



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, 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/15-97/OA/2023-24

DIN- 20240264WT000000D064

आदेश की तारीख/Date of Order: - 20.02.2024

जारी करने की तारीख/Date of Issue :- 20.02.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 80/ADC/LD/GST/2023-24**

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 रू. 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।

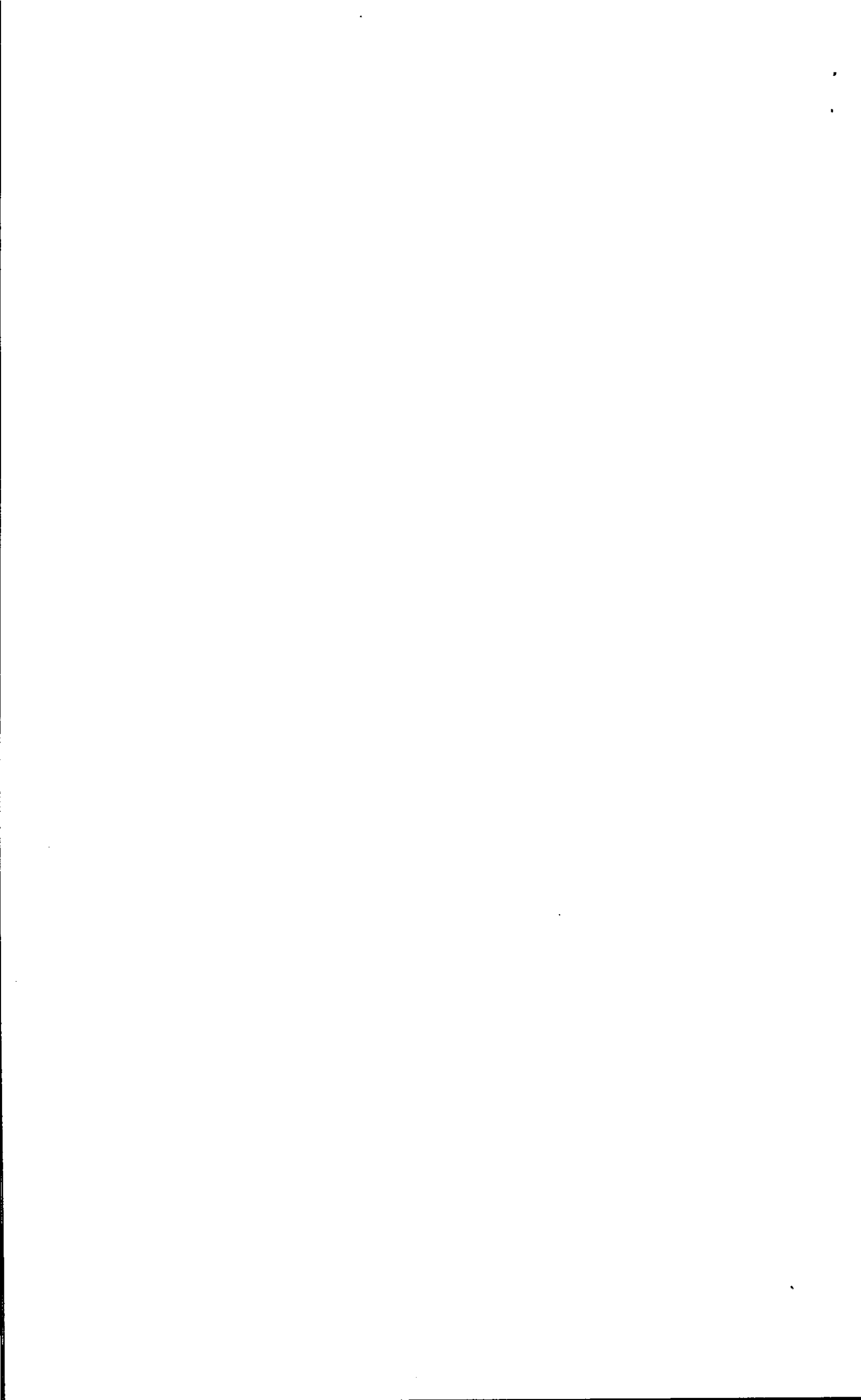
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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/15-97/OA/2023-24 dated 28.12.2023 issued to M/s. HCP Plastene Bulkpack Limited, GSTIN: 24AABCG1282C2Z6, 13, H.B. Jirawala House, Navbharat Society, Opp. Panchsheel Bus Stop, Usmanpura, Ahmedabad, Gujarat - 380013



