



सत्यमेव जयते

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 : 20230664SW00003353A7

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/20/2023 / 1922 - 26
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-44/2023-24
दिनांक Date : 30-05-2023 जारी करने की तारीख Date of Issue 01.06.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 45/AC/Hasibahmed N Khan/Div-II/A'bad-South/JDM/2022-23 दिनांक:
06.10.2022 passed by Assistant Commissioner, CGST, Division-II, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Hasibahmed Nasirahmed Khan
2551/1, Shalimar's Chawl,
Near Surti Society, Ramol Road,
Ahmedabad - 382449

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

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

भारत सरकार का पुनरीक्षण आवेदन :

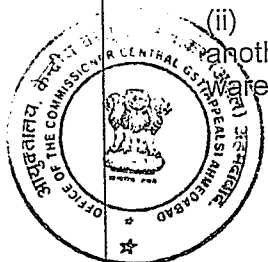
Revision application to Government of India:

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

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

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता 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 पढ़ी 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 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.

51प 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.

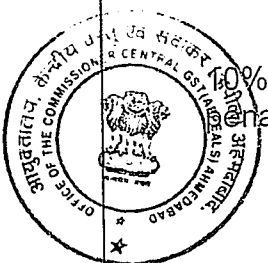
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (xix) amount determined under Section 11 D;
- (xx) amount of erroneous Cenvat Credit taken;
- (xxi) 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 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

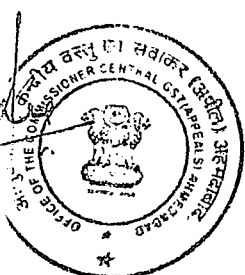
The present appeal has been filed by M/s. Hasibahmed Nasirahmed Khan, 2551/1, Shalimar's Chawl, Near Surti Society, Ramol Road, Ahmedabad – 382449 (hereinafter referred to as “the appellant”) against Order-in-Original No. 45/AC/Hasibahmed N Khan/Div-I/A'bad South/JDM/22-23 dated 06.10.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division-II, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. BBJPK7094P. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15, it was noticed that the appellant had earned income of Rs. 15,49,200/- during the FY 2014-15, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” or “Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)” 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 No. V/15-627/Div-I/HASIBAHMED NASIRAHMED KHAN/20-21 dated 22.12.2020 demanding Service Tax amounting to Rs. 1,91,481/- for the period from FY 2014-15, 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; and imposition of penalties under Section 77(1) & Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,91,481/- 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 2014-15. Further (i) Penalty of Rs. 1,91,481/- 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) of the Finance Act, 1994.

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



- The appellant are engaged in the job work of hand dyeing / colouring of cloths. The appellant received cloths from clients on delivery challan and after job work of hand dyeing / colouring of cloths, returned the same to the clients.
- The applicant have not obtained service tax registration as the services provided by them has been exempted from service tax under Notification No. 25/2012-ST dated 20.06.2012.
- In the present case it is important to decide that whether process has been carried out by the appellant is job work or manufacturing so it is important to verify the Chapter Note 3 and 4 of Chapter 54 of the Central Excise Tariff which clearly state as below:

“In relation to products falling under heading 5401 or 5402 or 5403 or 5405 or 5406 includes dyeing, printing, bleaching, mercerising, twisting, texturing, doubling, multiple-folding, cabling, air mingling, air texturing, any other process, any combination of products into another form of such product shall amount to ‘manufacture’”

“In relation to products falling under heading 5407 or 5408 bleaching, dyeing, printing, shrink proofing, tendering, heat-setting, crease-resistant processing, any other like processing and any combination of such processes shall amount to ‘manufacture’”.

- In view of the above provisions, it is clear that the activity carried out by the appellant amounts to manufacturing.
 - As per the provisions of Section 66D(f) of the Finance Act, 1994 “services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption” falls under the Negative List of services and not subject to service tax liability.
 - The applicant were engaged in job work, which was exempted from Service Tax vide Sr. No. 30(c) of the Notification No. 25/2012-ST dated 20.06.2012.
 - As demand of service tax is not sustainable, imposition of penalty and demand of interest also cannot sustain as promulgated by the Supreme Court in the case of C.C. Ex. Vs. HMM Ltd. reported in 1995 (76) ELT 497 (SC).
4. Personal hearing in the case was held on 16.05.2023. Shri Bhavin Panchal, Authorized person, appeared on behalf of the appellant for personal hearing. He submitted a written submission during hearing. He reiterated submissions made in appeal memorandum.



4.1 The appellant have in their additional submission made during the course of personal hearing, inter alia, reiterated the submission made in appeal memorandum and explained the process carried out by them. They have also submitted sample job work bills, sample challans issued by the principals, Form 26AS and Sales ledgers for the relevant period.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum 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 legal and proper or otherwise. The demand pertains to the period FY 2014-15.

6. It is observed that the main contention of the appellant are that (i) they were engaged in job work of hand dyeing / coloring of cloths and the said activity is amounting to manufacturer as per Chapter Note 3 and 4 of Chapter 54 of the Central Excise Tariff and thus, their activity falls under Negative List of Services as defined under Section 66D(f) of the Finance Act, 1994 and not subject to service tax; and (ii) their activity of job work is exempted vide Sr. No. 30(c) of the Notification No. 25/2012-ST dated 26/06/2012.

