


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>		

**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/. STC/15-162/OA/2020

DIN : 20211064WT0000777D3A

आदेश की तारीख / Date of Order : 12.10.2021  
जारी करने की तारीख / Date of Issue : 13.10.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-25/2021-22**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है ।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा

**BRIEF FACTS OF THE CASE:**

M/s Zydus Hospitals and Healthcare Research private Ltd., Plot No. 232, Near Jalsa Party Plot, Before Sola Bridge, S.G. Highway, Thaltej, Ahmedabad 380055 (hereinafter referred to as "the assessee" or "the said assessee" for the sake of brevity) are engaged in providing taxable services and are having Service Tax Registration No. AAACZ3443KSD001.

2. The Third Party Data of Sales/ Gross Receipt from Services (Value from ITR) in respect of the assessee were shared by CBDT with CBIC. The data so received was found to be not tallying with Gross value of Service provided as per ST-3 Returns filed by the Assessee for FY 2015-16. The difference in value was observed to be Rs. 88,81,13,569/- in the instant case. Therefore, it appeared that the assessee had declared less taxable value in their ST-3 Returns and accordingly the assessee had short paid / not paid service tax of Rs. 12,39,21,284/- (inclusive of cess) on the differential value of Rs. 88,81,13,569/- for FY 2015-16.[@ 12.36% from 01-04-2015 to 31-05-2015 ; @ 14% from 01-06-2015 to 14-11-2015; @ 14.50% from 15-11-2015 to 31-03-2016].

3. It appeared that CBDT had not shared data for FY 2016-17 and 2017-18 (upto June 2017) till the issuance of the subject SCN, hence, the service tax liability could not be ascertained for 2016-17 and 2017-18 (upto June 17). However, if any other amount was to be disclosed by the Income tax Department or any other agencies, the tax liability arising on account of this in future was to be covered under the subject SCN and was to be recoverable from the assessee under the proviso to Section 73(1) of the Finance Act, 1944 ("the Act") read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017.

4. The assessee was requested vide letter dated 19.10.2020/email to clarify the difference in value by submitting the self certified documentary evidences such as Audited Balance Sheet, Profit and Loss Account, copy of Ledgers, Gross Trial Balance, IT Returns, Form 26AS, ST-3 Returns and Sample Invoices for FY 2015-16 to FY 2017-18 (upto June 2017), but the assessee neither produced any documentary evidences nor submitted any reply.

5. Thus, it appeared the assessee had not discharged the service tax liability on the actual value of service provided by them, thereby short paying



service tax to the extent of Rs. 12,39,21,284/-. Further, it appeared that the assessee had contravened the provisions of Section 68 of the Act read with Rule 6 of Service Tax Rules, 1994 in as much as they failed to pay service tax to the tune of Rs. 12,39,21,284/- as per their IT Returns/ Form 26AS; the assessee had also contravened the provisions of Section 70 of the Act in as much as they had failed to assesses their tax liability.

6. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/short paid Service Tax to the extent of Rs. 12,39,21,284/- which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2015-16 vis-à-vis their ITR/Form 26AS. The said short payment appeared to have been done with an intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 12,39,21,284/-(inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on value of Rs.88,81,13,569/- .

7. It also appeared that all the acts of contravention on the part of the service provider had been committed by way of suppression of the facts by not declaring / not considering the correct value of taxable service provided by them for payment of service tax to the Central Government for the period in question, with an intent to evade payment of service tax and therefore the service tax not paid at the material time was required to be demanded/recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 along with interest as per the provision of Section 75 of the said Act.

8. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appeared that the said assessee had contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appeared to have rendered the assessee liable to penalty under Section 76 & Section 77 of the Act. Further, it appeared that the said assessee had wilfully suppressed the facts, nature and value of service provided by them with an intent to evade the



payment of Service Tax rendering them liable for penalty under Section 78 of the Finance Act, 1994.

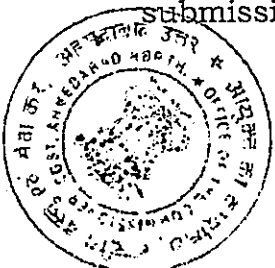
9. The provisions of repealed Central excise Act, 1944, the Central Excise tariff Act, 1985 and amendment of the Finance Act, 1944 had been saved vide Section 174(2) of the CGST Act, 2017, and therefore the provisions of the repealed /amended acts and rules were enforced for the purpose of demand of duty, interest etc. and imposition of penalty under this notice.

