



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. GST/15-208/OA/2020

DIN- 20221164WT000011691F

आदेश की तारीख/Date of Order :- 22.11.2022

जारी करने की तारीख/Date of Issue :- 22.11.2022

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 67/JC/ LD /2022-23**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।  
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015 को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form GST-APL-01 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

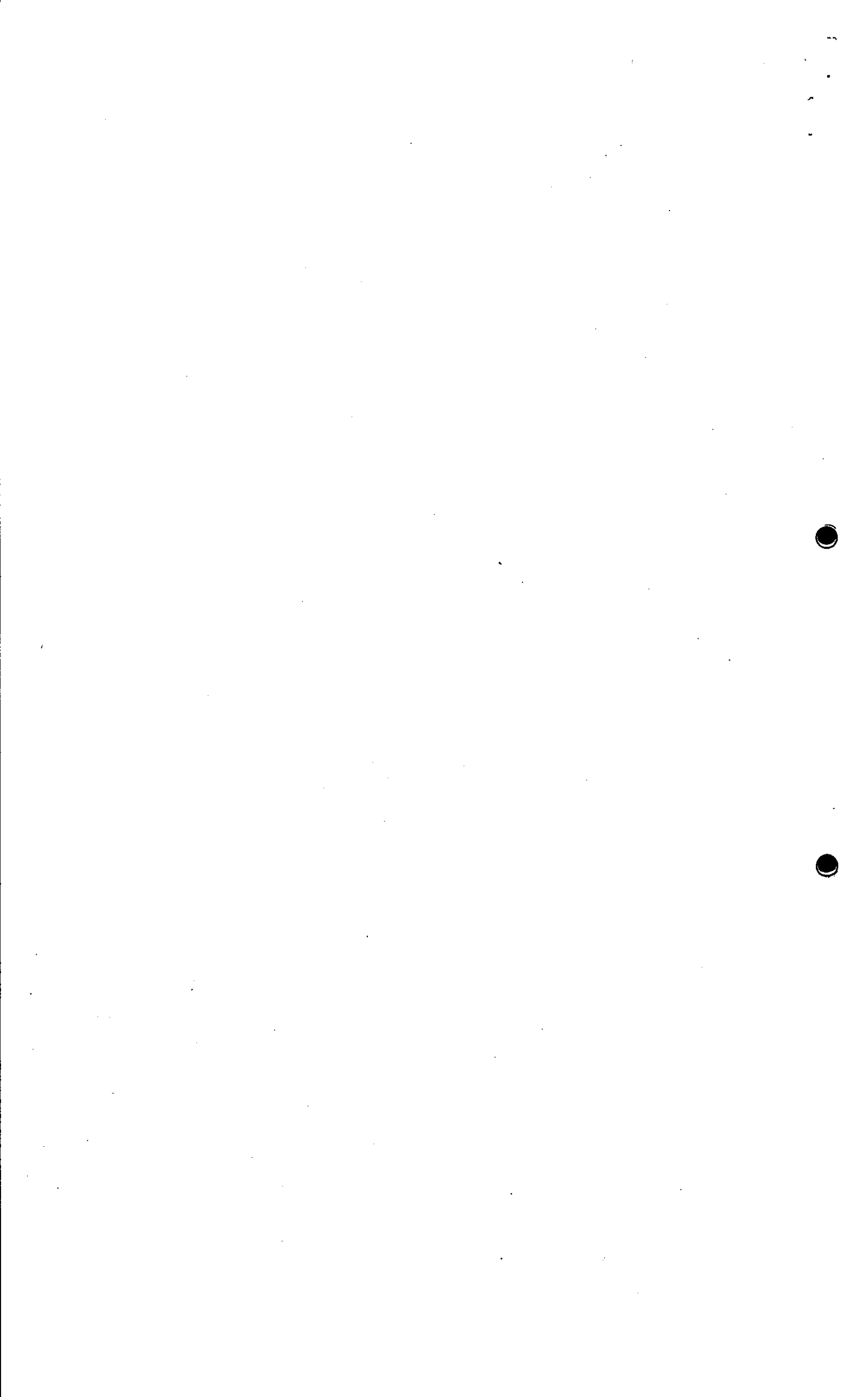
The appeal should be filed in form GST-APL-01 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 108 of CGST Rules, 2017. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. GST/15-208/OA/2020 dated 31.08.2020 issued to M/s Harikesh Agencies, 267/4/A, Harikesh House, Ashram Road, Juna Wadaj, Ahmedabad, Gujarat-380013.





## BRIEF FACTS OF THE CASE

M/s. Harikesh Agencies, Harikesh House, 267/4/A, Ashram Road, Juna Wadaj, Ahmedabad (here-in-after referred to as "the assessee" for the sake of brevity) having GST registration 24ABXPP2730L1Z5 are engaged in trading of various goods like Pan Masala, Tobacco, Cigarette and Supari. The assessee is a proprietary firm and Shri Harishbhai Keshavlal Patel is the proprietor of the said firm.

2. On receipt of intelligence that Pan Masala is being supplied by M/s. Harikesh Agencies to Vapi/Vyara/Waghai/Ahwa based retailers/wholesalers frequently without cover of GST paid invoices/bills and they are indulged in evasion of GST by way of clandestine receipt and supply of the Pan Masala, simultaneous searches were conducted at various premises including the registered premises and unregistered godowns of the assessee by the officers of Directorate General of Goods and Services Tax Intelligence (herein after referred to as "DGGI"), Regional Unit, Vapi and incriminating documents were recovered under panchanama dated 02.03.2020..