## **BRIEF FACTS OF THE CASE**

M/s. HCP PLASTENE BULKPACK LIMITED holding GSTIN-24AABCG1282C2Z6, situated at 13, H.B. JIRAWALA HOUSE, NAVBHARAT SOCIETY, OPP. PANCHSHEEL BUS STOP, Usmanpura, Ahmedabad, Gujarat-380013 falling under jurisdiction of CGST, Ahmedabad North Commissionerate, which has taken over M/s. GOPALA POLYPLAST LTD (GSTIN: 24AABCG1282C1Z7) having registered at 485, Santej Vadsar Road, Santej, Gandhinagar, Gujarat-382721(hereinafter referred to as the "taxpayer") vide NCLT Order No. IA 178/2020 dated 07.08.2020 in C.P(IB) 08/NCLT/AHM/2019. The taxpayer were engaged in manufacturing of Articles for the Conveyance or Packing of Goods, of Plastics; Stoppers, Lids, Caps and Other Closures, of Plastics - Sacks and Bags (Including Cones)-of Other Plastics falling under HSN 39232990 and others. Wherever the provisions of Central Goods & Service Tax Act, 2017 and Central Goods & Service Tax Rules, 2017 are quoted, the corresponding provisions of Gujarat State Goods & Service Tax Act, 2017 and Gujarat State Goods & Service Tax Rules, 2017 would apply simultaneously. The GST Registration of the taxpayer was cancelled Suo-moto w.e.f. 23.01.2020.

2. Audit observation Reference: #37(OBS-1046995) dated 30.10.2023 was raised by the Sr. Audit Officer, Office of the Director General of Audit (Central), Ahmedabad. The gist of the observation is detailed as under:-

2.1 Difference found in Liability declared in GSTR1/GSRT3B for the period January-2019 to March-2019:

- i. The Taxable Value and GST liability declared in GSTR-1 & GSTR-3B for outward supplies is as under:-

Whereas, it is noticed that the taxpayer has declared tax liability of Rs. 8,05,00,745.84/- (CGST+ SGST+IGST) in their GSTR-1M returns filed for month of January-19 to March-19. However, they have not filed GSTR 3B returns for the same period. Thus, the tax payer is liable to pay the total tax of Rs. 8,05,00,745.84/- (CGST+ SGST+IGST ) as declared in GSTR-1M alongwith applicable interest and penalty under Section 50 & Section 122(2) (a) of CGST Act, 2017 respectively.

3. Whereas during the scrutiny of the returns filed by the taxpayer for the financial year 2018-2019, it was noticed that the taxpayer has not filed GSTR-3B, GSTR-9 and GSTR-10 for the FY 2018-2019 with in the due dates as prescribed under Section 39 , Section 44 & 45 of CGST Act, 2017 read with Rule 80 of CGST Rules, 2017. Therefore, the taxpayer was liable to pay Late fees in terms of Section 47 of the CGST Act, 2017. The details thereof are as under:

(a) **Late Fee for GSTR-3B:**

Month	GSTR-3B filing due date	Date on which GSTR-3B filed	Late Fees payable (in Rs.)
Jan-2019	20-02-2019	Not filed	10000
Feb-2019	20.03.2019	Not Filed	10000
Mar-2019	20.04.2019	Not Filed	10000
<b>Total</b>			<b>30000</b>

From the above, it appeared that the taxpayer had not filed GSTR-3B even after expiry of due dates. Thus, it appeared that the taxpayer is required to pay the Late fees of Rs. 30,000/- (CGST Rs.15,000/- and SGST Rs. 15,000/-) in terms of Section 47(1) of CGST Act, 2017.

**(b) Late Fee for not filing of GSTR-9:**

Whereas, the taxpayer had not filed GSTR-9 for FY 2018-19 even after expiry of due date as prescribed under Section 44 read with Rule 80 of CGST Rules, 2017. Therefore, the taxpayer was required to pay late fees as per the Section 47(2) of the CGST Act, 2017.

