

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद— 380015.

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क फाइल संख्या : File No : V2(ST)171/A-II/2015-16 / 4545-50

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-183-16-17

दिनांक Date : 22.12.2016 जारी करने की तारीख Date of Issue 23/01/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

Cr. file

ग _____ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं
_____ दिनांक : _____ से सृजित

Arising out of Order-in-Original No SD-01/OIO: 11/AC/Harshal/2015-16 Dated 31.12.2015

Issued by Asstt. Commr., Division-I, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants

M/s. Harshal V Patel Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

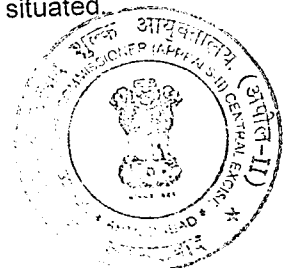
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल
हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at
O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या उससे कम है वहाँ रूप 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहाँ रूप 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.



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(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219K केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014) की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) रोनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) 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.

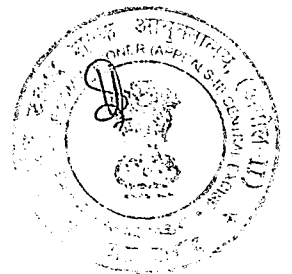


ORDER IN APPEAL

This order arises out of the appeal filed by Shri Harshal Patel, C/3-Premkunj Society, Mirambika School Road, Nraranpura, Ahmedabad (hereinafter referred to as "the appellant") against the Order In Original No. SD-01/OIO:11/AC/HARSHAD/2015-16 dated 31.12.2015 (hereinafter referred to as "the impugned order"), passed by the Additional Commissioner of Service Tax Division -I, Ahmedabad (hereinafter referred to as "the adjudicating authority").

2. The relevant facts of the case are that during the course of enquires by the Headquarters' Preventive Wing of the Service Tax Commissionerate, Ahmedabad, in connection with Indian Premier League (hereinafter referred to as "the IPL") it was found that M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL (two franchisees of BCCI-IPL) entered into franchisee agreement with Board of Cricket Control of India in India (BCCI), having its head office at Wankhede Stadium, Mumbai, on behalf of its Sub-committee unit known as India Premier League (hereinafter referred to as BCCI- IPL). Unlike normal franchisor-franchisee agreement where services flow from franchisor to franchisee, in the instant case the franchisee is also rendering some services to franchisor. During the course of enquiries, it was found that the Franchisee paid an amount to the franchisor (i.e. BCCI-IPL) in terms of the Agreement and the franchisee has been granted some rights as provided in the Agreement. In the Agreement apart from normal Franchisee obligations regarding non claiming of Franchisee Trademark, maintenance of standards of Trade Marks etc., there are clauses from which it is evident that services had also been provided by franchisee to franchisor. Basically, the services which had been provided by the franchisee to the BCCI-IPL (franchisor) can broadly be categorized as under.

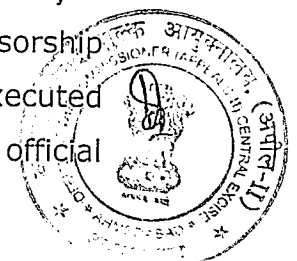
- (a) Raising a team of 16 players (by bidding/ hiring of players)
- (b) Bearing all expenses in connection with maintenance of team, travel, accommodation expenses of team, insurance charges of team and all other incidental expenses thereto.
- (c) To stage all home league on behalf of BCCI-IPL.
- (d) To allow BCCI-IPL to use trademark/logo/IPR rights of Franchisee for merchandise/ services branding.



3. The BCCI-IPL is a body consisting of eight franchisee teams. The franchisee (M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL (franchisee in this case) was under obligation to raise the team of 16 players and in furtherance to that obligation, M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL (franchisee) entered into agreement with the players including the appellant. Since M/s BCCI-IPL is a business entity, organization of BCCI-IPL Twenty-20 cricket tournament is not a sports event but a business & commercial activity. The franchisee provided services to BCCI-IPL in organizing the tournament for furtherance of their commercial & business interest and in the process, the players including the Appellant rendered taxable services to the franchisee. The franchisee had received consideration from the BCCI-IPL in the form of share of the said Central Rights income and players (including the appellant) had received consideration from the franchisee.

4. The appellant during the course of investigations furnish the copies of the documents that went into the making him a part of the team and the payments received by him therein under his contract with M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL (two franchisees of BCCI-IPL). Appellant also submitted Bank statements, form No. 26AS , copies of GAR-7 challans of Rs. 3,19,642/- ,copies of ST-2 registration (taken on 26.06.2012) and ST-3 return . The said documents were also pursued by the department with M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL (two franchisees of BCCI-IPL). and M/s Royal Challengers Bangalore IPL furnished the copy of "Indian Premier League Playing Contracts" (IPL Playing contract dated 30.12.2011 for Edition V and letter dated 29.10.2012 of M/s Rooyal Challengers Bangalore for extension of contract up to 31.12.2013 for playing IPL, edition VI), details of payment received pursuant to the IPL Playing Contract for the financial years 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13, Form No. 16A (Certificate of deduction of Tax at Source U/s 203 of the IT Act, 1961) for the financial years 2008-09, 2009-10, 2010-11 & 2011-12 and other essential information.