3. During the course of search at two unregistered godowns of the assessee, the officers conducted physical verification of the stock available in respect of Pan Masala, Tobacco, Cigarette & Supari and were found Pan Masala having Brand Karamchand, Dilbag, Tobacco of Brand Karamchand, Dilbag, Supari of Brand Sanjana and Water Bottle of Cello & Water Jugs of Cello etc. lacking in legitimate documents regarding purchase and storage at two unregistered godowns of M/s. Harikesh Agencies and therefore the same were seized under INS 02 (Order of Seizure) dated 02.03.2020 to the panchnama dated 02.03.2020 drawn at the drawn at godown of M/s. Harikesh Agencies situated at 94B, Sagar Estate, SarkhejBavala Road, Sarkhej, Ahmedabad and Panchnama dated 02.03.2020 drawn at godown of M/s. Harikesh Agencies situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road, in Lane opposite GanpatbhaiGotawala, KadodaraSurat Road, Saroli, Surat, under reasonable belief that the same were liable for confiscation as per provisions of the CGST Act, 2017 and the Gujarat GST Act, 2017 and rules made thereunder and handed over to Shri Rajesh Kumar Bharvad, Caretaker of godown of M/s. Harikesh Agencies situated at 94B, Sagar Estate, SarkhejBavala Road, Sarkhej, Ahmedabad and Shri Suresh DhanjibhaiTejani, Caretaker of godown of M/S.Harikesh Agencies situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road In Lane opposite GanpatbhaiGotawala, KadodaraSurat Road, Saroli, Surat for Safe Custody of the seized goods.

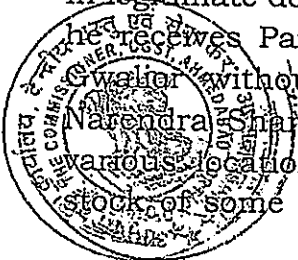
4. During the course of search while drawing panchnama dated 02.03.2020 at godown of M/s. Harikesh Agencies situated at 94B, Sagar Estate, Sarkhej Bavala Road, Sarkhej, Ahmedabad, it has been informed by Shri Rajesh Kumar Bharvad, Caretaker of said godown that the said godown is of the assessee and not shown as additional place of business in GST records. Further the aforesaid unregistered premise (godown) was searched by the officers of the DGGI, Regional Unit, Vapi, along with two independent panchas and Shri Rajesh Kumar Bharvad, Caretaker of said godown and found stock of various types of taxable goods as mentioned under INS 02 (Order of Seizure) dated 02.03.2020 to the panchnama dated 02.03.2020 drawn at godown of M/s. Harikesh Agencies situated at 94B, Sagar Estate, SarkhejBavala Road, Sarkhej, Ahmedabad. On being asked regarding documents/invoices/ stock



register related to the goods mentioned in the said INS 02 (Order of Seizure) dated 02.03.2020, in reply, Shri Rajesh Kumar Bharvad did not produce any records related to these goods, any valid documents or any valid explanation, then the officers under reasonable belief that the goods stored in above mentioned godown were intended to clear without payment of applicable GST, hence seized the goods under INS 02 (Order of Seizure) dated 02.03.2020 to the panchnama dated 02.03.2020 drawn at godown of M/s. Harikesh Agencies situated at 94B, Sagar Estate, SarkhejBavala Road, Sarkhej, Ahmedabad.

5. Further, during the course of search while drawing panchnama dated 02.03.2020 at godown of M/s. Harikesh Agencies situated at godown of M/s. Harikesh Agencies situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road, In Lane opposite Ganpatbhai Gotawala, KadodaraSurat Road, Saroli, Surat, it has been informed by Shri Suresh Dhanjibhai Tejani, Caretaker of said godown that the said godown is of the assessee and not shown as additional place of business in GST records. Further the aforesaid unregistered premise (godown) of the noticee was searched by the officers of the DGGI, Regional Unit, Vapi, alongwith two independent panchas and Shri Suresh Dhanjibhai Tejani, Caretaker of said godown and found stock of various types of taxable goods as mentioned under INS 02 (Order of Seizure) dated 02.03.2020 to the panchnama dated 02.03.2020 drawn at godown of M/s. Harikesh Agencies situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road, In Lane opposite Ganpatbhai Gotawala, KadodaraSurat Road, Saroli, Surat. On being asked regarding documents/invoices/ stock register related to the goods mentioned in the said INS 02 (Order of Seizure) dated 02.03.2020, in reply, Shri Suresh Dhanjibhai Tejani did not produce any records related to these goods, any valid documents or any valid explanation, then the officers under reasonable belief that the goods stored in above mentioned godown were intended to clear without payment of applicable GST, hence seized the goods under INS 02 (Order of Seizure)dated 02.03.2020 to the panchnama dated 02.03.2020 drawn at godown of M/s. Harikesh Agencies situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road, In Lane opposite GanpatbhaiGotawala, Kadodara, Surat Road, Saroli, Surat.

6. During the course of investigation, a statement of Shri Suresh Dhanjibhai Tejani, Caretaker of godown of M/s. Harikesh Agencies situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road, In Lane opposite GanpatbhaiGotawala, KadodaraSurat Road, Saroli, Surat, was recorded on 03.03.2020 under Section 70 of the CGST Act, 2017 wherein he has stated that he is aware of the facts that the premises of M/s. Harikesh Agencies, Harikesh House, 267/4/A, Ashram Road, JunaWadaj, Ahmedabad and two unregistered godowns were searched by the officers of DGGI, Vapi on 02.03.2020. During the course of search, the officers of the DGGI, Regional Unit, Vapi was conducted physical verification of the Pan Masala, Tobacco, and Water Bottles & Jugs of Cello Brand available in unregistered godown mentioned above; that after verification of the stock some quantity of Pan Masala, Tobacco and Water Bottles & Jugs of Cello Brand were found lacking in legitimate documents regarding purchase and storage. He further stated that he receives Pan Masala and Tobacco having brand name Karamchand from various locations without any Bill/Invoices and as per instructions given by Shri Narendra Sharma, a resident of Ahmedabad, he supplies the said goods to various locations without issuing any Bills/Invoices. He further stated that stock of some quantity of Pan Masala, Tobacco and Water Bottles & Jugs of



Cello Brand found at the godown of M/s. Harikesh Agencies situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road, In Lane opposite Ganpatbhai Gotawala, Kadodara Surat Road, Saroli, Surat were also received without covering of any bill/invoice, therefore the same were seized under INS 02 (Order of Seizure) dated 02.03.2020 to the panchnama dated 02.03.2020 drawn at the said godown.

