



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 - टेलीफैक्स 07926305136



DIN: 20230864SW000072297F

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1238/2023 /5031 -35
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-87/2023-24
दिनांक Date : 25-08-2023 जारी करने की तारीख Date of Issue 28.08.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. WSO7/O&A/OIO-237/AC-KSZ/2022-23 दिनांक: 10.01.2023 passed by
Assistant Commissioner, CGST, Division VII, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Kant Desai (Ele.) Private Limited,
Neelam Avenue, G-2, Neelam Complex,
Feniben Desai Marg,
Behind Chandanbala Complex, Bhatta,
Paldi, Ahmedabad-380007.

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 :

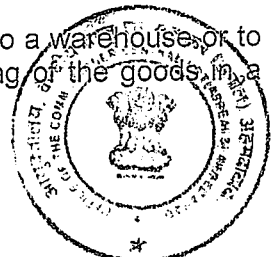
Revision application to Government of India:

(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.

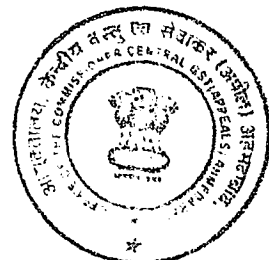
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-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.

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.

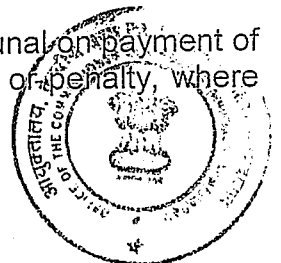
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



ORDER-IN-APPEAL

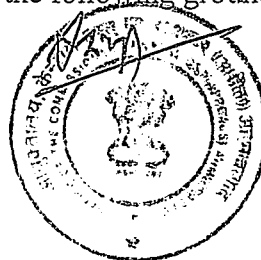
The present appeal has been filed by M/s. Kant Desai (Ele.) Private Limited, Neelam Avenue, G-2, Neelam Complex, Feniben Desaid Marg, Behind Chandanbala Complex, Bhatta, Paldi, Ahmedabad – 380007 (hereinafter referred to as “the appellant”) against Order-in-Original No. WS07/O&A/OIO-237/AC-KSZ/2022-23 dated 10.01.2023 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division VII, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AAACK8852BST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that there is difference of value of service amounting to Rs. 15,89,867/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the FY 2015-16. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant were called upon to submit clarification for difference along with supporting documents, 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/WS07/IV/O&A/SCN-968/2015-16/REG/2020 dated 24.12.2020 demanding Service Tax amounting to Rs. 2,30,530/- 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; and imposition of penalties under Section 77(1)(c), Section 77(2) and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. Rs. 2,30,530/- 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 FY 2015-16. Further (i) Penalty of Rs. Rs. 2,30,530/- was 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; and (iii) Penalty of Rs. 40,000/- was imposed on the appellant under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

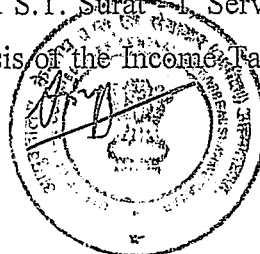
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:



- The appellant are engaged in Trading of Electronic Goods and providing Ancillary Services.
- The erstwhile Service Tax Law enacted by virtue of Chapter V of Finance Act, 1994, stipulated that registration shall be required to obtained if Gross Receipt from Service Exceeds Rs. 9 Lakhs in Previous Year. As in past appellant's Gross Receipt from Provision of Services exceeded this threshold, registration under Service Tax was obtained. However, in subsequent period Gross Receipts from Services reduced below threshold limit of Rs. 9 Lakhs and therefore, the appellant Surrendered its registration under Service Tax.
- The appellant submitted that for Financial Year 2015-16, the break up of their Total Turnover was as follows:

Particulars	Amount
Turnover from Sale of Services	Rs. 4,12,673/-
Turnover from Sale of Goods (On which VAT is charged)	Rs. 11,77,194/-
Total Turnover	Rs 15,89,867/-