5. M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL (Franchisee) provided the Sponsorship Services to various sponsors for which they might have executed Sponsorship Agreements with various sponsors granting them official

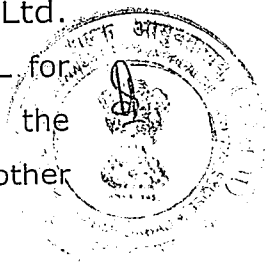


sponsorship rights. The considerations received by M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL for providing the Sponsorship services to these sponsors was the consideration for granting such "Official Sponsorship" rights that included being referred to as "official sponsor" in advertising and promotions such as uniform branding, Boundary Boards, use of players and teams intellectual property for sponsors advertisement or other forms of promotional activities organized by M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL (two franchisees of BCCI-IPL). This way M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL was serving the business or commercial interest of the sponsors through the players who were made to mandatorily take part in such promotional activities.

6. In terms of franchisee agreement with BCCI-IPL, M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL was under obligation to provide team for BCCI-IPL Twenty-20 Tournament. For the purpose of team, the players were engaged by M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL on payment who were also required to participate in the promotion activities of the Franchisee/Sponsors by wearing Franchisee's official cricket clothing, displaying Franchisee's/sponsors marks/logo etc., as per terms and conditions prescribed in the aforementioned agreement. The promotional activities described in clause 4 and 5 of the agreement were nothing but akin to promotion or marketing of the logo/ brands /marks / activities of the Franchisee/sponsors.

7. Further examination of the IPL Playing Contract revealed that there is a clause in the contract which stipulates that if the player fail to take part in promotional or endorsement activities or otherwise fail to comply with the agreement, then the Franchisee shall be entitled to reduce the player fee by 5% on each occasion as a result of such provision.

8. In view of the definition of '*Support Services of Business or commerce*' and terms and conditions prescribed in the agreement, it appeared that services provided by the appellant to M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL for promoting or marketing of the logo/brands marks of the Franchisee/Sponsors and taking part in team endorsement events/other



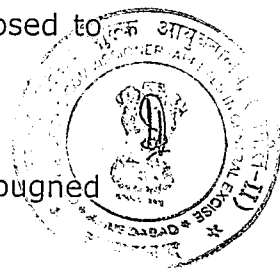
such activities for M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL (two franchisees of BCCI-IPL), appropriately fell under '*Support Services of Business or commerce*' (as per Section 65 (105)(zzzq) of the Finance Act, 1994) and the players were required to pay service tax on such taxable services.

9. Further, the consideration paid to the player was not only for playing cricket as the promotional activities performed by the player were duly reflected in the IPL Playing Contract executed by the Franchisee with individual players wherein the individual players were bound to undertake such promotional activities for the franchisee to promote/support their business. The appellant did not provide separate figures for the amount received by him for promotional activities.

10. During the course of investigations and as could be comprehended from the Schedule I of the IPL playing Contract between IPL Franchisee (M/s India wins sports Ltd. (Mumbai Indians) and the appellant), it was noticed that the appellant had been paid the sum of INR 8,00,000/- for the financial years 2010-11 for the IPL edition III and M/s Royal Challengers Bangalore IPL has paid amount of Rs. 25,24,200/- (including Rs. 3 lakhs for IPL- V award money) for the financial years 2012-13. Appellant has received total of Rs. 33,24,200/- from M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL for financial year 2010-11 and 2012-13 and thus the Service Tax had to be computed on the same.

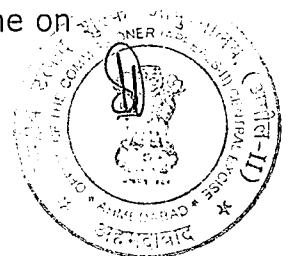
11. Based on the above findings, a Show cause notice was issued to the appellant from F. No. SD-01/4-290/SCN/HARSHAL/14-15 dated 19.02.2015, wherein the demand of Service Tax under the head of "*Support Services of Business or commerce*", as defined under Section 65 of the Finance Act, 1994, as amended amounting to Rs. 3,94,391/- under Section 73(1) after invoking extended period alongwith Interest under Section 75 of the Finance Act, 1994 were proposed to be demanded. Service tax paid Rs. 3,19,642/- on 16/17.04.2013 was proposed to be appropriated against demand. Interest was proposed to be demanded under section 75. Also the penalties under Section 76, 77 & 78 of the Finance Act, 1994 were also proposed to be invoked.