7. During the course of investigation, a statement of Shri Harishbhai Keshavlal Patel, Proprietor of M/s. Harikesh Agencies, Harikesh House, 267/4/A, Ashram Road, JunaWadaj, Ahmedabad, was recorded on 14.08.2020 under Section 70 of the CGST Act, 2017 wherein he has stated that he is aware of the facts that the premises of M/s. Harikesh Agencies, Harikesh House, 267/4/A, Ashram Road, JunaWadaj, Ahmedabad and two unregistered godowns mentioned in Para 4.1 & 4.2 above, were searched by the officers of DGGI, Vapi on 02.03.2020. During the course of search, the officers of the DGGI, Regional Unit, Vapi was conducted physical verification of the Pan Masala, Tobacco, Supari and Water Bottles & Jugs of Cello Brand available in unregistered godown mentioned above; that after verification of the stock some quantity of Pan Masala, Tobacco, Supari and Water Bottles & Jugs of Cello Brand were found lacking in legitimate documents regarding purchase and storage. He further stated that stock of some quantity of Pan Masala, Tobacco, Supari and Water Bottles & Jugs of Cello Brand found at two godowns of M/s. Harikesh Agencies situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road, In Lane opposite GanpatbhaiGotawala, KadodaraSurat Road, Saroli, Surat and 94B, Sagar Estate, SarkhejBavala Road, Sarkhej, Ahmedabad were received without covering of any bill/invoice, therefore the same were seized under INS 02 (Order of Seizure) dated 02.03.2020 to the panchnamadated 02.03.2020 drawn at the said godowns. ShriHarishbhaiKeshavlal Patel, Proprietor of the firm accepted that he was completely agreed with the facts, including the contravention of provisions of the CGST Act 2017 & Gujarat GST Act, 2017 committed by his firm.

8. On being asked about the availability of the purchase bills of goods seized under panchnama dated 02.03.2020 drawn at two unregistered godowns of M/S. Harikesh Agencies, Ahmedabad, Shri Harishbhai Keshavlal Patel stated that he did not have the purchase bills of the goods seized under the aforesaid panchnamas. He further stated that they sale these goods without cover of the GST bill to various customers located at different places of all over Gujarat and payment for all such goods are collected in cash only. It appears that these seized goods were kept unaccounted with the intent to supply them clandestinely which were purchased without cover of taxable invoices. The value of total goods seized under the panchnamas dated 02.03.2020 drawn at two godowns of M/s. HarikeshAgencies situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road, In Lane opposite GanpatbhaiGotawala, KadodaraSurat Road, Saroli, Surat and 94B, Sagar Estate, SarkhejBavala Road, Sarkhej, Ahmedabad, was of Rs. 1,37,78,960/-.

9. Further, the value shown in respect of all goods seized under the panchnama dated 02.03.2020 drawn at two godowns of Ms.Hariksches Agencies situated at Shivam Estate, Beside godown of Om Logistics, SaniyaAnmed Road, In Lane opposite Ganpatbhai Gotawala, KadodaraSurat Road, Saroli, Surat and 94B, Sagar Estate, Sarkhej Bavala Road, Sarkhej, Ahmedabad. was as per MRP inclusive of all taxes. The details of value and duty involved in the goods seized



under the said Panchnamas dated 02.03.2020 are as under **Annexure-A** attached to the SCN.

10. Further, the assessee vide their letter Reference No. NIL dated 12.03.2020, had applied for releasing of their goods seized during the course of search operation carried out at their respective premises on 02.03.2020. They have paid tax of Rs. 51,62,838/- alongwith equal penalty of Rs.51,62,838/- vide DR 03 Debit Entry Nos. DI2403200004282 dated 02.03.2020, DC2404200019947 dated 27.04.2020 and DC2405200000671 dated 01.05.2020 . The aforesaid seized goods have been released provisionally under FORM GST INS-05 dated 05.05.2020 issued by the Additional Director, DGGI, Surat Zonal Unit, Surat, on payment of complete tax involved in the seized goods and 100% penalty.

11. As per provisions of Section 35 of the CGST Act, 2017 as well as the Gujarat GST Act, 2017 read with rule 56 of the CGST Rules, 2017 as well as the Gujarat GST Rules, 2017, every registered person is required to keep and maintain at his place of business a true and correct account of the inward and outward supply of goods or services, stock of goods etc. The said Section 35 of both the above Acts and Rule 56 of both the above Rules are reproduced below: -

**Section 35. Accounts and other records-**

*(1) Every registered person shall keep and maintain at his principal place of business, as mentioned in the certificate of registration, a true and correct account of -*

- (a) production or manufacture of goods;*
- (b) inward and outward supply of goods or services or both;*
- (c) stock of goods;*
- (d) input tax credit availed;*
- (e) output tax payable and paid; and*
- (f) such other particulars as may be prescribed;*

*(6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.*

**Rule 56. Maintenance of accounts by registered persons. -**

- 1. Every registered person shall keep and maintain, in addition to the particulars mentioned in sub-section (1) of section 35, a true and correct account of the goods or services imported or exported or of supplies attracting payment of tax on reverse charge along with the relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers.*
- 2. ....*
- 3. Every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto.*
- 5. Every registered person shall keep the particulars of-*



- (a) names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the Act;
- (b) names and complete addresses of the persons to whom he has supplied goods or services, where required under the provisions of this Chapter;
- (c) the complete addresses of the premises where goods are stored by him including goods stored during transit alongwith the particulars of the stock stored therein.