The late fee for non filing of GSTR-9 for the Financial year 2018-19 is one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter percent of his turnover in the State or Union territory. The quarter percent of the turnover for period April-2018 to December-2018 is Rs.3648974/- (CGST Rs.1824487/- and SGST Rs. 1824487/-) [based on Turnover declared in GSTR-3B for period April-2018 to December-2018 which is Rs. 1459589460/-] and for the period January-2019 to Mar-2019 is Rs.1506721/- (CGST Rs.753360/- and SGST Rs. 753360/-) [based on the turnover declared in the GSTR-1M returns for the period from January-2019 to March-2019 which is Rs.602688200/-].

Thus, it appeared that on failing to file GSTR-9 return for FY 2018-19, the late fees amount will be charged one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter percent of his turnover in the State or Union territory and maximum amount of Rs. 51,55,694/- (CGST-Rs.2577847/- and SGST-Rs. 2577847/-) is required to be charge as late fee in terms of Section 47(2) of CGST Act, 2017.

**(c) GSTR-10 not filed after Cancellation of Registration:**

Whereas, the taxpayer had not filed GSTR-10 within time limit as prescribed under Section 45 of CGST Act, 2017 after cancellation of their GST Registration. Thus, the taxpayer is liable to pay Late fee of Rs. 10,000/- (CGST Rs. 5000/-, SGST Rs. 5000/-) for non filing of GSTR-10 after cancellation of GST Registration under Section 47(1) of CGST Act, 2017.

**Relevant portions of Section 47 of CGST Act, 2017 are reproduced below:**

**“Section 47. Levy of late fee. -**

*(1) Any registered person who fails to furnish the details of outward or 1[\*\*\*] supplies required under section 37 1[\*\*\*] or returns required under section 39 or section 45 2[or section 52] by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.*

*(2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory.”*

4. Hence, from the above, it appeared that the tax payer is required to pay total late fees liability of Rs. 51,95,694/- i.e., Rs. 25,97,847/- (CGST) and Rs. 25,97,847/- (SGST) in terms of Section 47 of CGST Act, 2017 as enumerated at (a) to (c) above.

5. Whereas, it is further noticed that the tax payer had not filed their GSTR-3B returns for the period April-2018 to December-2018 within the dues dates prescribed under Section 39(1) read with Rule 61(1)(i) of the CGST Act, 2017. The taxpayer is liable to pay Interest and Late fee on account of delayed filing of GSTR- 3B returns for the period April 2018 to December 2018 in terms of Section 50(1) & Section 47(1) of the CGST Act, 2017. The details are as under:

Period	3B Filing Date	3B Due Date	No. Of Days Late	CGST Interest payable	CGST Interest Paid	CGST Interest to be paid	SGST Interest Payable	SGST Interest Paid Difference	SGST Interest to be paid
Apr-18	31-Jul-18	22-May-18	70	3837	3892	-55	3837	3892	-55
May-18	04-Aug-18	20-Jun-18	45	2891	2828	63	2891	2828	63
Jun-18	22-Oct-18	20-Jul-18	94	7827	7577	250	7827	7577	250
Jul-18	06-Nov-18	24-Aug-18	74	6044	6125	-81	6044	6125	-81
Aug-18	20-Dec-18	20-Sep-18	91	37891	2020	35871	37891	2020	35871
Sep-18	20-Dec-18	25-Oct-18	56	1717.5	1350	367.5	1717.5	1350	367.5
Oct-18	03-Jan-19	20-Nov-18	44	3308.5	3309	-0.5	3308.5	3309	-0.5
Nov-18	20-Feb-19	20-Dec-18	62	3591	3533	58	3591	3533	58
Dec-18	05-Mar-19	20-Jan-19	44	2892.5	2893	-0.5	2892.5	2893	-0.5
						36472.5			36472.5
						Total Interest amount payable-		72945/-	

LATE FEE		
Late Fee Payable (INR)	Late Fee Paid (INR)	Difference of late fee to be paid (Late Fee Payable - Late Fee Paid) (INR)
3500	2,700	800
2250	3,500	-1250
4700	2,250	2450
3700	4,700	-1000
4550	3,700	850
2800	4,550	-1750
2200	0	2200
3100	2,200	900
2200	3,100	-900
<b>29000</b>	<b>26700</b>	<b>2300</b>

6. Thus, it appeared that the tax payer is required to pay Interest of Rs.72,945/-(CGST Rs. 36472.5/- and SGST Rs. 36472.5/-) under section 50 of CGST Act, 2017 for delayed payment of tax in GSTR-3B and also late fees of Rs. 2,300/- (CGST Rs. 1150/- SGST Rs. 1150/-) in terms of Section 47(1) of the CGST Act, 2017 as detailed above.