10. Therefore, a Show Cause Notice No.STC/15-162/OA/2020 dated 23.10.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s Zydus Hospitals and Healthcare Research Private Limited, Plot No. 232, Near Jalsa Party Plot, Before Sola Bridge, S.G. Highway, Thaltej, Ahmedabad 380055, asking them to show cause as to why;

- a) Demand of Service Tax to the extent of Rs. 12,39,21,284/- (Service Tax 121708056/- + Education Cess of Rs. 356218/- and SHEC Rs. 178109/-) not paid /short paid by them should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- b) interest at the appropriate rates should not be recovered from them as prescribed under Section 75 of the Finance Act, 1994;
- c) penalty should not be imposed upon them under the provisions of Section 76 of the Finance Act, 1994, for failure to assess service tax as required under Section 70 of the Finance Act, 1944 and make the payment of service tax within the period and in the manner prescribed under Section 68 of the Finance Act, 1944 read with rule 6 of the Service Tax Rules;
- d) penalty should not be imposed upon them under the provisions of Section 77 of the Finance Act, 1994;
- e) penalty should not be imposed upon them under Section 78 of the Finance Act, 1994.

**DEFENCE REPLY:**

11. The assessee vide their letter dated 29.10.2020 forwarded their written submission alongwith copies of previous correspondence they had had with the



department. The assessee, in their reply, stated: that they had received email communication on 20.10.2020 with letter F.No. CGST-06/TPD-FY2015-16/AR-II/2020-21 seeking various information, that they had again received letter F.No. CGST-06/04-768/O&A/Zydus/20-21 dated 22.10.2020 through mail requesting to submit explanations/ clarifications as pre-SCN consultation before the Commissioner, CGST North; that they had submitted the detailed submission and explanations clarifying the reasons for mismatch and had explained in details the nature of activities carried on by them being healthcare services by a clinical establishment, being exempt from levy of service tax by way of their email dtd. 23.10.2020; that they had submitted all the details/ documents requested vide letter dated 19.10.2020; that the demand of service tax of Rs. 12,39,21,284/- as determined by the department was arbitrary based on third party data and without appreciating the facts of the case; that proposals of demand of service tax by invoking the provisions of section 73(1), demand of interest under Section 75 and imposition of penalties under Section 77 and 78 of the Finance Act were arbitrary based on third party data received from CBDT without appreciating the facts of the case. They further stated that Zydus Hospitals is clinical establishment engaged in providing healthcare services in respect of all major medical specialities, subspecialties, investigation and diagnostics facility, rehabilitation & physical therapy care; that the service provided by them were exempt from the levy of whole of service tax vide Sr. No. 2(i) of Notification No. 25/2012-ST dated 20.06.2012; that they rendered multi speciality services in following area:

- Arthroscopy and Sportsmedicine
- Cancer Care (Oncology)
- Cardiac Sciences
- Clinical Diagnostics
- Critical & Intensive Care
- Dental Sciences
- Dermatology
- ENT Surgery
- Emergency Medicine
- Gastro Sciences
- Genetic Sciences
- Gynaecology & Obstetrics
- Health Check-up
- Joint Replacement



- Kidney Transplant
- Liver Transplant
- Nephrology
- Neuro Science
- Ophthalmology
- Orthopaedics & Trauma
- Paediatrics
- Pain Clinic
- Pulmonology
- Spine & Scoliosis

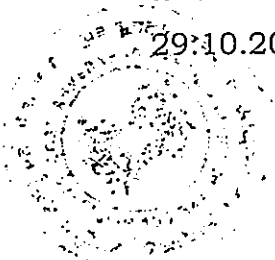
They further added that the Main Object of the Memorandum of Association of the Company provides for establishment and running of Hospitals and Clinical establishments to provide "Health Care Services" by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any organization system of medicine and includes service by way of supply of meals for the patient or transportation of the patient to and from a clinical establishment; that as per their financial statements submitted, they had earned revenue of Rs. 89.65 crore from operations –Hospital establishment which is exempt; the revenue of Rs. 1.07 crore from Interest Income which is exempt; that Income of Rs. 84.17 Lacs from Nursing School which is exempt under Section 66D(1); that they were required to pay service tax under RCM on certain services, hence they had filed ST-3 Returns. In the end, they requested to drop the proceedings.

#### **PERSONAL HEARING**

12. The assessee was granted personal hearing on 30.09.2021 to present their case. Shri Nimesh Panchal, Finance Head and Shri Chandresh Shah, Chartered Accountant appeared for hearing, wherein, they stated that they are basically a hospital and are running nursing school as well and their activities are covered by the exemption provided for healthcare service. They requested to drop the proceedings initiated against them.

