



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आजादी का
अमृत महोत्सव

By SPEED POST

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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3212/2023 1858-62
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-229/23-24 and 18.01.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	29.01.2024
(ङ)	Arising out of Order-In-Original No. CGST-VI/Dem - 257/Riddhi/AC/DAP/ 2022-23 dated 30.01.2023 passed by The Assistant Commissioner, CGST, Division-VI, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Riddhi Infocom Solution LLP, 10, Mill Officer Colony, B/h Old RBI Bank, Ashram Road, 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 अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-

(क) 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 किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

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.

(ख) 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।



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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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.

(3) 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 :-

(2) उक्तलिखित परिच्छेद 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।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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 शुल्क अधिनियम 1970 यथा संशोधित 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 और 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6) (i) 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. Riddhi Infocom Solution LLP, 10, Mill officer Colony, B/h Old RBI Bank, Ashram Road, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/DEM-257/RIDDHI/AC/DAP/2022-23 dated 30.01.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST & Central Excise, Division – VI, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant was registered with under Service Tax having Service Tax Registration No. AARFR0271RSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that the appellant had earned an income of Rs. 56,63,313/- during the FY 2015-16, 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 Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, 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 and demanding Service Tax amounting to Rs. 8,21,180/- for the period FY 2015-16, 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; recovery of late fees under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 and imposition of penalties under Section 77 and Section 78 of the Finance Act, 1994.

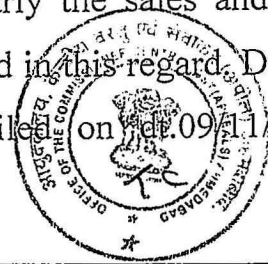
2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority and given the benefit of the notification No. 33/2012 dated 20.06.2012 and demand of the Service Tax amounting to Rs. 6,75,684/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994



along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16. Further (i) Penalty of Rs. 6,75,684/- was also 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)(c) of the Finance Act, 1994; (iii) Late fees of Rs. 40,000/- for the service tax return not filed timely for the relevant period i.e. F.Y. 2015-16 under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 .

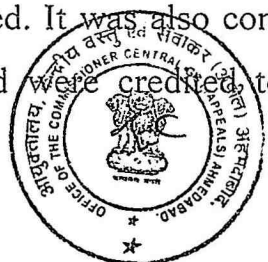
3. Being aggrieved with the impugned order issued by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The appellant is registered Limited Liability Partnership, incorporated under Limited Liability Partnership Act, 2008 with LLP ID : AAC-3517, dt.06/06/2014 with main object of doing business related to IT enabled services work. As per business requirement, service-tax registration was sought for vendor registration with various clients' eligibility criteria vide STIN AARFR0271RSD001. It is pertinent to note the fact that the appellant LLP was formed as special purpose vehicle to apply for work as enumerated by work order issued by Reliance Webstore Limited and Reliance Communications Limited who were existing clients of associate/sister concern, Riddhi Corporate Services Private Limited. The vendor registration for ITeS work order was registered with ICICI Bank, Reliance Webstore and Reliance Communication along with copy of PAN and STIN. Due to no work profile of the appellant firm, the work order was assigned to Riddhi Corporate Services Limited, who in turn, executed the services, issued service-tax invoices and were paid for their bills but since the vendor registration was done in appellant's name, tax deduction on said bills were deducted and deposited by all the three vendors in PAN of the appellant. The said fact was already made known to vendors but PAN could not be changed in eTDS returns filed by them as Reliance group working under ADAG was going bankrupt and there were no one to listen to our redressal of complaints. In order to claim the tax deducted which was shown in the Form 26AS of the appellant was claimed disclosing clearly the sales and cost effected by Riddhi Corporate Services Private Limited in this regard. During the year under appeal, return of income was filed on dt.09/11/2017



disclosing gross sales of services of Rs.8,75,718/- (net of sales effected by Riddhi Corporate Services Private Limited) to claim credit of taxes deducted by vendors whose name appear in Form 26AS. The said return was processed for refund since credit of taxes paid were allowed under Income-tax Act, only when it is credited and shown in Form No.26AS. It is pertinent to note the fact that during the year under appeal, books of accounts of the appellant were not subject to tax audit under the provisions of Income-tax Act and therefore financials were produced as signed by two Designated Partners of the appellant firm which were public document available with Ministry of Company Affairs domain in MCA21.