7. It is also observed that the adjudicating authority has in the impugned order held that the textile processing amounts to manufacture. However, he has confirmed the demand of service tax observing that bills submitted by the appellant are silent about description of the process carried out by the appellant and also appellant failed to produce any document / challan, evidencing movement of goods from and to his Principals. The adjudicating authority has, in the impugned order, held as under:

"20. Further, as stated by him and from the records submitted, I find that he is engaged in work of dyeing and colouring work on textile materials / fabrics. But, it does not transpire that the said work was done by him on his own or on job-work.

21. I find that the noticee has not submitted any of the following documents, to substantiate his claim for exemption from payment of Service Tax, for the period involved in the SCN.

- 1) Details of Principals on whose behalf of job-work was carried out by the noticee for F.Y. 2014-15.*
- 5) Copies of job work challans for F.Y. 2014-15*
- 6) C. Ex. Registration details of Principals for whom job-work was carried out by the noticee for F.Y. 2014-15*



7) Any records evidencing movement of goods from Principal to him and back to Principal, for F.Y. 2014-15.

22. I find that the textile processing amounts to manufacture and not subject to levy of service tax when the same is done on his own account but when the same is carried out as a job-work, it shall be ascertained whether the final product at the end of principal is dutiable or exempt from levy of Central Excise / Service Tax. The above documentary evidences plays vital role in deciding the exemption, which is missing on the record.

23. I find that the noticee has submitted bills issued by him, to substantiate his claim. I find that such bills are silent about description of the process carried out by him. Further, he also failed to produce any document / challan, evidencing movement of goods from and to his Principals.

24. Thus, in absence of sufficient evidential proof, I have reason to believe that the noticee had provided taxable service -- which is neither exempted by any Notification nor it fall under the Negative List of services under Service Tax law, during the period covered under the notice and hence Service Tax is liable to be demanded and recovered from him."

8. For ease of reference, I reproduce the relevant provision of Section 66D(f) of the Finance Act, 1994 and relevant provision under Notification No. 25/2012-ST dated 20.06.2012 as amended, which is as under:

"SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely :-

(a) (b)

(f) *Services by way of carrying out any process amounting to manufacture or production of goods"*

"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);

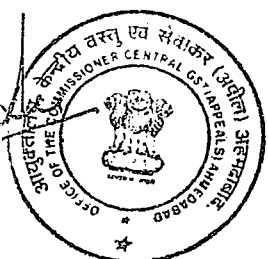
(c) any goods [excluding alcoholic liquors for human consumption,]*

*{inserted vide Notification No. 6/2015-ST dated 01.03.2015} 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;"

9. In this regard, I find that if the services are in the nature of any process which amounts to manufacture, Service Tax is not applicable as per Section 66D(f) of the Finance Act, 1994. I also find that the adjudicating authority has in the impugned order also held that the appellant had carried out manufacturing process. However, the adjudicating authority has confirmed demand of service tax by holding that the appellant has failed to submit any documentary evidence in support of their claim in respect of job work carried out by them. Even otherwise, the job work carried out by the appellant is not falling within the definition of process amounting to manufacture, then said job work is exempted from Service Tax as per Sr. No. 30(a) of the Notification No. 25/2012-ST dated 20.06.2012.

10 In view of the above provisions of Section 66D(f) of the Finance Act, 1994 and Sr. No. 30(a) of the Notification No. 25/2012-ST dated 20.06.2012 and on verification of the documents submitted by the appellant viz. Invoice, challans and process carried out by the appellant, I find that the job work carried out by the appellant were exempted in both the



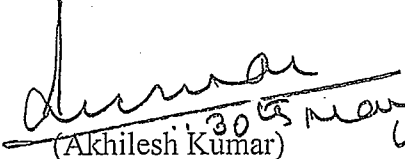
situation, i.e. (i) if the said activity was amounting to manufacture, the same was not leviable to Service Tax under Section 66D(f) of the Finance Act, 1994; and (ii) if the said activity does not amount to manufacture, the job work service is exempted from Service Tax as per Sr. No. 30(a) of the Notification No. 25/2012-ST dated 20.06.2012. In view of the above, I find that the appellants are not liable to pay service tax on income received by them during the FY 2014-15.

11. In view of above, I hold that the impugned order passed by the adjudicating authority, in respect of income received by the appellant during the FY 2014-15, is not legal and proper and deserves to be set aside. 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.


12. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

13. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

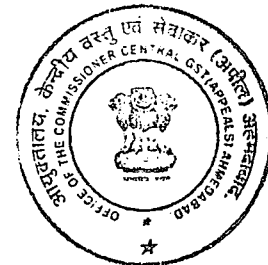
The appeal filed by the appellant stands disposed of in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)

Attested


(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad

Date : 30.05.2023



By RPAD / SPEED POST

To,
M/s. Hasibahmed Nasirahmed Khan,
2551/1, Shalimar's Chawl,
Near Surti Society, Ramol Road,
Ahmedabad – 382449

Appellant

The Assistant Commissioner,
CGST, Division-II,
Ahmedabad South

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division I, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South

(for uploading the OIA)

5) Guard File

6) PA file