6.1 The sub-section (1) of Section 39 of CGST Act, 2017 is reproduced as under:

*1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10, or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:*

6.2 Further, Rule 61(1)(i) of CGST Rules, 2017 reads as under:

*“(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in **FORM GSTR-3B**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, as specified under’*

*(i) Sub-section (1) of section 39, for each month, or part thereof, on or before the twentieth day of the month succeeding such month:”*

6.3 Section 50(1) of the Act is reproduced below:

**“Section 50: Interest on delayed payment of tax.**

*(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made there under, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.”*

7. The relevant text to Section 7(1) of the Central Goods and Services Act, 2017 ('CGST Act') and the Gujarat State Goods and Services Tax Act, 2017 ('SGST Act') (collectively 'Act') is reproduced as under:

*“7. (1) For the purposes of this Act, the expression “supply” includes—*

*(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business”.*

8. Moreover, a plain reading of sub-section (1) of Section 37 is as below:

*“37. (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed.”*

9. Whereas, the taxpayer had declared the total outward tax liability of Rs. 8,05,00,745.84/- (CGST+ SGST+IGST) in GSTR-1M for the period from January-2019 to March-2019 and has failed to discharge total tax liability

of Rs. 8,05,00,745.84/-(CGST+ SGST+IGST) in GSTR 3B returns for the same period.

10. Therefore, the said taxpayer has contravened the provisions of sub-section (1) of Section 39 read with Rule 61(1)(i) of the CGST Act, 2017. Hence, tax amounting to Rs. 8,05,00,745.84/-(CGST+ SGST+IGST) is required to be recovered alongwith applicable interest and penalty under Section 73(1) of CGST, Act, 2017 read with Section 50(1) & Section 122(2)(a) of CGST Act, 2017.

11. Sub-section 8 of Section 49 of the CGST Act, 2017 reads as under:

*"Every taxable person shall discharge his tax and other dues under this Act or the rules made there under in the following order, namely:-*

*(a) Self-assessed tax, and other dues related to returns of previous tax periods;*

*(b) Self-assessed tax, and other dues related to the return of the current tax period;*

*(c) Any other amount payable under this Act or the rules made there under including the demand determined under section 73 or section 74".*

12. Rule 85 (3) of the CGST Rules, 2017 stipulates that:

*"85 (3) Subject to the provisions of section 49, [section 49A and section 49B]134, payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per rule 86 or the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly".*

13. From the above provisions of law, it appeared that the liability of a registered person is discharged only by debiting the electronic credit ledger or electronic cash ledger as the case may be, and not by merely debiting the bank account and crediting the electronic cash ledger. The discharge of the tax amount is done only after the filing of GSTR-3B or by generation of DRC-03 in GST mechanism. Whereas, in the instant case the tax payer has only filed GSTR 1 for the period Jan-2019 to March-2019 and has not filed GSTR 3B for the period Jan-2019 to March-2019 and thus not paid the total Tax amounting to Rs. 8,05,00,745.84/-(CGST+ SGST+IGST). It appeared that the tax amount is required to be recovered under the provisions of Section 73(1) of the Act, alongwith interest under Section 50(1) of the CGST Act, 2017 and similar provisions of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017 from the taxpayer. It also appeared that the tax payer is also liable to pay Penalty as per Section 73(1) of the CGST Act 2017 read with the provisions of Section 122 (2)(a) of the Act and Section 20 of the IGST Act.

**Relevant text of Section 73 & 122 of CGST Act, 2017 is quoted below:-**

**Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-**

*"(1) Where it appeared to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder."*

**Section 122. Penalty for certain offences.-**

*"(1)....."*

*(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-*

*(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;*

*(b) ....."*

14. In terms of the provision of Rule 142(1)(a) of the CGST Rules, 2017, the tax ascertained in Form DRC-01A Part-A dated 26.12.2023 was issued to the taxpayer under which they were requested to pay the tax ascertained by tax officer. However, the taxpayer had neither paid the tax as ascertained nor filed any reply to this office till date. Accordingly, to protect the government revenue, this show cause notice is being issued under Section 73(1) of CGST Act, 2017 read with similar section of SGST/IGST Act, 2017.

