



सत्यमेव जयते

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

**By SPEED POST**

DIN:- 20240564SW0000520195

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4642/2023
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-10/2024-25 and 25.04.2024
(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	03.05.2024
(ङ)	Arising out of Order-In-Original No. MP/26/DC/Div-IV/2023-24 dated 31.05.2023 passed by The Deputy Commissioner, CGST, DIV-IV, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	1. M/s. Saathiva Web, <b>(New Address)</b> Prop. - Shri Anish Shoketbhai Jesani, 201, Maurya Atria, Opp. Atithi Dining Hall, Bodakdev, Ahmedabad-380054 2. M/s. Sathiva Web 25, Shreebaug Society, Nr. B.R. Somani School, Danilimada, Ahmedabad - 380028

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:-

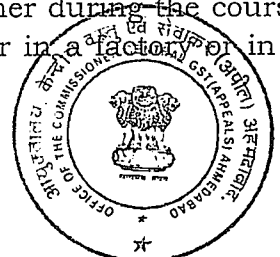
**Revision application to Government of India:**

(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, 4<sup>th</sup> 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 प्रक्रिया 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 हों।

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.

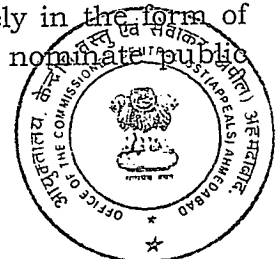
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 nominated 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."

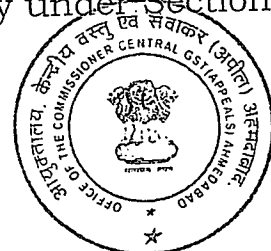


**ORDER IN APPEAL**

The present appeal has been filed by M/s. Shri Anish Shoketbhai Jesani, 25/Shreebaug Society, Nr. B.R. Somani School, Danilimda, Ahmedabad, Gujarat-380028 (hereinafter referred to as "*the appellant*") against Order in Original No. MP/26/DC/Div-IV/2023-24 dated 31.05.2023 hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division IV, CGST Commissionerate 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. AGDPJ8500B. The Income Tax Department provided data indicating taxable income for the financial years 2014-15, 2015-16 and 2016-17. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the appellant had earned an income of Rs. 52,65,710/- during the Financial Year 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 required details of service provided during the impugned period, however, they did not respond to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice bearing F.No. IV/Div-IV/SCN-116/2020-21 dated 21.12.2020 demanding Service Tax amounting to Rs. 7,63,527/- for the period from F.Y. 2015-16 & 2016-17, 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; imposition of penalties under Section 77(1) and 77(2) of the Act, and penalty under Section 78

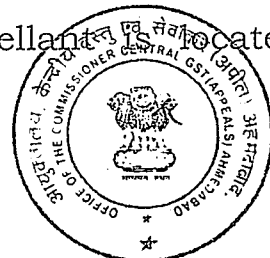


of the Finance Act, 1994.

3. 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. 7,63,527/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 by invoking extended period along with interest under section 75 of the Act along with Interest under Section 75 of the Finance Act, 1994 for the period F.Y. 2015-16. Further (i) Penalty of Rs. 7,63,527/- 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 Finance Act, 1994 and (iii) Penalty of Rs. 10,000/- under Section 77(2) of the Finance Act, 1994 for not submitting documents to the department, when called for.

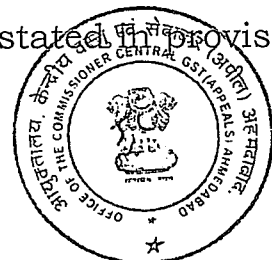
4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The Ld. Deputy commissioner has erred in the law while passing the order as the appellant is engaged in the export of service which are not liable for Service tax registration as appellant is engage in export of Services under Service Tax Rule No. 6A of Service Tax Rules, 1994.
- The appellant is engaged in the development of the software services which are meant for the export only.
- As per the Rule 6A of Service Tax Rules export of the services are not liable to pay the service tax hence, the service tax registration is not required to obtain. Rule 6A is reproduced.
- The appellant has the registered office at Saathiva Web, 201, Maurya Atria, Opp. Atithi Dining Hall, Bodakdev, Ahmedabad Gujarat-380054. The appellant is located



India. Hence, the first condition gets complied.