- The SCN was issued solely on the basis of data of sales/gross receipt from services reported under income-tax return as shared by CBDT for the year under appeal and accordingly the information so shared for Rs.56,63,313/- was assumed escaped tax and liability for Rs.8,21,180/- was proposed under SCN. The appellant furnished duly signed Profit & Loss A/c as well as Balance Sheet showing net sales of Rs.8,75,718/-, which is below small scale exemption limit after considering sales effected by Riddhi Corporate Services Private Limited of Rs.47,84,175/-. In support whereof, your appellant furnished tax invoices raised by Riddhi Corporate Services Private Limited along with ST-3 returns filed along with bank statements explicitly making it clear that all those services were rendered and consideration was received by Riddhi Corporate Services Private Limited alone, it was just that tax deducted at source for the bills so raised were reflected in your appellant's Form. No.26AS due to mistake on the part of the vendor. Your appellant informed the vendor to change the PAN while revising their TDS returns but could not find support from the vendor as vendor went bankrupt and it was beyond appellant's control to change respective PAN in their respective eTDS returns on behalf of them.
- Further, the appellant pleaded that amounts shown as paid/credited against ICICI Bank, Reliance Webstore and Reliance Communications were in fact service tax invoices raised by Riddhi Corporate Services Private Limited which tallies with the Form 26AS amounts reported. It was also contended that payments against service tax invoices issued were credited to bank



account of Riddhi Corporate Services Private Limited and not to appellant's bank accounts which were already on record. It is pertinent to note that during the adjudication, tax bills raised, payments received and service tax paid against invoices so raised by Riddhi Corporate Services Private Limited were not disputed but it was not believed to be verified based on written submission. Your appellant submitted tax invoices raised, bank account statement showing credit against said tax invoices, ST-3 returns filed showing service tax paid on said invoices, expenses incurred and paid for providing such services by Riddhi Corporate Services Private Limited however adjudicating officer assumed that all these documents could not substantiate appellant's claim. The appellant pleads that no confirmation was sought from vendors who can substantiate beyond doubt the claim of the appellant. In absence of exercise of such powers, it was not prima facie case to assume that services on which service tax was already paid by associate company; was rendered by the appellant solely on basis of conjectures and surmises. Your appellant also argued that service tax liability cannot be determined merely by relying on Form 26AS. The appellant also apprised of the fact that service tax cannot be levied twice on single transaction which has already suffered tax in hands of associate company unless refund is ordered to the associate company.

4. The appellant were given opportunities for Personal Hearing on 11.09.2023, 11.12.2023 & 22.12.2023 but no one appeared for hearing. Next Personal hearing in the case was held on 09.01.2024 Shri Vaibhav Shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated the contents of the written submission and requested to allow their appeal.

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 ~~less~~ and proper or otherwise. The demand pertains to the period FY 2015-16.



6. It is observed that the main contentions of the appellant in the appeal memorandum that the appellant was registered for ITeS work order with M/s. ICICI Bank, M/s. Reliance Webstore and M/s. Reliance Communication. Due to no work profile of the appellant firm, the work order was assigned to Riddhi Corporate Services Limited (Sister Concern of the appellant), who in turn, executed the services, issued service-tax invoices and were paid for their bills but since the vendor registration was done in appellant's name, tax deduction on said bills were deducted and deposited by all the three vendors in PAN of the appellant. In order to claim the tax deducted which was shown in the Form 26AS of the appellant was claimed disclosing clearly the sales and cost effected by M/s. Riddhi Corporate Services Private Limited in this regard. During the year under appeal, return of income was filed on dt.09/11/2017 disclosing gross sales of services of Rs.8,79,138/- (net of sales effected by Riddhi Corporate Services Private Limited) to claim credit of taxes deducted by vendors whose name appear in Form 26AS.