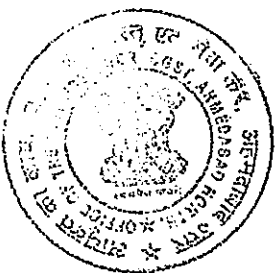
12. In view of the above, it was noticed that the assessee have failed to account for the goods seized under the Panchnamas dated 02.03.2020, violating provisions of Section 35 of the CGST Act, 2017 and the Gujarat GST Act, 2017 read with Rule 56 of the CGST Rules, 2017 and Gujarat GST Rules, 2017. It was further noticed that the assessee have received the aforesaid seized goods from the suppliers thereof without cover of tax invoices with sole intention to supply without payment of the applicable Tax, therefore, they appear to have contravened the provisions of Section 35 of CGST Act, 2017 read with Rule 56 of CGST Rules, 2017 and Section 35 of Gujarat GST Act, 2017, hence, the said goods are liable for confiscation under section 130 of CGST Act, 2017 and attract penal action under Section 122 of CGST Act, 2017 and thereby, they are liable to pay the tax involved in the said seized goods along with applicable interest and penalty equal to 100% tax. Since, the noticee has paid the amount of and 100% penalty for provisional release of the said seized goods, the same may be appropriated.

13. Therefore, the goods seized the Panchnamas dated 02.03.2020 valued Rs. 1,37,78,960/- (including taxes) found stored unaccounted and without cover of taxable invoices in the premises of the noticee, are liable for confiscation as per provisions of Section 130 of the CGST Act, 2017 and Gujarat GST Act, 2017.

14. From the facts and figures as mentioned in foregoing paras and the material evidence available on record, it was found that the assessee has contravened the provisions of Section 35 of the CGST Act, 2017 and Gujarat GST Act, 2017 read with Rule 56 of the CGST Rules, 2017 and Gujarat GST Rules, 2017, thereby, for the above acts of omission and commission, they have rendered themselves liable for penal action under Section 130 of CGST Act, 2017 read with Section 122 of CGST Act, 2017 and under Section-130 of Gujarat GST Act, 2017 read with Section 122 of Gujarat GST Act, 2017.

15. Therefore, Show Cause Notice No.DGGI/SZU/36-49/2020-21 dated 31.08.2020 was issued to M/s. Harikesh Agencies, Harikesh House, 267/4/A, Ashram Road, JunaWadaj, Ahmedabad called upon to show cause and explain in writing within thirty days of the receipt of this notice, as to why:

- i. GST amounting to Rs. 51,62,828/- (involving CGST, SGST & CESS) leviable on the seized goods mentioned in the **Annexure-A** attached to the SCN, liable for confiscation, should not be demanded & recovered from them under Section 130 of the CGST Act, 2017 read with Section 74 of the CGST Act, 2017 and Section 74 of the Gujarat GST Act, 2017. Since, the noticee has paid the amount of tax for provisional release of the said seized goods, the same may be appropriated against tax liability;



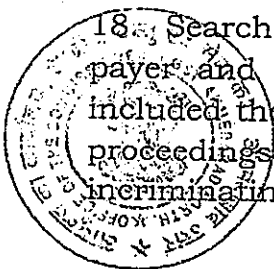
- ii. Interest on the amount mentioned at Sr. No. (i) above, at the applicable rates, should not be recovered from them under Section 50 of the CGST Act, 2017;
- iii. The seized goods as mentioned in the **Annexure-A** attached to the SCN, valued at RS. 1,37,78,960/- should not be confiscated under Section 130 of the CGST Act, 2017 and Section 130 of the Gujarat SGST Act, 2017 and
- iv. penalty should not be imposed upon them under Section 130 of the CGST Act, 2017 read with Section 122 of the CGST Act, 2017. Since, the noticee has paid penalty equal to tax at the time of provisional release of the said seized goods, the same may be appropriated against penalty.

#### DEFENCE REPLY

16. The Assessee vide their reply dated 08.08.2022 & 19.10.2022 denied all the allegations and insinuations levelled in the notice, whether or not stated. Tax payer is engaged into the business of trading of products. They have been acting as a distributor of Karamchand and other brands in the state of Gujarat. The tax payer has vast experience in marketing of pan masala and related products in the state of Gujarat and thus also acted as a marketing and strategic facilitator to various manufacturers. All the products deal with the tax payer being received at tax payer at the Godown. They are having registration under CGST Act vide 24ABXPP2730L1Z5 and discharging the obligations from time to time. All the transactions of purchase and sale involving their products being recorded in the books of accounts and covered by the tax invoices as part of the provisions of the Act. They have not received and /or supplied any products without cover of invoices.

17. During the course of search, the officers of the DGGI, Regional Unit, Vapi was conducted physical verification of the Pan Masala, Tobacco, and Water Bottles & Jugs of Cello Brand available in unregistered godown. On verification of the stock some quantity of Pan Masala, Tobacco and Water Bottles & Jugs of Cello Brand were found lacking in legitimate documents regarding purchase and storage. He further stated that he receives Pan Masala and Tobacco having brand name Karamchand from Gwalior without any Bill/Invoices and as per instructions given by Shri Narendra Sharma, a resident of Ahmedabad, he supplies the said goods to the various locations without issuing any Bills/Invoices. He further stated that stock of some quantity of Pan Masala, Tobacco and Water Bottles & Jugs of Cello Brand found at the godown of M/s. Harikesh Agencies situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road, In Lane opposite Ganpatbhai Gotawala, Kadodara Surat Road, Saroli, Surat were also received without covering of any bill/invoice, therefore the same were seized under INS 02 (Order of Seizure) dated 02.03.2020 to the panchnama dated 02.03.2020 drawn at the said godown.

18. Search was conducted by the revenue at the registered office of the tax payer and other places on 02.03.2020. Places searched by the revenue included the Godown as well as Surat premises. During the course of search proceedings the revenue had found certain discrepancies in stock and some incriminating records. As alleged by the revenue, the tax payer had possessed





unrecorded stock of products at the time of search proceedings in the Godown as well as Surat premises. Moreover, the revenue had found some records written by the other persons for and on behalf of the manufacturer purportedly showing clandestine supplies. Panchnama was records and statement of proprietor o and got him to admit the liabilities and findings determined by the revenue. Due to tremendous stress, the proprietor had signed the statement prepared by the revenue and offered to admit and discharge the obligations worked out by the revenue.