15. Accordingly, A Show Cause Notice No.- GST/15-97/OA/2023-24 dated 28.12.2023 was issued by the Joint Commissioner, Ahmedabad North calling upon M/s. HCP PLASTENE BULKPACK LIMITED GSTIN 24AABCG1282C2Z6 situated at 13, H.B. JIRAWALA HOUSE, NAVBHARAT SOCIETY, OPP. PANCHSHEEL BUS STOP, Usmanpura, Ahmedabad, Gujarat, 380013 as being taken over M/s. GOPALA POLYPLAST LTD (GSTIN: 24AABCG1282C1Z7) as to why:-

- i. Tax amounting to Rs. 8,05,00,746 /-(Eight Crores Five Lakhs Seven Hundred Forty Six Only) (CGST+ SGST+IGST), should not be demanded and recovered from them, under the provisions Section 73 (1) of the CGST Act, 2017, GGST Act, 2017 read with Section 20 of the IGST Act, 2017.
- ii. Interest should not be charged and recovered from them, under the provisions of Sections 50 (1) of the Act read with Section 20 of the IGST Act on the demand as proposed in (i) above;
- iii. Interest of Rs. 72,945/-(CGST Rs. 36472.5/- and SGST Rs. 36472.5/-) on account of delayed filing of GSTR-3B return for the period from April-18 to Dec-18 should not be charged and



recovered from them, under the provisions of Sections 50 (1) of the Act;

- iv. Penalty should not be imposed upon them under the provisions of Sections 73(1) of the Act read with the provisions of Section 122 (2)(a) of the CGST Act, 2017 and Section 20 of the IGST Act, 2017 on the demand as proposed in (i) above;
- v. Late fees for non filing of returns (GSTR-3B, GSTR-9 & GSTR-10) as applicable should not be recovered under the provisions of Section 47 of the CGST Act, 2017 read with similar provision of SGST/IGST Act, 2017.
- vi. Late fees of Rs. 2,300/- (CGST Rs. 1,150/- SGST Rs. 1,150/-) should not be recovered from them under the provisions of Section 47 of the CGST Act, 2017 for delayed filing of GSTR-3B for the period from April-2018 to December-2018.

### **DEFENCE REPLY**

**16.** M/s. HCP Plastene Bulkpack Limited has filed their defence reply vide letter dated 11.01.2024 wherein they submitted that:-

- (i) Gopala Polyplast Limited has processed under NCLT-Ahmedabad and as per NCLT order, they, Plastene India Limited take Over Business of the in terms of court order No. **I. A. No. 178 of 2020 in CP(IB) No 08 of 2019** where liability of Gopala Polyplast limited is restricted, as per approved resolution plan.
- (ii) As per Approved Resolution plan, The company has restricted its liability to various stock holders including operational creditors as per terms of approved resolution plan which include liability towards statutory dues as approved under Resolution Plan and In view of above, The company is in-charges From 07<sup>th</sup> August 2020 and before these period companies' liability is restricted as per approved resolution Plan only (Pl refer para 3.6. (1) as attached) and the same is discharged by R.P. while handing over the possession. Hence they requested to drop the demand and any notices be issued should be directly issued to R.P. Only since they as new Company has nothing to do in the matter.
- (iii) They also enclosed Copy of National Company Law appellate tribunal, Principal Bench-New Delhi's order passed in case **No 477 of 2021 of Deputy Commissioner, CGST Kalol, Gujrat Vs Gopala Polyplast limited** where also Court dismissed revenue appeal admitting management stand that Present Company is no longer liable for past dues of erstwhile Company once the liability is already finalized under resolution plan.
- (iv) Further, they submitted that department has cancelled GST No **24AABCG1282C1Z7** since Jan 2019 and they are not able to access data from portal nor as management of present entity are liable for any pending proceeding, which are not referred under resolution plan at the time of Liquidation proceeding. After taking

charges through Resolution professional, they have process for New registration and at present they are using Present GSTN 24AABCG1282C2Z6.

- (v) They requested to drop the proceedings as present company is no longer be liable for dues of earlier Management/ GSTN company known as Gopala Polyplast limited and having GSTN No 24AABCG1282C1Z7.

