



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

DIN:- 20240364SW0000888D66

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4914/2023/3102 - 3106
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-314/2023-24 and 19.03.2024
(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	20.03.2024
(ङ)	Arising out of Order-In-Original No. 427/ WS08/AC/KSZ/2022-23 dated 16.03.2023 passed by The Assistant Commissioner, CGST & CEx, Division-VIII, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Patel Bhavnaben Jashvantkumar, 18, Amrut Jivan Society, Javraj Park Road, Vejalpur, Ahmedabad - 380015

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 या 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 उपयोगी 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 2nd floor, 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।

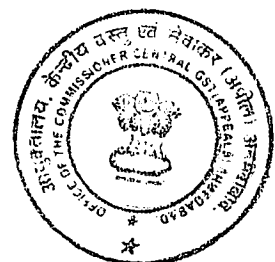
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



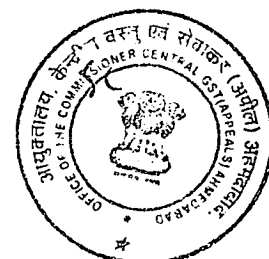
अपीलिय आदेश/ ORDER-IN-APPEAL

The present appeal has been filed by M/s Patel Bhavnaben Jashvantkumar, 18, Amrut Jivan Society, Javraj Park Road, Vejalpur, Ahmedabad – 380015 (hereinafter referred to as '*the appellant*') against Order in Original No. 427/ WS08/AC/KSZ/2022-23 dated 16.03.2023 [hereinafter referred to as '*impugned order*'] passed by the Assistant Commissioner, CGST & CEx, Division-VIII, Ahmedabad South Commissionerate [hereinafter referred to as '*adjudicating authority*'].

2. Briefly stated, the facts of the case are that the appellant were not registered under Service Tax and were holding PAN No. AMUPP8245L. As per information received from the Income Tax Department, it was observed that during the period F.Y. 2014-15, the appellant had earned substantial service income by way of providing taxable services, but had neither obtain Service Tax Registration nor paid Service Tax thereon. Accordingly, in order to seek information, letter dated 24.07.2020 and reminder letter dated 08.09.2020 were issued to the appellant calling for the details of services provided during the period. But they didn't submit any reply. Further, the jurisdictional officers considering the services provided by the appellant as taxable, determined the Service Tax liability on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS for the relevant period as per details below :

Sr. No.	Period (F.Y.)	Differential Taxable Value as per Income Tax Data (in Rs.)	Rate of Service Tax incl. Cess	Service Tax liability to be demanded (in Rs.)
1.	2014-15	15,93,723/-	12.36%	1,96,984/-

3. The appellant were issued Show Cause Notice No. CGST/DIV-VIII/O&A/TPD/162/AMUPP8245L/2020-21 dated 21.09.2020 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.1,96,984/- under proviso to Section 73 of Finance Act, 1994 along with applicable interest and penalties.



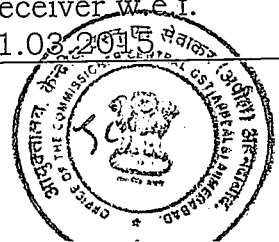
4. The SCN was adjudicated *ex-parte* vide the impugned order wherein :

- ❖ Service Tax demand of Rs. 1,96,984/- was confirmed under Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.
- ❖ Penalty of Rs.10,000/- was imposed under Section 77(1)(a) of the Finance Act, 1994.
- ❖ Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994.
- ❖ Penalty of Rs.1,96,984/- was imposed under Section 78 of the Finance Act, 1994.

5. Aggrieved by the impugned order, the appellant has preferred this appeal on following grounds:

- The appellant stated that they are engaged in the business of supply of Manpower and Security personnel Services.
- Appellant submitted that in case of services in the nature of Manpower & Security personnel services the liability to pay service tax is partially on the receiver of the services in view of the Notification No. 30/2012-ST dated 20.06.2012, the relevant entry thereof is reproduced hereunder for your ease of reference:

Nature of Services	Particular/Condition	Person Liable for payment Service Tax of
Services by supply manpower for purpose or services way of	When the said service is provided by any of individual, Hindu Undivided Family or any partnership firm, whether registered or security not, including association of persons, located in the	75 % by Service Receiver (upto 28.02.15) 100% by Service Receiver w.e.f. 01.03.2015



	taxable territory to a business entity registered as body corporate, located in the taxable territory;	
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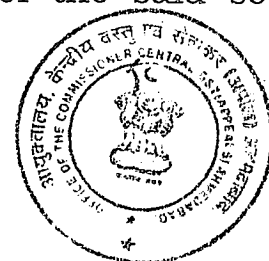
- They submitted that during the year 2014-15, out of total income shown in Income Tax Returns below mentioned Income were received from the various Business Entity registered as Body corporate :