7. I find that the adjudicating authority, while confirming the demand, held / discussed as under:

"6.8. The noticee has contended that initially PO and work was to be executed by firm the notice i.e. M/s. Riddhi Infocom Solutions LLP however, due to time and manpower constraints the same, was executed by Riddhi corporate services limited which is an associate concern of the firm. It was a mere case of vendor registration on what basis TDS was made by the client in firm's PAN but in fact invoices, execution related expenses and even bank payments were made to Riddhi corporate services limited. However, the noticee has not submitted any documentary evidence which substantiate their above claim. Therefore, it appears that the noticee has provided taxable services of Rs. 56,59,893/- to the Reliance communications limited, Reliance webstore limited, ICICI Bank Limited in the financial year 2015-16 and accordingly service tax is payable on the same.

7.1 It is observed that the adjudicating authority, while confirming the demand in the present case, inter alia, observed that "*the noticee has not submitted any documentary evidence which substantiate their above claim*". However, the appellant has submitted various documents i.e. (i) ITR for the F.Y. 2014-15 and 2015-16; (ii) Balance Sheet and Profit and Loss account for the F.Y. 2014-15 and 2015-16; (iii) Bank statement for the F.Y. 2015-16; (iv) Invoice copies issued by the M/s. Riddhi Corporate Services Private Limited to M/s. ICICI Bank, M/s.

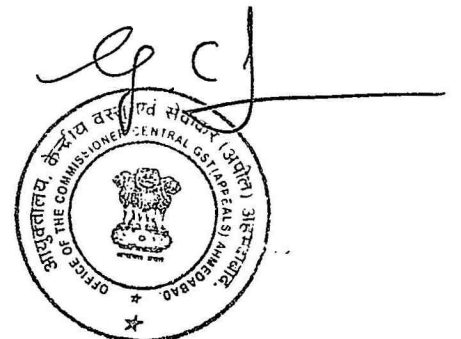


Reliance Webstore and M/s. Reliance Communication for said service; (v) ST-3 copy filled by the M/s. Riddhi Corporate Services with details of invoice for Service tax paid in the said period (vi) Certificate issued by the M/s Riddhi Corporate Services, wherein they certified that the services rendered have been credited to their bank account and related expenses are also booked and claimed in our books of accounts which are duly audited and have been assessed to income tax as per returned income; and (vii) copy of 26AS for the F.Y. 2015-16 vide his letter dated 27.12.2023.

8. I find that the appellant has submitted various documents in support of their claim for exemption for payment of service tax at the appeal stage, which was not produced by them before the adjudicating authority and first time submitted at appeal stage. In this regard, I am of the considered view that the appellant cannot seek to establish their eligibility for exemption at the appellate stage by bypassing the adjudicating authority. They should have submitted the relevant records and documents before the adjudicating authority, who is best placed to verify the authenticity of the documents as well as their eligibility for exemption.

9. 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 to examine the case on merits and also to consider the claim of the appellant for exemption from the service tax. The appellant is directed to submit all the records and documents in support of their claim for exemption from the service tax before the adjudicating authority. The adjudicating authority shall after considering the records and documents submitted by the appellant decide the case afresh by following the principles of natural justice.

10. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh and pass a speaking order after following the principles of natural justice.



11. अपील कर्था 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.

(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Dated: 18th January, 2024

सत्यापित / Attested:

(अनुराग कुमार)

अधीक्षक(अपील्स)

केंद्रीय जीएसटी, अहमदाबाद

By RPAD / SPEED POST



To,

M/s. Riddhi Infocom Solution LLP,
10, Mill officer Colony, B/h Old RBI Bank,
Ashram Road, Ahmedabad.

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division VI, Ahmedabad South
- 4) The supdt(Systems) Appeals Ahmedabad, with a request to upload on Website,
- 5) Guard File
- 6) PA file