### **PERSONAL HEARING**

17. Personal hearing in present matter was granted to the said noticee on 31.01.2024 wherein Shri Hemant Thakar, accountant and authorized person appeared on behalf of the noticees and reiterated their defence reply dated 11.01.2024. He further requested to decide the matter on merits.

### **DISCUSSION AND FINDINGS**

18. I have carefully gone through the case records, contents of show cause notice dated 28.12.2023, defence reply dated 11.01.2014 filed by the said assessee and the record of personal hearing and find that Show Cause Notice No.- GST/15-97/OA/2023-24 dated 28.12.2023 was issued to the said noticee for non payment of Tax amounting to Rs. 8,05,00,746 /- for the month of January 2019 to March 2019 under section 73(1) of the CGST Act 2017 alongwith interest under Section 50(1) and penalty under Section 73(1) read with Section 122(2)(a) of the CGST Act. Further, interest of Rs. 72,945/- on account of delayed filing of GSTR 3B for the Period from April 18 to Dec 2018, late fee for non filing of returns (GSTR-3B, GSTR-9 & GSTR-10) and Late fees of Rs. 2,300/- for delayed filing of GSTR-3B for the period from April-2018 to December-2018 is also proposed in said SCN dated 28.12.2023.

19. In reply to above allegation, the said assessee has submitted that Gopala Polyplast Limited has processed under NCLT-Ahmedabad and as per NCLT Order No. I.A.No. 178 of 2020 in CP(IB) No 08 of 2019 dated 07.08.2020 they i.e. Plastene India Limited take over business of Gopala Polyplast Limited and as per approved Resolution plan they are no longer liable for dues of earlier Management/ GSTN company known as Gopala Polyplast Limited and having GSTN No 24AABCG1282C1Z7 for earlier period i.e. period prior to 07.08.2020. Further, they also relied upon on judgement delivered by the NCLT, New Delhi in the case of Deputy Commissioner, CGST Kalol, Gujarat v/s M/s Gopala Polyplast Limited wherein NCLT, New Delhi held that Present Company is no longer liable for past dues of erstwhile Company once the liability is already finalized under resolution plan.

20. As per records available, I find that in present case Resolution Plan was approved by the Hon'ble National Company Law Tribunal (NCLT), Ahmedabad vide Order No. I.A. No. 178 of 2020 in CP(IB) No 08 of 2019 on 07.08.2020. Present Show Cause Notice No.- GST/15-97/OA/2023-24 dated 28.12.2023 was issued to the said assessee for the period Jan 2019 to March 2019 i.e. period prior to approval of Resolution Plan. For sake of brevity, I reproduced below date wise details of events in present case.

- I. Date of order of NCLT, Ahmedabad Bench under the provisions of the Insolvency and Bankruptcy Code, 2016(IBC) vide which Interim Resolution Professional was appointed- **02.05.2019**.
- II. Date of approval of Resolution Plan by NCLT, Ahmedabad- **07.08.2020**.
- III. Date of Issuance of Audit Observation reference : #37(OBS-1046995) by CRA Audit, Ahmedabad-**30.10.2023**.
- IV. Date of issuance of Show Cause Notice - **28.12.2023**.

21. It is observed that main contention of the said assessee is that said notice dated 28.12.2023 pertains to period prior to approval of resolution plan, therefore they are no longer liable to pay dues of earlier management. In this regard, I find that application for initiating Corporate Insolvency Resolution Process was admitted by National Company Law Tribunal (NCLT) under The Insolvency and Bankruptcy Code against the M/s Gopala Polyplast Limited vide NCLT Order dated 02.05.2019. Then after, the Committee of Creditors was formed and Resolution Plan was approved by majority of 91.28% of the Committee of Creditors members and accordingly NCLT passed the order by approving resolution plan on 07.08.2020 vide Order No. I. A. No. 178 of 2020 in CP(IB) No 08 of 2019. Further as per records available, I find that no claim before the Resolution Professional regarding said matter/case is filed before NCLT. In this regard, I relied upon on para 2 of CBIC Circular No.- 1083/04/2022-CX9 dated 23.05.2022 wherein it is mentioned that no claims can be raised once the plan is approved and no demand can be raised on the resolution applicant. Para 2 of said circular is reproduced below for ready reference:-