#### **DISCUSSION AND FINDINGS:**

13. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 29.10.2020 and documents submitted by the assessee.



14. On going through the SCN, I find that data of Sales /Gross receipt from services as per ITR were shared by the CBDT with CBIC for FY 2015-16, which was then compared with the gross value declared in ST-3 Returns filed for FY 2015-16 by the assessee. The difference in value of service to the extent of Rs. 88,81,13,569/- was noticed and therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the differential value of Rs. 88,81,13,569/- under proviso to section 73(1) of Finance Act, 1944 or not.

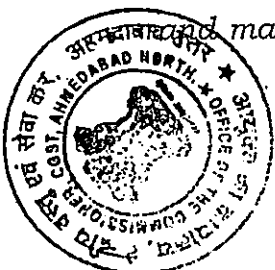
15. Thus, first and foremost I feel it necessary to understand the activities being carried out by the assessee. I find that after introduction of new system of taxation of services in negative list regime, any services for a consideration is taxable except those services specified in the negative or exempt list by virtue of mega exemption.

16. I find that the assessee in his defence reply dated 29.10.2020 has stated that they have rendered service of Health Care Service being a Hospital and have also rendered service of education being education institute. They have contended that the services provided by them are covered under Sr.No. 2(i) of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 and Sr. No. (1) of negative list of service specified under Section 66D of the Act. Hence, I find that the activities being carried out by the assessee for a consideration are squarely covered under the definition of "Service" as defined under Section 65B (44) of the Act and I also find that there is no dispute in this regard.

17. In order to comprehend the actual nature of service, I would like to take support of the following documents which have been submitted along with their aforementioned defence reply dated 29.10.2020. I would also like to discuss and reproduce the relevant excerpt of the documents.

17.1 The assessee is a registered company incorporated under the Company Act. The assessee has submitted the copy of Memorandum of Association of the Company. The main object of forming of the company as appearing in the Memorandum of Association is reproduced as under:

*"To acquire, establish, run, promote, take on lease, hire; manage, support and maintain one or more hospitals including specialty hospitals, clinics, dental*



*clinics, dispensaries, polyclinics, nursing homes, healthcare centers, diagnostics centers, laboratories, wellness centers, paramedical courses, institutions, for detecting, diagnosing, understanding, curing, treating and preventing all kind of diseases and ailment that affect or seem to affect the regular normal, healthy and smooth functioning of human and to provide medical relief to the public in all the branches of medical sciences by all available means including telemedicine.”*

17.2 The assessee has also submitted the Independent Auditors' Reports for FY 2015-16, 2016-17 and 2017-18. I find that the Independent Auditor is appointed by the Company under Section 139 of the Company Act, and auditor has to make a report, in accordance with Section 143 of Company Act, to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under section 143(11) and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

Company's Overview has been provided under the Financial Note 1 to financial statements attached to the Auditors report *ibid*. The said Note 1 is reproduced below:

*Note:1 Company Overview:*

*ZyduS Hospitals and Healthcare Research Private Limited (“the Company”) was incorporated on June 12, 2008 and operates as A Healthcare Service provider company with business primarily consisting of building and Hospitals.*

Further, the Profit and Loss Accounts for FY 2015-16, 2016-17 and 2017-18 recognises main Revenue as “Sale of Service-Hospital”.

17.3 The assessee has also submitted the copies of Income Tax Returns in Form ITR-6 for Assessment Year 2016-17, 2017-18 and 2018-19 filed with Income Tax Department as required under Section 11 of the Income Tax Act.





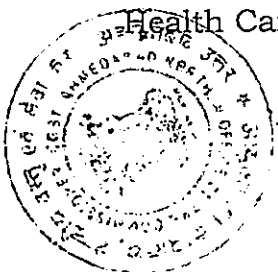
On perusing these returns, I observe that the information about "the nature of company and its business" provided in the returns is shown as "Speciality Hospitals".

17.4 Now, I consider necessary to look into the definition of "Health Care Service" provided under the Act as the assessee has claimed their service to be Health Care Service. I find that the definition of "Health Care Service" is provided under the Notification No. 25/2012-ST dated 20.06.2012 at Sr. No. (t), the same is reproduced for better comprehension:

*"health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;"*

17.5 I find that the aforementioned records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

17.6 Having considered above facts and discussion, I am of the view that the service provided by the assessee is appropriately classifiable under the Health Care Service.



