



अनुयायक (अपील) का कार्यालय एवं सेवा केंद्र केन्द्रीय कर भवन
 OFFICE MUNICIPAL COMMISSIONER, APPEALS GST & CENTRAL EXCISE



द्वितीय तलवाड़ी इलाकी मकान / 2nd Floor, GST Bldg
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आपलेशन का विवरण:

आपलेशन का क्रमांक / Case No.	आपलेशन का प्रकार / Type	दिनांक / Date
MS/01/09/2019	Refund/21.190/Mundra/Refund/2019	03.12.2019

आपलेशन प्रवेश संख्या / Appeal No.

KCH-EXCIS-001-APP-1145-2019

आपलेशन संख्या / Case No. 25.03.2019
 दिनांक / Date of case 31.03.2019

आपलेशन के प्रकार / Type of case: Refund

आपलेशन के विवरण / Details of case: Refund of duty on goods

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18. The Government of India has decided to... (Hindi text) ...

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- (ii) ...
- (iii) ...

19. The Government of India has decided to... (English text) ...

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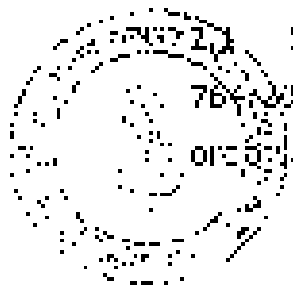


: ORDER - IN APPEAL :

M/s. Anani Wilkar Ltd., Village - Dharu, Taluka: Mundra, District - Kutch, Pin Code - 370 421 (having Service Tax Registration No. AABLA0566ST001 (a merchant exporter and hereinafter referred to as 'the appellants') has filed present appeal against Order-in-Original No. Refund/21/DC/Mundra/Refund/2018-19 dated 03.12.2018 (hereinafter referred to as 'the Impugned Order') passed by the Deputy Commissioner, CGST, Mundra, (hereinafter referred to as 'the lower adjudicating authority').

2. The brief facts of the case are that the appellants had filed refund claims of (1) Rs. 13,28,993/- for the period from January, 2009 to March, 2009 on 31.07.2009; (2) Rs. 43,49,541/- for the period from April, 2009 to September, 2009 on 25.09.2010; (3) Rs. 35,38,000/- for the period from October, 2009 to December, 2009 on 21.09.2010; (4) Rs. 88,04,455/- for the period from April, 2010 to September, 2010 on 21.04.2011 and (5) Rs. 96,84,000/- for the period from October, 2010 to December, 2010 on 29.09.2011 (total Rs. 2,79,05,080/-) with the Assistant/Deputy Commissioner, Service Tax Division, Rajkot under Notification No. 17/2009-ST dated 07.07.2009 (hereinafter referred to as 'the said notification'), who rejected refund claims mainly on the ground that their various branches at Indore, Karnal, Mumbai, Ahmedabad, Ludhiana, Kakinada, Chennai etc. did not fall within the jurisdiction of the office of the Deputy Commissioner, Service Tax Division, Rajkot as these branches were not registered under STC No. AABCA0566ST002 and hence, they have not followed the conditions of the said notification. The refund claims of Rs. 2,79,05,080/- were rejected by the Assistant/Deputy Commissioner, Service Tax Division, Rajkot vide various orders (1) 387/ST/Refund/2011 dated 30.01.2011 (for Rs. 56,78,534/- + Rs. 13,28,993/- + Rs. 43,49,541/-); (2) 443/ST/Refund/2011 dated 30.07.2011 (for Rs. 25,38,000/-); (3) 67/ST/Refund/2012 dated 15.07.2012 (for Rs. 88,04,455/-) and (4) 131/ST/Refund/2012 dated 28.07.2012 (for Rs. 96,84,000/-) respectively.

The Deputy Commissioner (Appeals), Rajkot vide O.A. No. 751 of 784/2012/STMR(A)/RET/RA dated 03.09.2012 upheld the above said orders. However, the Hon'ble CESTAT, Ahmedabad vide Order No.



10/11/2012

AF/11120-11123/2015 dated 28.07.2015 set aside the said DTA and remanded the matter to an adjudicating authority. The Assistant Commissioner, Service Tax Division, Gandhidham vide CIO No. 51/156/2017-18 dated 20.12.2016 (for Rs. 35,38,001/-) and 396/ST/ST/2016-17 dated 20.12.2016 (for Rs. 49,70,085/-; Rs. 43,49,541/-; Rs. 88,07,465/- and Rs. 38,87,060/-) again rejected the refund claims, inter alia, on the ground that refund claims could not be entertained as the branch offices situated at other positions do not fall within the jurisdiction of the then Service Tax Division, Gandhidham and these branches were not centrally registered with them under STC No. AACCA8056GST003 through obtained by the appellant. Aggrieved by the said CIOs, the appellant again filed appeals before the Commissioner (Appeals), Rajkot vide vide DTA No. KCH-EXCIS-002-APP-111-2017-18 dated 11.12.2017 and DTA No. KCH-EXCIS-002-APP-015-2018-19 dated 12.07.2018 remanded the case back to the lower adjudicating authority. The then Commissioner (Appeals), Rajkot on application filed by the Commissioner, Central Excise & Service Tax, Gandhidham issued S.O. KCH-MTSC-ORDER (SOM)-002-2018-19 dated 17.07.2018 for rectification of calculation mistakes committed by the adjudicating authorities but kept in DTA No. KCH-EXCIS-002-APP-111-2017-18 dated 11.12.2017. The lower adjudicating Authority vide the impugned order has again rejected the refund claims amounting to Rs. 2,79,35,080/- on the grounds that the branches from where export trade and also on the ground that the branches which sold services tax on the specified services, did not fall within the jurisdiction of the lower adjudicating authority where refund claims had been filed.