*"2. A timeline of 90 days from the insolvency commencement date is available for filing of claims. However, it has been observed that there is an inordinate delay in filing of claims by Customs and GST authorities. This leads to their claims not being admitted and extinguished once a resolution plan, is approved. It is also observed that the authorities then litigate on the rejection of each claims, despite the settled position that no claims can be raised once the plan is approved and no demands can be raised on The resolution applicant who has taken over the company through such a resolution plan."*

22. Further, I find that Supreme Court of India in the case of Ghanashyam Misra and Sons Private Limited Versus M/s. Edelweiss Asset Reconstruction Company Limited has clearly held that claims/dues if not part of the resolution plan shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 of the I&B Code 2016 could be continued. Para 95 of said judgement is reproduced below for ready reference:-

- I. *Once a resolution plan is duly approved by the Adjudicating Authority under Sub-Section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors*

and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan and

II. ....

III. Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 of the I&B Code 2016 could be continued.

**23.** I also hold that Hon'ble High Court of Rajasthan in ULTRA TECH NATHDWARA CEMENT LTD. Versus UNION OF INDIA 2020 (37) G.S.T.L. 289 (Raj.) has observed that demand raised by the department for the period prior to the date on which, petitioner company took over the company under liquidation, after the resolution plan was finalized and approved is totally illegal. Relevant portion of said judgement is reproduced below for ready reference:-

*“21. Therefore, we are of the firm opinion that the respondents would be acting in a totally illegal and arbitrary manner while pressing for demands raised vide the notices which are impugned in this writ petition and any other demands which they may contemplate for the period prior to the resolution plan being finalized.*

*22. The demand notices are ex facie illegal, arbitrary and per se and cannot be sustained.*

*23. Accordingly, the impugned demand notices and orders viz. notice dated 11-2-2019 (Annex. 10), letter dated 7-9-2018 (Annex. 11), order dated 20-3-2019 (Annex. 12), notice dated 6-3-2019 (Annex. 13), notice dated 8-3-2019 (Annex. 14), notice dated 29-3-2019 (Annex. 15), notice dated 29-3-2019 (Annex. 16), notice dated 10-4-2019 (Annex. 18), order dated 9-4-2019 (Annex. 19), two notices dated 11-6-2019 (Annex. 20) and any further demands pending as on the date of finalization of the resolution plan issued/raised by the respondents Central Goods and Services Tax Department, Govt., of India are quashed and struck down.*

*24. Before parting, we would like to express our serious reservation on the approach of the concerned Officers of the GST in persisting with the demands raised from the petitioner in gross ignorance of the pertinent statement made by Hon'ble the Finance Minister before the Parliament (referred to supra) and the amendment brought around in the IBC. We are of the firm view that the authorities should have adopted a pragmatic approach and immediately withdrawn the demands rather than indulging in a totally frivolous litigation, thereby unnecessarily adding to the overflowing dockets of cases in the courts.”*

**24.** I also refer to the order of the Hon'ble High Court of Gujarat in case of Garden Silk Mills Ltd. vs. UOI, 2022 (381) E.L.T. 445 (Guj.) wherein it was held that claims which are not part of resolution plan approved by the NCLT, stand extinguished and so proceedings related thereto should be terminated. The relevant part of the said decision read as under:-

*“8. In our view, the legal position as regards the effect of resolution plan once approved by the NCLT vis-a-vis the claims pending adjudication is concerned, is no longer res integra in view of the recent pronouncement of the Supreme Court in the case of Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. reported in (2021) 9 SCC*

657 wherein the Supreme Court took the view as regards 2019 amendment being incorporated to Section 31 of the Insolvency and Bankruptcy Code, 2016 being treated clarificatory and declaratory in nature and thereby treating it to have come into effect retrospectively. The relevant observation as recorded in Paragraph 138 of the aforesaid decision are reproduce as under :

*"In the foregoing paragraphs, we have held, that 2019 amendment to Section 31 of I&B Code is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished."*

*9. In view of the aforesaid legal position as well as taking into consideration the provisions of the resolution plan as approved by the National Company Law Tribunal, Ahmedabad Bench, in case of the writ applicant along with all the reliefs, concessions and dispensations as granted in the approval order, we hereby hold that the present writ application is rendered infructuous, non est and is disposed of as abated. So far as the issue of extinguishment of claims pending adjudication of the respondent revenue department is concerned, Mr. Dhaval Vyas, the Learned Senior Standing Counsel appearing for the department has submitted that though the writ petition being declared as infructuous and abated, liberty may be reserved in favour of the revenue department to invoke Section 61 of the Insolvency and Bankruptcy Code, 2016, if in any eventuality such question arises for consideration in future. It would be appropriate to consider sub-section (3) of Section 61 of the Code.*