18. I find that the SCN shows the difference in value to the tune of Rs. 88,81,13,569/- for FY 2015-16 when value of sales/gross receipt as per ITR are compared with gross value declared in ST-3 as mentioned in forgoing paras. Further para 4 of the SCN states that the levy of service tax for FY 2016-17 and FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017—CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. I however do not find any charges levelled for demand for FY 2016-17 and FY 2017-18 (upto June 2017) in charging part of the SCN. On going through the ST-3 returns for FY 2015-16, it is noticed that the assessee has declared service tax liability to be discharged under RCM only and no liability under forward charge has been declared. As per ITRs filed by the assessee, Revenue from operations for FY 2015-16, 2016-17 and 2017-18 booked are as under:

Revenue form operations (Rs.)			
	FY 2015-16	FY 2016-17	FY 2017-18
Sale of Services	88,81,13,569	1,49,54,05,972	2,25,94,20,,041
Nursing School Income	84,17,340	1,11,69,650	Not available separately

From the SCN, I find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain from discussing the taxability on other income other than the sale of service.

19. I find that the Notification No. 25/2012 -ST dated 20.06.2012 issued under Section 93(1) of the Act, grants exemption to the taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. I find that the assessee has contested the demand of service tax on services rendered by them being Health Care Service and has claimed the exemption from levy of service tax under Sr. No. 2(i) of Notification No. 25/2012-ST dated 20.06.2012. I therefore would like to reproduce the said Sr.No. 2(i) ibid hereinunder:



*"2(i) Health Care Service by a clinical establishment, an authorised medical practitioner or paramedics;"*

I would also like to reproduce the definition of "Clinical Establishment" as provided under Notification No. 25/2012-ST dated 20.06.2012 against Sr.No. (j):

*"clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carryout diagnostic or investigative services of diseases;*

As discussed hereinabove, the assessee is a Hospital which is clearly engaged in business of providing Health Care Service and is rightly covered under the above definition of clinical establishment.

Keeping in view the aforementioned detailed discussions, I find that the services rendered by the assessee is squarely covered under the Sr.No. 2(i) of the Notification No. 25/2012-ST dated 20.06.2012 and find that the exemption is quite clearly available to the assessee as claimed by them. Since I am fully convinced with the arguments put forth by the assessee, I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

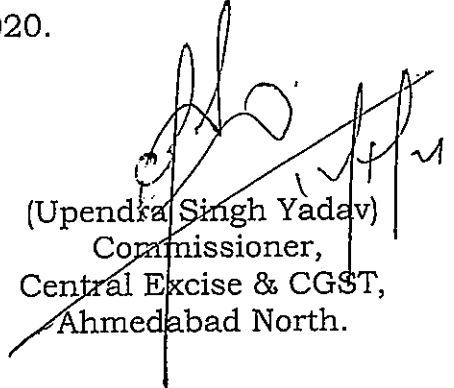
20. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the difference in value of service as discerned by the department by comparing the value of services in ITR/TDS and gross value of services provided in ST-3 Returns is basically on account of the exempt service being the Health Care Service rendered by the assessee as discussed hereinabove which was not shown in ST-3 Returns. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

21. In view of the facts and circumstances pertaining to the case, the demand is not tenable in law, accordingly I do not consider it necessary to delve in the merits of invoking extended period of limitation which has been

discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise of imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

**ORDER**

I drop the proceedings initiated against M/s Zydus Hospitals and Healthcare Research private Ltd., Plot No. 232, Near Jalsa Party Plot, Before Sola Bridge, S.G. Highway, Thaltej, Ahmedabad 380055, vide Show Cause Notice F.No. STC/15-162/OA/2020 dated 23.10.2020.

  
(Upendra Singh Yadav)  
Commissioner,  
Central Excise & CGST,  
Ahmedabad North.

By Regd. Post AD./Hand Delivery

F.No. STC/15-162/OA/2020  
To,

Date: 12.10.2021

M/s. Zydus Hospitals and Healthcare Research private Ltd.,  
Plot No. 232, Near Jalsa Party Plot,  
Before Sola Bridge, S.G. Highway,  
Thaltej, Ahmedabad 380055,.

Copy to:

1. The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2. The Assistant Commissioner, CGST & C. Ex., Division-VI, Ahmedabad North.
3. The Superintendent, Range-II, Division-VI, Ahmedabad North.
4. The Superintendent (System), CGST, Ahmedabad North for uploading on website.
5. Guard File