19. They further contended that, in fact the stock of the products found at the godown were duly supported by the tax invoices, copies are enclosed with the reply. Merely because the tax invoices were forwarded to the registered office of the tax payer and not available at the godown at the time of search and same not entered into accounting software by the accountant, the products covered thereby were treated as unrecorded stock by the revenue. Stock of products found at the Surat premises was not belonging to the tax payer as the said premises were not the premises of the tax payer. Hence the tax payer was not able to explain anything about the stock of the products lying at the Surat premises. Regarding the findings as to clandestine supplies on the strength of diaries prepared by other persons, it was orally explained and pressed vehemently that the taxpayer had nothing to do with the same as the said records were neither prepared by the tax payer nor the products covered by the said notes were either received or delivered to /by the tax payer. As per the past practice of the proprietor of the tax payer acting as strategic consultant to the manufacturer, the persons who found to have written the notes, were merely acting as facilitator to the manufacturer nor the tax payer has done anything with respect to the purported transactions. It was vehemently submitted that in none of these cases, the tax payer had either received the products or taken delivery of the products from the manufacturer. It is also submitted that the taxpayer had neither supplied nor given delivery of the said products.

20. It was also submitted that the tax payer had not acted as agent of the manufacturer with respect to the said transactions. They have neither received nor forwarded any cash relating to the said transactions from the dealers or on behalf of the manufacturer. Despite of the same, the tax payer was made to accept the same and pay the tax alongwith interest and penalties As they are having outstanding repute in the society and always been law abiding citizen, accepting the liabilities worked out by the revenue in order to buy peace of mind and to avoid threat of getting arrested. Accordingly all the payments were made by the taxpayer despite of tremendous financial difficulties. Thereafter the revenue had issued From DRC-04 and notice to the tax payer. The assessee further submitted that:

- a. Stock or products found at Godown, particulars of which are given in Sl.No. 1 to 4 of the Annexure -A to the notice were received and stored by the tax payer under cover of tax invoices.
- b. GST amount of Rs.44,69,190/- pertaining to the stock of products found at the Godown was not demandable and recoverable from the tax payer as the sale have already been subjected to the taxation as per the tax invoices.



- c. Stock of products found at the surat premises were not belonging to the tax payer for the reasons that the said surat premises not belonging to or under the control of the assessee.
- d. GST amount of Rs.6,93,638/- pertaining to the stock of products found that the surat premises was not recoverable from the tax payer.
- e. Interest and penalty are not payable by them.
- f. Goods were not liable to confiscation under section 130 of the CGST
- g. Amount paid by the tax payer after provisional release not be appropriated but to be refunded to the tax payer.

21. The assessee vide letter dated 17.10.2022 (received on 19.10.2022) submitted copy of affidavit of Shri Harishbhai Patel, proprietor of the assessee company. In the said affidavit he stated that he has studied upto second year B com and due to limited education, he did not very well understand complicated laws of taxation but have been taking help and assistance of other professional and accountant as and when needed. The search was carried out by the DGGI officers on 02.03.2020 and difference was pointed on the bass of comparison of stack lying at the godown with the books of accounts prepared by the clerk namely Shri Chiragsinh Chavda. He tried to explain that goods are received recently and could not enter in books. He further claimed that due to limited education and under standing of tax law and due to lack professional assistance during the course of search proceedings, he had no choice but to accept the contentions made in law by the DGGI officers and agreed to pay the amount of tax, penalty worked out by them.

22. They further stated that the stock in dispute found at the Ahmedabad Godown was duly received by Harikesh Agencies under cover of tax invoice an due to fault on part of the clerk and same was not captured in the books of accounts. The stock found in Surat Godown was not belongs to them and the diary found was not belongs to them also.. They have not taken or given any delivery of any goods other than the goods duly supported by the tax invoices and duly captured in audited books of accounts results of which were duly presented in periodical tax returns. They have also filed another affidavit of Shri Chiragsinh Chavda account clerk of the assessee and he contended that the said invoices were not captured in the books of accounts due to fact that the same were received very recently and the said invoices duly captured n books of accounts.

#### PERSONNEL HEARING

23. Personnel Hearing was granted to the assessee on 26.07.2022. Shri Rohit Patel, CA and duly authorise representative attended the P.H on behalf of the assessee and requested to submit reply. Accordingly they submitted their further reply on 08.08.2022 & 19.10.2022

#### DISCUSSION AND FINDGS

24. I have carefully gone through SCN, Reply to the show cause notice dated 08.08.2022 & 19.10.2022, panchnama dated 02.03.2020, INS 02- Order of Seizure, letter dated 12.03.2020 application for releasing of the seized goods liable for confiscation, Form GST INS -05 dated 05.05.2020 under which

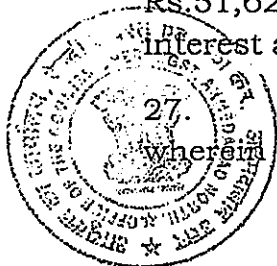


seized goods has been released provisionally and Form GST DRC-04 dated 01.10.2020 issued by Additional Director, DGGI, SZU, Surat.

25. On perusal of the above referred records, I find that the assessee is registered with GST under GSTIN (GSTIN 24ABXPP2730L1Z5). In the instant case, on receipt of intelligence that Pan Masala is being supplied by M/s. Harikesh Agencies (Proprietor Shri Harishbhai Keshavlal Patel), to Vapi/Vyara/Waghai/Ahwa based retailers/wholesalers frequently without cover of GST paid invoices/bills and is indulged in evasion of GST by way of clandestine receipt and supply of the Pan Masala, simultaneous searches were conducted at various premises including the registered premises and unregistered godowns of the assessee by the officers of Directorate General of Goods and Services Tax Intelligence Regional Unit, Vapi and incriminating documents were recovered under panchanama dated 02.03.2020. On investigation and verification of documents and statements, it was noticed that the assessee have failed to account for the goods seized under the Panchnama dated 02.03.2020, violating provisions of Section 35 of the CGST Act, 2017 and the Gujarat GST Act, 2017 read with Rule 56 of the CGST Rules, 2017 and Gujarat GST Rules, 2017. The assessee have received the aforesaid seized goods from the suppliers thereof without cover of tax invoices with sole intention to supply without payment of the applicable tax, therefore, they have contravened the provisions of Section 35 of CGST Act, 2017 read with Rule 56 of CGST Rules, 2017 and Section 35 of Gujarat GST Act, 2017, hence, the said goods are liable for confiscation under section 130 of CGST Act, 2017 and attract penal action under Section 122 of CGST Act, 2017 and thereby, they are liable to pay the tax involved in the said seized goods along with applicable interest and penalty equal to 100% tax.