- It is clear from the above mentioned break up that the appellant was not required to collect and deposit the service tax on its Turnover during the FY 2015-16. From the above mentioned facts, it is very much clear that adjudicating authority has clearly erred while confirming the Service Tax for Financial Year 2015-16. The appellant submitted that they have collected VAT on the sale of goods amount of Rs. 11,77,194/-.
- The Taxpayer had submitted Balance Sheet, Profit and Loss Account, Income Tax return and Form 26AS.
- The appellant filed their reply to the show cause notice on 28.01.2021, however, the adjudicating authority not considered the said submission and in the impugned order mentioned that no submission was made/ no reply was given to SCN issued, which is totally inappropriate and it is also incorrect on factual basis.
- As decided by the jurisdictional CESTAT in Service Tax Appeal No 10027 of 2020, Shresth Leasing and Finance Ltd. V. C.C.E. and S.T. Surat - I Service tax authority can not ask to pay service tax merely on the basis of the Income Tax Records of the



assessee. It has to find out the service on which service tax ought to have collected and deposited. While passing this judgment, hon'ble CESTATE has followed its earlier judgments like J. P. Iskon Pvt. Ltd v. C.C.E. Ahmedabad-1 and others.

- Hence it is established law that before issuing a demand notice, Service Tax Authorities are required to find out the value of the service on which the service tax ought to have collected and deposited with the dept. Merely the random figures picked up from the Income Tax Returns and/or other records doesn't prove the assessee's liability of collection and payment of service tax.
- In view of their aforesaid submission the appellant requested to set aside the impugned order passed by the adjudicating authority.

4. Personal hearing in the case was held on 11.08.2023. Shri Fenil B. Shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated submissions made in appeal memorandum. He submitted that the appellant during relevant time rendered sale of goods related to computers apart from providing computer related services. However, mistakenly in the ITR entire value was shown from services. If the sale value is excluded, remaining value is below threshold limit. He requested to allow one week time for submission of supporting documents in this regard and requested to set aside the OIO.

4.1 The appellant vide their letter dated 14.08.2023 submitted additional written submission, wherein, they, inter alia, reiterated the submission made in the appeal memorandum and submitted as under:

- The appellant have been engaged in Trading of Computers, Laptops and Printers and Providing Ancillary Services of their repairs and maintenance. It has obtain the registration under the service tax for the maintenance contracts taken by them for the printers and type writers when the turn over from the above services has reached the threshold limit for obtaining the service tax registration.
- However, they have surrendered the service tax registration in the subsequent years as the maintenance services of the type writers is almost becomes zero because of the discontinuation of type writers from the offices and maintenance services for the dot matrix printer has also reduced substantially because of the newer printers.



- For the FY 2014-15, their receipts from the maintenance contract was Rs. 6,77,000/- which came down to Rs. 4,14,487/- in FY 2015-16. However, the accounting software used by the company has clubbed the income of the repairing, maintenance contracts and trainings in one major head of the Service and Repair Receipts. While preparing the audited accounts, all the three accounts are reported under the head as 'Sale of Services' and as a result of this the confusion of chargeability of the same has arisen.
- To substantiate their claim, they attached relevant pages of the trial balance for the FY 2014-15 and FY 2015-16. The has also attached copies of the VAT return filed by them for the FY 2015-16, which clearly shows that they have paid VAT on other items and hence the applicability of the Service tax on the same does not arise. They also attached sample invoices issued by them.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and additional written submission; submission made 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 legal and proper or otherwise. The demand pertains to the period FY 2015-16.

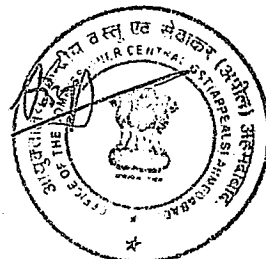
6. It is observed that the main contentions of the appellant is that they were not required to collect and deposit the service tax on its Turnover from Sale of Services during the FY 2015-16 as their total service value was Rs. 4,12,673/-, which is below the threshold limit of exemption and turnover from sale of goods (on which VAT is charged) was Rs. 11,77,194/-.