Particulars	F.Y. 2014-15	Apr-2014 to Feb-2015	March-15
Total Sale of Services as per ITR	15,93,723	15,79,132	14,591
Income from Body Corporate (i) The Institute of Company Secretary & (ii) The Oriental Insurance Co.	1,67,773	1,53,182	14591
Taxable Income from other than Body Corporate	14,25,950	14,25,950	0

- They are Individual providing services to various Business Entity registered as Body corporates so in respect of those services which are provided to various Business Entity registered as Body corporates the liability of services tax if any would be only 25% upto 28.02.2015 & 0% w.e.f. 01.03.2015 on the Appellants and balance on service receiver.
- They further submitted that the Appellant are also eligible for Small Scale Service provider exemption under Notification No. 33/2012-ST dated 20.06.2012.

6. It is observed from the records that the present appeal was filed by the appellant on 16.06.2023 against the impugned order dated 16.03.2023, which was reportedly received by the appellant on 23.03.2023.

6.1 It is also observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :



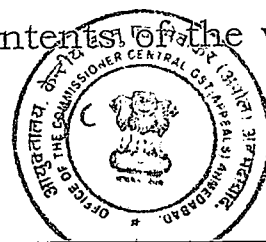
“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”

6.2 As per the above legal provisions, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 22.05.2023 and further period of one month, within which the Commissioner (Appeals) is empowered to condone the delay upon being satisfied with the sufficient reasons shown by the appellant, ends on 22.06.2023. This appeal was filed on 16.06.2023, i.e after a delay of 25 days from the stipulated date of filing appeal, and is within the period of one month that can be condoned.

6.3 In their application for Condonation of delay in filing the appeal, they submitted that during the course of filing appeal, they were struggling for payment of pre-deposit challan since they were not registered with the service tax department. Due to some technical reasons their registration and payment of challan were not getting within the time limit. These reasons of delay were also explained by them during the course of personal hearing, the grounds of delay cited and explained by the appellant appeared to be genuine, cogent and convincing. Considering the submissions and explanations made during personal hearing, the delay in filing appeal was condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.

7. Personal Hearing in the case was held on 13.02.2024. Shri Pratik Trivedi, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written



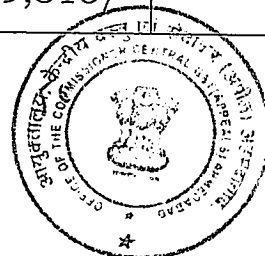
submission. Further he requested for two days time to submit ITR for the F.Y. 2014-15 & F.Y. 2013-14.

7.1 Subsequently, the appellant submitted Form 26AS, ITR for the F.Y. 2014-15 & F.Y. 2013-14.

8. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, oral submissions made during personal hearing, the impugned order passed by the adjudicating authority and other case records. The issue before me for decision in the present appeal is whether the demand of service tax amounting to Rs.1,95,417/- confirmed under proviso to Section 73 (1) of Finance Act, 1994 alongwith interest, and penalties vide the impugned order passed by the adjudicating authority in the facts and circumstances of the case is legal and proper or otherwise. The demand pertains to the period of F.Y. 2014-15.

9. Upon reviewing the written submission of the appellant during the time of filing of Appeal Memorandum, as well as their oral submission at the time of personal hearing and examining the case records, it is evident that the appellant are engaged in the business of providing Security and Manpower Supply services. They have provided these services to both body corporate such as M/s the Oriental Insurance Co. in the impugned period, and also to the non-body corporate. The consideration received for these services is summarized in the table below:

Sr. No.	Particular	F.Y. 2014-15	
1.	Total sale of income as per ITR	Rs. 15,93,723	
2.	Income from The Oriental Insurance Co.	Rs. 79,260/- (upto Feb. 2015)	Rs. 7,200/- (Mar. 2015)
3.	Taxable value of the appellant under RCM	Rs. 19,815/-	0



4.	Service Tax @ 14.5% under RCM	Rs. 2,873/	0
5.	Total Income from Other than Body-Corporate	Rs. 15,07,263	
6.	Threshold exemption benefit U/s 33/2012-ST dated 20.06.2012	Rs. 10,00,000/-	
7.	Differential Taxable value	Rs. 5,07,263/-	
8.	Service Tax @ 14.5% under Forward Charge Method	73,553/-	
9.	Total Service Tax Liability on the appellant (Sr. No. 4 + 8)	76,426/-	

10. I find that the appellant assert that according to the Notification No. 30/2012-ST dated 20.06.2012 as amended, the liability to pay service tax is partially on the receiver of the services and partially on the service provider. They further argue that for services provided to business entities registered as body corporate, the service tax liability is only 25% until February 28, 2015, and 0% from March 1, 2015, on the appellant in the light of Notification No. 30/2012-ST dated 20.06.2012 and 07/2015-ST dated 01st March, 2015.