26. During the course of investigation, on being asked about the availability of the purchase bills of goods seized under panchnama dated 02.03.2020 drawn at two unregistered godowns of M/S. Harikesh Agencies, Ahmedabad, Shri Harishbhai Keshavlal Patel stated that he did not have the purchase bills of the goods seized under the aforesaid panchnamas. He further stated that they sold these goods without cover of the GST bill to various customers located at different places of all over Gujarat and payment for all such goods are collected in cash only. It was noticed that these seized goods were kept unaccounted with the intent to supply them clandestinely which were purchased without cover of taxable invoices. The value of total goods seized under the panchnamas dated 02.03.2020 drawn at two godowns of M/s. Harikesh Agencies situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road, In Lane opposite Ganpatbhai Gotawala, KadodaraSurat Road, Saroli, Surat and 94B, Sagar Estate, Sarkhej Bavala Road, Sarkhej, Ahmedabad, is of Rs. 1,37,78,960/-. Therefore, the goods seized the Panchnamas dated 02.03.2020 valued Rs. 1,37,78,960/- (including taxes) found stored unaccounted and without cover of taxable invoices in the premises of the noticee, are liable for confiscation as per provisions of Section 130 of the CGST Act, 2017 and Gujarat GST Act, 2017. Accordingly SCN dated 31.08.2022 was issued to the assessee demanding GST amounting to Rs.51,62,828/- leviable on seized goods valued at Rs. 1,37,78,960/- along with interest and applicable penalty.

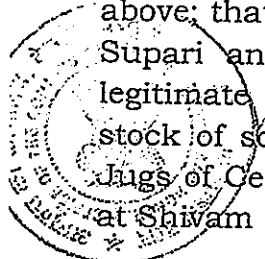
27. I have gone through the reply to SCN submitted by the assessee wherein they denied all the allegations and insinuations levelled in the Notice,



whether or not stated. The assessee claimed that they are engaged into the business of trading of products. They have been acting as a distributor of Karamchand and other brands in the state of Gujarat. The tax payer has vast experience in marketing of pan masala and related products in the state of Gujarat and thus also acted as a marketing and strategic facilitator to various manufacturers. All the products deal with the tax payer being received at tax payer at the Godown. They are having registration under CGST Act vide 24ABXPP2730L1Z5 and discharging the obligations from time to time. All the transactions of purchase and sale involving their products being recorded in the books of accounts and covered by the tax invoices as part of the provisions of the Act. They have not received and /or supplied any products without cover of invoices.

28. It was also submitted that the tax payer had not acted as agent of the manufacturer with respect to the said transactions. They have neither received nor forwarded any cash relating to the said transactions from the dealers or on behalf of the manufacturer. Despite of the same, the tax payer was made to accept the same and pay the tax along with interest and penalties As they are having outstanding repute in the society and always been law abiding citizen, accepting the liabilities worked out by the revenue in order to buy peace of mind and to avoid threat of getting arrested. Accordingly all the payments were made by the taxpayer despite of tremendous financial difficulties. Thereafter the revenue had issued From DRC-04 and notice to the tax payer.

29. On perusal of the SCN, reply to SCN and FORM GST DRC 04 dated 01.10.2020 issued by the competent authority i.e. Additional Director, DGGI, Zonal Unit, Surat, I find that the point put forth by the assessee that they all the transactions of purchase and sale involving their products being recorded in the books of accounts and covered by the tax invoices as part of the provisions of the Act. They have not received and /or supplied any products without cover of invoices. Despite of the same, the tax payer was made to accept the same and pay the tax along with interest and penalties As they are having outstanding repute in the society and always been law abiding citizen, accepting the liabilities worked out by the revenue in order to buy peace of mind and to avoid threat of getting arrested. Accordingly all the payments were made by the taxpayer despite of tremendous financial difficulties. The argument of the assessee has no merit as the proprietor of the assessee firm Shri Harishbhai Keshavlal Pately himself accepted that in his statement dated 14.08.2020 that he is aware of the facts that the premises of M/s. Harikesh Agencies, Harikesh House, 267/4/A, Ashram Road, Juna Wadaj, Ahmedabad and two unregistered godowns mentioned in Para 4.1 & 4.2 above, were searched by the officers of DGGI, Vapi on 02.03.2020. During the course of search, the officers of the DGGI, Regional Unit, Vapi was conducted physical verification of the Pan Masala, Tobacco, Supari and Water Bottles & Jugs of Cello Brand available in unregistered godown mentioned in Para 4.1 & 4.2 above; that after verification of the stock some quantity of Pan Masala, Tobacco, Supari and Water Bottles & Jugs of Cello Brand were found lacking in legitimate documents regarding purchase and storage. He further stated that stock of some quantity of Pan Masala, Tobacco, Supari and Water Bottles & Jugs of Cello Brand found at two godowns of M/s. Harikesh Agencies situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road, In Lane



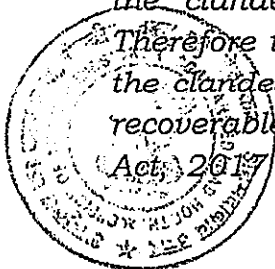
opposite GanpatbhaiGotawala, KadodaraSurat Road, Saroli, Surat and 94B, Sagar Estate, Sarkhej Bavala Road, Sarkhej, Ahmedabad were received without covering of any bill/invoice, therefore the same were seized under INS 02 (Order of Seizure) dated 02.03.2020 to the panchnama dated 02.03.2020 drawn at the said godowns. Shri Harishbhai Keshavlal Patel, Proprietor of the assessee firm accepted that he was completely agreed with the facts, including the contravention of provisions of the CGST Act 2017 & Gujarat GST Act, 2017 committed by his firm.