12. The above Showcause notice was adjudicated vide the impugned



order, wherein the adjudicating authority held that since the BCCI-IPL and its franchisees are Business entities and were engaged in business and commercial activities, the appellant had rendered his service [as per the agreement discussed in the show cause notice] in the capacity of professional cricketer to M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL (two franchisees of BCCI-IPL), a franchisee of BCCI-IPL for supporting their business and accordingly the activities of the appellant clearly fell under the category of "Support Service for Business or Commerce" as defined under section 65(104c) of the Finance Act, 1994 and accordingly the same is liable to service tax as provided in section 65(105)(zzzq) of the Finance Act, 1994; that the appellant in a way supported the promotion or marketing of Mark, Brand, Logo of Trading name of the sponsoring firms who has promoted the team of M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL and accordingly the all the benefits of such promotion had accrued to the sponsoring firms for which the latter in turn have paid to M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL, thus services rendered by appellant fit under the category of Support service of Business or Commerce and as contested by the appellant fails to find the classification under the category of "Brand Promotion" introduced w.e.f. 1.7.2010 or Business Auxiliary Services, that the remuneration of Rs. 33,24,200/- received by the appellant as per agreement for providing taxable service is held to be taxable value under section 67 of the Finance Act, 1994; that the Service Tax on the said taxable value amounting Rs. 3,94,391/- by way of suppression of material facts with intent to evade service tax is required to be recovered under the proviso to section 73(1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act, 1994; that penalties under Section 77 (Rs 10,000/-) & 78 (Rs 3,94,391/-) were imposed. Adjudicating Authority calculated the demand and intimated to appellant vide his letter dated 25.01.2016 that appellant were require to pay remaining duty Rs. 73652/- under section 73(2) , Interest of Rs. 69,933/- under section 75 , 25% penalty of Rs. 18413/- under section 78 if paid within 30 days from communication of order and penalty of Rs. 10, 000/- under 77. Total amount of Rs. 1,71,998/- was intimated to pay. Appellant has paid Rs. 1,71,998/- on 28.01.2016.

13. Being aggrieved by the impugned order, the appellant is before me on the following grounds,



- a) That appellant has received Rs. 8 lakhs from M/s Indiawins Sports Ltd. (Mumbai Indians) during F. Y. 2010-11. Appellant are eligible for small service provider exemption Notification No. 8/2008- ST dated 01.03.2008 whereby aggregate value of services below 10 lakhs in F.Y. is exempted. Appellant being eligible for said notification has not paid the service tax.
- b) That appellant has taken service tax registration on 26.06.2012 before issuance of SCN and since paid all required taxes benefit of 25% penalty should be granted.

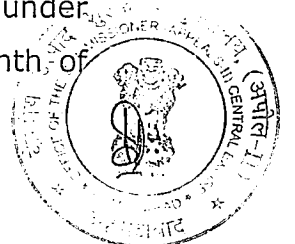
14. Personal hearings were fixed on 29.02.2016 and 17.08.2016, which were was attended by the appellant or his representative. Third opportunity of Personal hearings fixed on 29.02.2016 was attended by Shri Divyang Patel, CA, the Authorized representative. CA reiterated ground of appeal and stated that no basic exemption is allowed to Harshal J. Ptael.

15. I have carefully gone through the facts of the case, the written submissions and documents submitted under their grounds of appeal. I have also gone through the copies of the contracts signed between the appellant, M/s BCCI and M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL (two franchisees of BCCI-IPL). I proceed to decide the case on merits, hereinafter.

16. On going through the above case, I find that issue needs to be decided on the following two issues,

- a) Whether the services rendered by the appellant are exempted under notification No. 8/2008 -ST in the Finance year 2010-11.
- b) The value of the services rendered by the appellant on which the Service Tax is levied.

17. I find that if the appellant has received the total player fees of Rs. 8,00,000 for FY 2010-11 . I am of the view, benefit of Notification 8/2008-ST dated 1.3.2008 cannot be extended to the appellant as the appellant has rendered the services on behalf of Brand name owner viz., M/s India wins sports Ltd. (Mumbai Indians) and M/s Royal Challengers Bangalore IPL (franchisee of BCCI-IPL);and thus the Service Tax demanded under the impugned order is upheld. Further regarding 25% penalty benefits under section 78 I find that appellant has paid the penalty within one month, of



communication of order. I hold that appellant is entitled for said 25% penalty benefits.

28. This being the first contravention of non taking registration and not filing ST-3 registration I reduce the penalty imposed under section 77 of Finance Act- 1994 from 10,000/- to Rs. 2000/- .

29 अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

29. The appeals filed by the appellant stands disposed off in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED

R. R. Patel
(R. R. PATEL)
SUPERINTENDENT (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

To, (By R.P.A.D)

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C/3- Premkunj Society,
Mirambika School Road,
Nraranpura ,
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NEW ADDRESS

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COPY TO:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Additional Commissioner, Service Tax, Ahmedabad.
4. The Assistant Commissioner, Service Tax, Division-I, Ahmedabad.
5. The Assistant Commissioner, (Systems), Service Tax, Ahmedabad.
6. Guard file.
7. P.A. file.