*10. Thus, we find that the provision itself makes it clear that if in case the revenue is dissatisfied in any manner with the sanctioning of the resolution plan by the National Company Law Tribunal then the liberty is always reserved in favour of the revenue to prefer an appeal under Section 61 of the Code, 2016 before the National Company Law Appellate Tribunal.*

*11. For the reasons stated above, the present writ application does not survive and is hereby disposed of as abated and infructuous. We further clarify that we have otherwise not expressed any opinion on the merits of the case and at the same time, we reserve the liberty in favour of the revenue department to file appropriate proceedings or an appeal as provided under Section 61 of the Code, 2016. Resultantly, the Civil Application bearing No. 1 of 2021 filed in the main writ application also stands disposed of accordingly. Notice stands discharged."*

**25.** I also hold that the Commissioner (Appeals), Ahmedabad vide OIA No. AHM-EXCUS-00i~APP-141/2023-24 dated 03.10.2023 in the case of M/s. Perfect Boring Pvt. Ltd has held that when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Relevant portion of said judgement is reproduced below for ready reference:-

7.5 Bare reading of the aforesaid provision makes it clear that the Central Government any State Government or any Local Authority to whom debt in respect of payment of dues arising under any law for the time being in force, then such as the authorities to whom statutory dues are owed falls within the purview of Section 31 of the Code, 2016. As such when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated.

7.6 I also find that present proceedings i.e. issuance of the SCN and confirmation of demand relates to the period prior to the approval of the plan and not the part of the approved plan, even the SCN was issued after the approval of the plan by NCLT. Therefore, in my considered view that the proceeding initiated vide the present SCN dated 12.04.2021 and issuance of the impugned order by the adjudicating authority is infructuous and not legally tenable and deserved to be set aside.

26. In view of the above discussion, findings and case laws I find that it is very settled position that once a resolution plan is approved by the Adjudicating Authority/NCLT under sub-section (1) of section 31 of IBC, the claims which are not part of the such resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. I also find that present proceedings i.e. demand in present Show Cause Notice No.- GST/15-97/OA/2023-24 dated 28.12.2023 pertains to the period prior to the approval of the plan and not the part of the approved plan. Therefore Show Cause Notice dated 28.12.2023 which issued after approval of resolution plan is not sustainable and therefore required to be dropped. As the demand itself is not sustainable, the question of charging interest under Section 50(1) of CGST Act 2017, imposing penalty under the provisions of Section 73(1) of CGST Act 2017 and late fee for non filing of returns does not arise.

27. Accordingly, I pass the following order:

**ORDER**

I. I hereby order to drop proceedings initiated against M/s. HCP PLASTENE BULKPACK LIMITED GSTIN 24AABCG1282C2Z6 situated at 13, H.B. JIRAWALA HOUSE, NAVBHARAT SOCIETY, OPP. PANCHSHEEL BUS STOP, Usmanpura, Ahmedabad, Gujarat, 380013 as being taken over M/s. GOPALA POLYPLAST LTD (GSTIN: 24AABCG1282C1Z7) vide Show Cause Notice No.- GST/15-97/OA/2023-24 dated 28.12.2023.

28. Accordingly the Show Cause Notice No. GST/15-97/OA/2023-24 dated 28.12.2023 is disposed off.

  
(Lokesh Damor)

Additional Commissioner,  
Central GST & CE,  
Ahmedabad North

By RPAD/EMAIL

To,

M/s. HCP PLASTENE BULKPACK LIMITED

**GSTIN : 24AABCG1282C2Z6**

13, H.B. JIRAWALA HOUSE, NAVBHARAT SOCIETY,

OPP. PANCHSHEEL BUS STOP,

Usmanpura, Ahmedabad,

Ahmedabad, Gujarat, 380013.

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Div- VII Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Central GST & Central Excise, Ahmedabad North.
- ✓ 4. The Supdt.(System), CGST & C.E. Ahmedabad North for uploading the order on website.
5. Guard File.