30. Further, On being asked about the availability of the purchase bills of goods seized under panchnama dated 02.03.2020 drawn at two unregistered godowns of M/S. Harikesh Agencies, Ahmedabad, Shri Harishbhai Keshavlal Patel stated that he did not have the purchase bills of the goods seized under the aforesaid panchnamas. He further stated that they sale these goods without cover of the GST bill to various customers located at different places of all over Gujarat and payment for all such goods are collected in cash only. It was found that these seized goods were kept unaccounted with the intent to supply them clandestinely which were purchased without cover of taxable invoices. The value of total goods seized under the panchnamas dated 02.03.2020 drawn at two godowns of M/s. HarikeshAgencies situated at Shivam Estate, Beside godown of Om Logistics, Saniya Ahmed Road, In Lane opposite Ganpatbhai Gotawala, Kadodara - Surat Road, Saroli, Surat and 94B, Sagar Estate, Sarkhej, Bavala Road, Sarkhej, Ahmedabad, is of Rs. 1,37,78,960/-.

31. In addition to the above, the assessee themselves requested vide their letter reference No.NIL dated NIL received by the investigating agency on 08.09.2020 that they have accepted the liability and paid the same and they do not want and SCN and requested to conclude the proceedings in terms of provision of CGST Act, 2017. They have also paid GST, interest and penalty in respect of the said case in terms of Section 74(5) of CGST Act, 2017 . I Also find that the request of the assessee for conclusion of the proceedings has been accepted by the competent authority under provisions of Section 76(6) of CGST Act, 2017 in relation to the non payment of GST in respect of clandestine supplies of Pan Masala, Cigarette and supari made by them. In view of the above facts, the contention of the assessee that as they are having outstanding repute in the society and always been law abiding citizen, accepting the liabilities worked out by the revenue in order to buy peace of mind and to avoid threat of getting arrested and accordingly all the payments were made by the taxpayer despite of tremendous financial difficulties does not have any merit as they have already accepted the clandestine removal and paid the outstanding GST alongwith interest and penalty.

32. I have gone through the Form DRC 04 issued by Additional Director, DGGI, SZU, Surat from F.No.V/15-07/DGGI/VAPI/2020-21 dated 01.10.2020. On perusal of the said DRC 04, I find that, in the DRC 04 it was concluded that

*"10. in view of the findings of investigation discussed in the foregoing paras, it appeared that M/s.Harikesh Agencies, Ahmedabad have not paid the GST on the clandestine supplied of pan masala, cigarettes and supari by them. Therefore the GST of RS.5,72,81,900/- has not been paid by the tax payer on the clandestine supplied of pan masala, cigarette and supari by them which is recoverable from M/s.Harikesh agencies, Ahmedabad under Section 74 of CGST Act, 2017 along with interest under Section 50 of the CGST Act, 2017 and*



applicable penalty under Section 74 of CGST Act, 2017. M/s.Harikesh Agencies accepted non payment of GST liability on the clandestine supplied of Pan Masala, Cigerattes and Supari by them and paid entire liability of GST of Rs.5,72,81,900/- alongwith interest of Rs.34,03,645/- and penalty of Rs.85,92,285/- (equivalent to 15% of the total GST liability).

11. Further besides the above liability of GST, the tax payer has paid tax or Rs.51,62,838/- along with equal penalty of Rs.51,62,838/- on goods seized during the course of search operation carried out at their respective premises i.e.unregistered godowns situated at Sarkhej, Ahmedabad and Saroli, Surat on 02.03.2020 vide DRC 03 Debit Entry No.DI2403200004282 DATED 02.03.2020, DC2404200019947 DATED 27.04.2020 and DC2405200000671 DATED 01.05.2020. The aforesaid seized goods have been released provisionally under FORM GST INS-05 dated 05.05.2020 issued by the Additional Director, DGGL, Surat Zonal Unit, Surat, on payment of complete tax involved in the seized goods and 100% penalty.

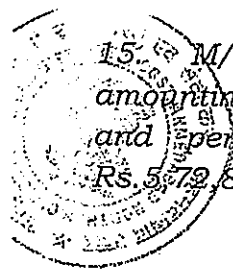
12. Further, in terms of Section 67(7) of the CGST Act, 2017, a Show Cause Notice bearing F.No.V/15-07/DGGI/VAPI/2020-21 dated 31.08.2020 issued by teh Additional Director, DGGI, SZU, Surat to the tax payer in respect of seiaure protion for confiscation of goods under Section 130 of CGST Act, 2017 and Section 130 of Gujarat SGSt Act, 2017.

13. The investigation and verification of records/ documents and evidences gathered in the form of statements, it is found that , investigations has gathered irrefutable & incontrovertible docuemtnary evidences suggesting non payment of GST by M/s.Harikesh agencies, ahmedbad. Accordingly, an inquiry was initiated by teh DGGI, Regional Unit, Vapi against M/s.Harikesh Agencies, Ahmedabad by way of searches conducted. The total GST incolved in the clandestine suppld of Pan masala, Cigerates and supari by them comes to Rs.5,72,81,900/-.