- The appellant has provided Software services to the SAATHIVA CREATIONS LLC, which has been incorporated in as per the US Laws and is separate legal entity as per the US laws. Further, the service recipient is located at 6007 N Sheridan Rd Apt 20j Chicago, 11 606603063, which is located at in the United States of America. Second conditions also get complied.
- As mentioned above, The appellant is proprietor and has provided Software development services to the foreign entity, which are not covered under the section 66D Negative list. This condition also get complied.
- As mentioned earlier, the service provided by the appellant is to Saathiva Creations LLC which is located in the United states of Amreica, therefore place of provisions of the services is USA only. The said conditions also get fulfilled.
- The payment has been received in USD only. The copy of the FIRC's are attached. By analyzing the FIRC's it will be clear that the payment has been received in INR only. This conditions also get complied.
- Appellant has provided services to the Sathiva ceations LLC located in the city Chicago and the same is located in the Illionis state of the USA And the said LLC has been incorporated under Illinois Limited Liability Company Act. From this explanation it is crystal clear that Sathiva creation LLC is not an establishment of Sathiva Web. Hence, this conditions also get complied.
- The ld. Assistant Commissioner erred in the Law by invoking extended period of limitation as stated in proviso to section 73 of the Act



- The impugned order passed by the ld. Deputy Commissioner arising out of SCN is required to be set aside as the same is vague in nature.
- The impugned order passed by the ld. Deputy Commissioner arising out of SCN is required to be set aside so far as the penalty is imposed under Section 78 of the Act.
- The impugned order passed by the ld. Deputy Commissioner arising out of SCN is required to be set aside so far as requirement of payment of interest is concerned since the tax is not required to be paid.

5. Personal Hearing in the case was held on 21.03.2024. Shri Rohan Thakkar, Chartered Accountant, appeared for PH. He stated that the client is doing export of service. He stated that additional submission has been sent through email and he will also submit in hard copy.

6. In an additional submission dated 22.03.2024, the appellant have submitted (1) sample copies of export invoices, (2) copy of Income tax return for the A.Y. 2015-16 (F.Y. 2014-15), (3) copy of agreement between Saathiva Web and Saathiva Creations, LLC and (4) FIRC Certificate.

7. I have gone through the facts of the case, submission made in the Appeal Memorandum, the submission made at the time of personal hearing and the material available on record. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming demand of service tax amount of Rs. 7,63,527/- along with interest and penalties, considering the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period F.Y. 2015-16.

8. The adjudicating authority confirmed the demand of



Service Tax in the impugned order ex-parte as the appellant had not appeared for submission reply against the SCN before the adjudicating authority. I find that the appellant having PAN No. AGDPJ8500B, are proprietorship firm and are not registered with the service tax department. They are engaged in the business software development service. On the basis of invoices issued for the F.Y. 2015-16 and FIRC copies submitted by the appellant, it is found that the appellant are having consideration of income amounting to Rs. 52,40,709.93/- from the only recipient Saathiva Creations, LLC, Miami, USA.

9. I also find that the amount of 52,40,709.93/- in F.Y. 2015-16 was collected against the service in respect of Website development to the Saathiva Creations, LLC. The details of income received from service provided to Saathiva Creation, LLC, are given as under:

Date	Customer Name	Amount in foreign currency USD	INR Amount
01.08.2015	Saathiva Creations LLC	12,574	11,84,021.21
04.08.2015	Saathiva Creations LLC	6,050	
13.09.2015	Saathiva Creations LLC	12,672	8,37,596.00
03.11.2015	Saathiva Creations LLC	10,000	6,51,820.20
10.11.2015	Saathiva Creations LLC	11,783.77	7,78,299.47
01.01.2016	Saathiva Creations LLC	11,548.98	7,64,609.93
01.03.2016	Saathiva Creations LLC	15,281	10,24,363.12
	Total	79,909.75	52,40,709.93

