registration under service tax act and filed their return of Service Tax in ST-3 form on 28/04/2016. The Calculation as submitted by the appellant is produced below:

Name of the concern	Gross amount received	Service amount	Service Tax	SBC	Total
Balkrishna Textile Limited	3,95,000/-	3,44,978.17/-	48,296.94/-	1,724.89/-	3,95,000/-
Mirachem Industries	20,40,000/-	17,81,659.39/ -	2,49,432.31 /-	8,908.28/-	20,40,000/-
Soma Textiles & Industries Ltd	42,000	36,681.22/-	5,135.37/-	183.42/-	42,000/-
Total	24,77,000/-	21,63,318.77/-	3,02,864.63/ -	10,816.59/-	24,77,000/-

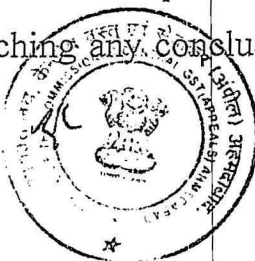
9.1 They have further said that from the table above, it has been seen that the gross amount received by the assessee is **RS. 24,77,000/-** and the same is tallied with the income tax return data.



10. I have also observed that for the differential amount as reflected in form 26AS, the appellant have clarified that In 26AS, M/s. Balkrishna Textile Limited has shown the amount paid or credited Rs. 4,35,000/-, which is wrongly entered by company. During the year, they have received or debited the account of M/s. Balkrishna Textile Limited by Rs. 3,95,000/-. On going through the copy of ledger account for the period under consideration as submitted by appellant the said fact is ascertained. However, on going through the Ledger account service of M/s Balkrishna Textile Limited, the Amount of 4,15,000/- is shown. The appellant have submitted that the mismatch of Rs. 20,000/- is because the said amount was credited by the M/s. Balkrishna Textile Limited on 31.03.2016 which is not received by them in the year under consideration. Further the appellant have submitted that they have provided the service less than 50 lacs so the service tax liability will be applicable on receipt basis. However, I find that the Appellant have not submitted any conclusive documentary proof of the payment of 20,000/- received by them in the following year. Hence I am of the opinion that the documentary proof must be crossed checked for ascertaining the tax liability.

10.1 Further, As regards the amount of Rs. 1,94,650/- of M/s. Mirachem Industries, the appellant have submitted that the Basic amount of Rs. 1,70,000/- and 14.50% on 1,70,000/- comes to Rs. 24,650/-. However the company has mentioned in 26AS the amount including Service Tax amount therefore the amount of 1,94,650/- taken from 26AS for calculation of service Tax liability is not correct and the S.Tax must be calculated on 1,70,000/-. In this case too, if find that documentary evidences such as Ledger account and Bank Statement of the Axis Bank for the period under consideration does not satisfactorily and conclusively correlate the same and hence the same must also be cross verified with the substantial documents to ascertain the tax liability. The appellant have neither submitted any reconciliation sheet justifying the above differences as noticed in Form 26AS.

11. In view of the facts mentioned at Paras 10 & 10.1 hereinabove, I am of the considerate view that the instant matter requires comprehensive verifications of the documentary proofs before reaching any conclusion. I also find that the appellant

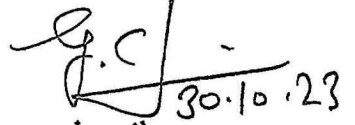


have neither provided the proofs to confirm the same beyond doubts nor have given proper reconciliations to the differential amounts as quoted above.

12. In view of the above discussions, without going into merits, I am of the considered view that the appeal is required to be remanded back to adjudicating authority for fresh re-considerations. The appellant is also hereby directed to submit all the relevant documents to the Adjudicating Authority.

13. ~~अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।~~

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



(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Dated: 30th October, 2023

सत्यापित /Attested:



(मोहित कुमार)

अधीक्षक(अपील्स)

केंद्रीय जीएसटी, अहमदाबाद



By REGD/SPEED POST A/D

To,
M/s Pankaj Bhagvandas Gohel,
9,2, Regent Park, Nr. Judges Bunglow,
Bodakdev, Ahmedabad-380054.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad
2. The Commissioner, CGST and Central Excise, Gandhinagar
3. The Deputy/Asstt. Commissioner(Technical/Preventive), Central GST, Division-VI, Ahmedabad South.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website
5. Guard file
6. PA File