11. Thus I find that the service tax liability for manpower and security services until 28.02.2015 should be shared between the appellant and the service receiver in those cases wherein the appellant provided services to the business entities registered as the body corporate in terms of Notification No. 30/2012-ST dated 20.06.2012. I also find that the service tax liability on the appellant for manpower and security services w.e.f. month of March 2015 should be Nil in the light of 07/2015-ST dated 01st March, 2015.

12. In view of the above provision of Notification 30/2012-ST dated 20.06.2012 as amended, the appellant would be liable to pay service tax at the rate of 25% of the taxable value of Rs. 79,260/- and the body corporate recipient would be liable to pay service tax at the rate of 75% of Rs. 79,260/-. Further, the appellant would not be liable to pay service tax on Rs. 7,200/- as the liability would shift to the recipient on 100% of the taxable value in terms of Notification No. 07/2015-ST dated 01st



March, 2015. Hence, I find that the appellant would be liable to pay service tax Rs. 2,873/- under RCM as presented in the preceding table.

13. As regards to the income received against the service provided to the non body corporate, I am of the opinion the appellant's liability of paying service would not be shifted to recipients and the appellant themselves would be liable to pay service tax on the whole amount received against the service provided to non body corporate. I find that the income in the impugned period received from the non body corporate is Rs. 15,07,263/- out of total income Rs. 15,93,723/- in the impugned period.

14. However, the appellant argue that they are eligible to avail Notification No. 33/2012-ST dated 20.06.2012. This notification establishes a basic exemption limit of Rs. 10 lakhs for small service providers. The appellant contends that Rs. 10 lakhs should be excluded from the remaining taxable value of Rs. 15,07,263/- in terms of Notification No. 33/2012-ST dated 20.06.2012. Upon reviewing the Income Tax Returns for the preceding year of the impugned period i.e. F.Y. 2013-14 submitted by the appellant, I find that their total income from 'sale of goods' is Rs. 2,17,954/- and received no income under 'sale of service'. Hence the appellant would be exempted from paying service tax on the taxable value not exceeding 10 lakhs in the light of Notification No. 33/2012-ST dated 20.06.2012. Thus, I find the appellant are liable to pay service tax Rs. 73,553/- on the taxable value of Rs. 5,07,263/- (Rs. 15,07,263/- (-) Rs. 10,00,000/-) as calculated in the preceding table.

15. In view of the above discussion and findings the order in appeal is passed as under:

15.1 I uphold the order to the extent of service tax of Rs. 76,426/- along with interest.

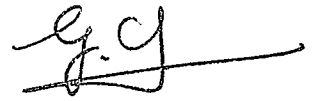


15.2 I uphold the penalty of Rs. 10,000/- under the provision of Section 77(1) of the Finance Act, 1994.

15.3. I uphold the penalty of Rs. 10,000/- under the provision of Section 77(2) of the Finance Act, 1994 for failure to assess the tax due on the service provided by them and furnish a return in the format of ST-3 return within the specified time.

15.4. I uphold the equal penalty of Rs. 76,426/- under Section 78 of the Act.

16. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है |
The appeal filed by the appellant stands disposed of in above terms.



ज्ञानचंद जैन

आयुक्त (अपील्स)

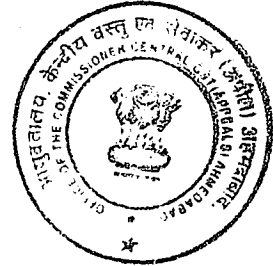
Dated: 19th March, 2024

सत्यापित/Attested

अरिंद कुमार
अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद

By REGD/SPEED POST A/D



To,

M/s Patel Bhavnaben Jashvantkumar,
18, Amrut Jivan Society, Javraj Park Road,
Vejalpur, Ahmedabad – 380015.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Ahmedabad South.
3. The Assistant Commissioner, CGST & CEX, Division - VIII, Ahmedabad South Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
5. Guard file.
6. PA File.