8. The appellant asserted that income Rs. 52,40,709.93 is pertaining to export of Service and is exempted under Rule 6A of the Service Tax Rule, 1994. For clarification extract of Rule 6A is reproduced as under:

RULE 6A. (1) The provision of any service provided





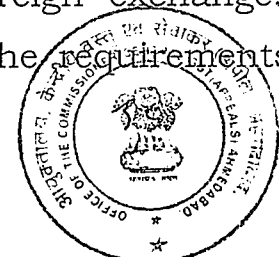
*agreed to be provided shall be treated as export of service when, -*

- (a) the provider of service is located in the taxable territory ,*
- (b) the recipient of service is located outside India,*
- (c) the service is not a service specified in the section 66D of the Act,*
- (d) the place of provision of the service is outside India,*
- (e) the payment for such service has been received by the provider of Service in convertible foreign exchange, and*
- (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of 2 [Explanation 3] of clause (44) of section 65B of the Act*

*(2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.]*

8.2 In support of the submission that they are providing export of service to Saathiva Creations, LLC and such service is exempted under Rule 6A of the Service Tax Rules, 1994, they have provided documents viz. sample invoice copies, FIRC certificate, copy of agreement between Saathiva Web and Saathiva Creations, LLC.

8.3 I have carefully examined the documents provided by the appellant based upon which the appellant claimed that the service they provided to Saathiva Creations, LLC meet all the criteria of export of service as mentioned in aforesaid Rule 6A of the Service Tax Rules, 1994. I find that the appellant are located in taxable territory and are providing service to the recipient of service located outside India, which are not specified in 66D of the Act. It is also clarified that the place of provision of service is outside India and for the service rendered by the appellant they were collecting payment in convertible foreign exchange. As such, I find that the appellant fulfill all the requirements as



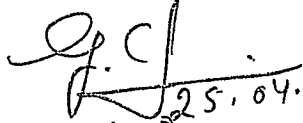
mentioned in aforesaid Rule 6A (1) of Service Tax Rules, 1994 except the condition mentioned in entry no. (f) of the Rule 6A (1) of Service Tax Rules, 1994.

8.3 Apart from providing services from India to abroad, it is not clear as to whether the service recipient Saathiva Creations, LLC, USA is the branch/sister concern of the appellant. As per the Rule 6A(1)(f), I am of the opinion that any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of service. It is not clear from the submission of the appellant whether the recipient is incorporated under the laws of abroad country. This aspect need to be verified at the end of adjudicating authority. Hence the matter is remanded back to adjudicating authority for further examination.

8.4 Accordingly, the impugned order passed ex-parte is set aside and the appeal is allowed by way of remand.

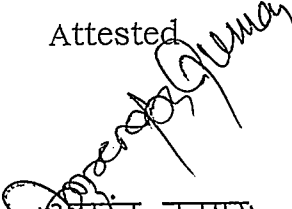
9. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

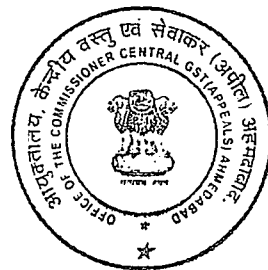
The appeal filed by the appellant stands disposed of in above terms.

  
25.04.24  
ज्ञानचंद जैन  
आयुक्त (अपील्स)

Date : 25 .04.2024

Attested

  
(अनंद कुमार)  
अधीक्षक (अपील्स)  
सी.जी.एस.टी, अहमदाबाद



**BY RPAD/ SPEED POST**

To  
M/s. Shri Anish Shoketbhai Jesani,  
25/Shreebaug Society,  
Nr. B.R. Somani School,  
Danilimda, Ahmedabad, Gujarat-380028

**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 - IV, Ahmedabad  
South Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for  
publication of OIA on website.
5. Guard file.
6. PA File.