6.1 It is also observed that the adjudicating authority has confirmed the demand of service tax vide the impugned order passed ex-parte.

7. On verification of the Profit & Loss Account for the FY 2015-16 submitted by the appellant, I find that the appellant has shown the various income as under:

<u>Particular / Description</u>	<u>Amount (in Rs.)</u>
Sales	- 4,333/-
Sales Return	- 34,566/-
Sales [All posting code]	35,49,110/-

Sales	35,10,211/-



Repairs Receipts	7,98,680/-
Service Receipts [All posting code]	4,14,487/-
Training Receipts [All]	3,76,700/-

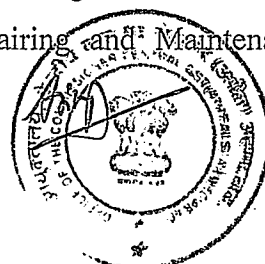
Service & Repairs Receipt	15,89,867/-

7.1 On verification of the VAT Return for the FY 2015-16 submitted by the appellant, I find that the appellant has shown the 'Gross Turnover of Sales' as Rs. 37,32,098/- and Net Taxable Sales (i) for Inter-State Sales as Rs. 9,87,947/- and (ii) Within State Sales as Rs. 27,08,517/-.

7.3 On verification of the sample invoices submitted by the appellant, I find that the appellant submitted Invoice No. RI/524 dated 10.03.2016; No. RI/541 dated 22.03.2016; No. TX/65-15 dated 18.08.2015; No. TX/67 dated 18.08.2015 and No. TX/93 dated 06.11.2015 in respect of Sales of Goods under which they have charged and collected applicable VAT. The appellant also submitted Invoice No. R/657 dated 04.12.2015 for control penal repairing charges; No. R/656 dated 04.12.2015 for toner refilling charges and No. R/658 dated 04.12.2015 for Laser printer servicing and toner refilling charges. All the said invoices are in respect of repairing income, under which they have not charged any VAT. The appellant also submitted Invoice No. S/104 dated 05.01.2016; No. S/185 dated 11.01.2016 and No. S/207 dated 20.02.2016 in respect of service income (AMC charges), under which they have also not charged any VAT. It is also observed that the appellant not submitted any invoices in respect of training income.

7.4 On scrutiny of the aforesaid documents submitted by the appellant, I find that the contention of the appellant that Repairing Income and Training Income not their service income and the same from sale of goods on which they have paid VAT, is found not correct. In fact, during the FY 2015-16, the appellant earn income from Sale of goods to the tune of Rs. 35,10,211/- on which they have paid the appropriate VAT. The appellant also earned income of Rs. 15,89,867/- form services, repairing services and training and not paid any VAT on the said income as contended by them. On verification of the Profit & Loss Account for the FY 2014-15 submitted by the appellant, I find that the appellant has received total Service & Repairs income of Rs. 20,16,550/-, therefore, the appellant also not eligible for threshold benefit up to Rs. 10 lakh in the FY 2015-16.

8. In view of the aforesaid discussion, I find that the appellant have engaged in the sale of goods and received total income of Rs. 35,10,211/- during the FY 2015-16 as well as they have also engaged in providing services viz. Repairing and Maintenance Service and



Commercial Training Service and received total income of Rs. 15,89,867/- as Service Income and the same shown as 'Sale of Service' in the ITR on the basis of which the present proceeding initiated and demand of service tax confirmed vide the impugned order.


9. In view of the discussion above, I do not find merit in the grounds raised by the appellant. Accordingly, I reject the appeal filed by the appellant and uphold the impugned order.

10. 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.


(Shiv Pratap Singh)
Commissioner (Appeals)

Date : 25.08.2023

Attested


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



By RPAD / SPEED POST

To,
M/s. Kant Desai (Ele.) Private Limited,
Neelam Avenue, G-2, Neelam Complex,
Feniben Desaid Marg,
Behind Chandanbala Complex, Bhatta,
Paldi, Ahmedabad – 380007

Appellant

The Assistant Commissioner,
CGST, Division-VII,
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 VII, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)

- 5) Guard File
- 6) PA file