14. Accepting the liability, M/s.Harikesh agencies, Ahmedabd has paid the entire amount of GST of Rs.5,72,81,900/- alongwith applicable interst of Rs.34,03,645/- and penalty of Rs.85,92,285/-. The tax payer has also paid GST of Rs.51,62,838/- alongwith equal penalty of RS.51,62,838/- on goods seized during the course of search operations carried out at their respective premises i.e.unregistered godown situated at Sarkhej, Ahmedabad and Saroli Surat on 02.03.2020. The details of payment particulars are as under:

Sr. No	DRC 03 NO	DRC 03 DATED	CGST	SGST	CESS	INTERES T	PEN	TOTAL
1	DC240320005829	02.03.2020	5000000	5000000	0	0	0	10000000
2	DI2403200004282	02.03.2020	934705	934705	4155567	0	0	6024977
3	DC2403200005776	02.03.2020	5000000	5000000	0	0	0	10000000
4	DC2403200007398	03.03.2020	5669000	5669000	0	0	0	11338000
5	DC2404200019947	27.04.2020	0	0	0	0	4960864	4960864
6	DC2405200000671	01.05.2020	0	0	0	0	201980	201980
7	DC2408200285101	27.08.2020	8540952	8540952	7999847	0	0	25081751
8	DC2409200019394	03.09.2020	0	0	0	3403645	0	3403645
9	DC2409200019359	03.09.2020	0	0	0	0	8592285	8592285
	TOTAL		2514465 7	2514465 7	1215541 4	3403645	8592285 9	8592285 79603502

15. M/s.Harikesh Agencies, Ahmedabd has voluntarily paid the GST amounting to Rs.6,24,44,728/- alongwith applicable interest of Rs.34,03,645/- and penalty of Rs.1,37,55,129/- (@ 15% of the amount of GST of Rs.5,72,81,900/- and @100% of amount of GST of Rs.51,62,838/- involved in



seized goods) vide DRC 03 debit entries as detailed above. They have requested vide their letter Reference No.NIL dated Nil received by this office on 08.09.2020 that they have accepted the liability and paid the same and they do not want any written SCN in the matter and requested to conclude the procedure in terms of provisions of the CGST Act, 2017.

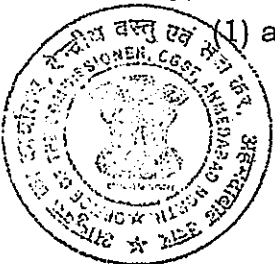
16. The said payment of GST, interest and penalty thereof, in respect of the said firm, has been done in terms of Section 74(5) of the CGST Act, 2017. The case is squarely covered under the section 74(6) of the CGST Act, 2017, therefore, show Cause notice appears not to be issued in the matter since the tax payer has fulfilled the conditions of section 74(5) of the CGST Act, 2017 in the instant case. Therefore, the request of the taxpayer vide reference No.NIL dated NIL received by this office on 08.09.2020, for conclusion of the proceedings has been accepted by the competent authority under the provisions of Section 76(6) of the CGST Act, 2017 in relation to non payment of GST in respect of clandestine supplies of pan masala, cigarettes and supari made by them only and is without prejudice to any other action that may be taken under any other provisions of the law in force."

33. On perusal of the above said concluding part of the FORM GST DRC 04 dated 01.10.2020 issued by the Additional Director, DGGI Zonal Unit, Surat, I find that the assessee M/s.Harikesh Agencies, Ahmedabad has voluntarily paid the GST amounting to Rs.6,24,44,728/- alongwith applicable interest of Rs.34,03,645/- and penalty of Rs.1,37,55,129/- (@ 15% of the amount of GST of Rs.5,72,81,900/- and @100% of amount of GST of Rs.51,62,838/- involved in seized goods) vide DRC 03 debit entries as detailed above. On the basis of which the proceedings have been concluded by them by issuing FORM GST DRC 04 dated 01.10.2020 by the competent authority under the provisions of Section 76(6) of the CGST Act, 2017 as requested by the assessee. In view of the above facts, I find that the in issues covered in the instant SCN has already been concluded in the above referred FORM GST DRC 04 dated 01.10.2020 and pass the following order

34. In view of the above facts and findings, I pass the following orders.

#### ORDER

1. I order to confirm GST amounting to Rs. 51,62,828/- (Rupees Fifty One Lac, Sixty Two Thousand Eight Hundred Twenty Eight only) (involving CGST, SGST & CESS) under Section 130 of the CGST Act, 2017 read with Section 74 of the CGST Act, 2017 and Section 74 of the Gujarat GST Act, 2017.
2. I order to appropriate GST of Rs. 51,62,828/- (Rupees Fifty One Lac, Sixty Two Thousand Eight Hundred Twenty Eight only) (involving CGST, SGST & CESS) paid by the assessee vide DRC 03 debit entries as detailed above against the demand as confirmed (1) above.
3. I order to recover interest, if not paid, on the amount mentioned at (1) above under Section 50 of the CGST Act, 2017 at appropriate rate.



4. I do not order to confiscate the seized goods as the said goods has already been released and the proceedings have been concluded vide GST DRC 04 dated 01.10.2020.
5. I impose penalty of Rs. 51,62,828/- (Rupees Fifty One Lac, Sixty Two Thousand Eight Hundred Twenty Eight only) them under Section 130 of the CGST Act, 2017 read with Section 122 of the CGST Act, 2017.
6. I order to appropriate Rs. 51,62,828/- (Rupees Fifty One Lac, Sixty Two Thousand Eight Hundred Twenty Eight only) paid by the assessee vide DRC 03 debit entries as detailed above against the penalty as confirmed (5) above.
32. Accordingly Show Cause Notice No.DGGI/SZU/36-49/2020-21 dated 31.08.2020 is disposed off.



*(Signature)*  
 22/11/2022  
 (Lokesh Damor)  
 Joint Commissioner  
 Central GST & Central Excise  
 Ahmedabad North

F.No. GST/15-208/OA/2020

Date:

To,  
 M/s. Harikesh Agencies,  
 "Harikesh House", 267/4/A,  
 Nr.ST Larn Hotel, Juna Wadaj,  
 Ashram Road, Ahmedabad - 380 013.

Copy to:

- 1) The Commissioner Central GST & Central Excise, Ahmedabad North.
- 2) The Addl. Director, DGGI, 3<sup>rd</sup> Floor, Royal Fortune, Daman Road, Vapi - 396191.
- 3) The A.C, Central GST & Central Excise, Division-VII, Ahmedabad North.
- 4) The Supdt., C GST & Central Excise, Range-I , Division-VII, Ahmedabad North
- 5) The Supdt. Systems ,CGST& CX, Ahmedabad North for uploading the order
- 6) Guard File.