3. Being aggrieved with the impugned orders, the appellant preferred the present appeals, inter alia, on the following grounds:

- (i) The lower adjudicating authority did not consider the evidences regarding registration of all these branches at Mumbai only and he held that these branches were not registered with them without discussing/refering evidences produced by them. Therefore, the impugned order is non speaking order and hence, non tenable.
- (ii) The department issued centralized registration certificate on 07.03.2012, which was applied by them on 13.03.2010, but central authority for all these branches and payment of service tax on

benefit of all these branches was allowed to them by the service tax division at Mumbai since 2006; that no reason has been shown in the impugned order for not accepting this fact; that the lower adjudicating authority has erred in rejecting refund claims on the ground that the premises of Indora, Ludhiana, Kurukshetra branches were not registered whereas the appellant had registration for these branches since 2006, and had also been paying service tax for all these branches at Mumbai only since 2005; that the requirement of registration is only for the administrative convenience and such administrative aspects cannot be made basis for rejection of refund when facts of export of goods by them and utilization of the services for export of goods and payment of service tax by them are not in dispute; that the grant of registration is the function of the department; that having accepted the centralized status of registration for payment of service tax at Mumbai for all these branches the department cannot treat them not registered for rejection of their refund claims; that the online amendment in registration was also allowed by the department on 07.03.2012 by granting centralized registration online on their application submitted by the appellant on 10.03.2010.

(ii) The appellant was registered for all these branches since 2006. It was vehemently submitted that the procedural aspects like endorsement of registration certificate can't be ground for rejection of refund claim especially when department delayed it for almost two years. Therefore, it is incorrect to say that during relevant time, the registration of the branches of the appellant was not available.

(iv) The purpose behind refund of service tax is to implement the overall policy of the Government that taxes are not to be exported. Once the fact of export of goods is not in doubt, then the taxes paid on such goods must be refunded. The notification only provides mechanism to implement this overall policy and in that name, refusal to the appellant of service tax paid by them at Mumbai for all these branches can't be rejected. The principle of interpretation of law in such cases is to allow the refund and not to deny the same. The technicalities should not be used to deny substantial benefit to the appellant. It does not lie in the mouth of the Government to raise such objections only to deny refund to the assessee and burden them with taxes not leviable on them.

The provisions/conditions of Notification No. 41/2007 were the



[Signature]

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same as Notification No. 17/2009-ST and that the Board had issued clarifications vide Circular No. 121/4/2008-ST dated 12.05.2008, that the language and intent of Notification No. 17/2009-ST and Notification No. 41/2007-ST for the process of claim refund were the same; that Notification No. 17/2009-ST was issued only to streamline the refund of service tax paid on the services used for export of goods. Therefore, the notifications issued by the Board vide Circular No. 121/4/2008-ST dated 12.05.2008 would apply with full force even in respect of subsequent Notification No. 17/2009-ST dated 07.07.2009. The CBEC Circular very clearly clarified that wherever exporter is registered with the department, either as manufacturer or as trader, the claim can be made where ever registration is obtained. Thus, there is no wrong done by them and the lower adjudicating authority should have sanctioned refund claims.

4. Personal hearing is held and is held by Sri S. I. Vyas, Advocate and Sri Anand Chohan, Senior Manager (Taxation), who reiterated the grounds of appeal and submitted that Notification No. 17/2009-ST is in continuation of Notification No. 41/2007-ST and not a separate and new notification; that Board issued Circular No. 121/4/2008-ST dated 12.05.2008 clarifying that refund can be claimed from a service tax office where any premises is registered or from legal Office; that since they were registered with Mumbai CF & ST Division, they filed correctly their claims there; that in their Registration Certificate No. A5/ST/ST/109/2008-09 they got various branches added vide their letter dated 26.01.2008 and Ludhiana, Indore, Kurnool are filed at Sl. No. 3, 15, 37 respectively; that even in the revised list dated 09.07.2008, those places were listed like Kurnool at Code 4301 (Page 43), Indore at Code 5350 (Page 46), Ludhiana; that CBEC Circular dated 12.05.2008 at Para 4 very clearly states that refund may be filed with CF & ST jurisdictional authorities wherever any premises of trader is registered with ST department; that since they as trader were registered at Mumbai, they were obliged to file refund claim for their all branches at Mumbai only; that refund sanctioning authority/lower adjudicating authority is duty bound to grant refund following provisions of the Board vide said Circular dated 12.05.2008; that the impugned order needs to be set aside being patently incorrect.

Findings:

5. We have carefully gone through the facts of the case, the impugned order, the grounds of appeals and earlier orders passed by

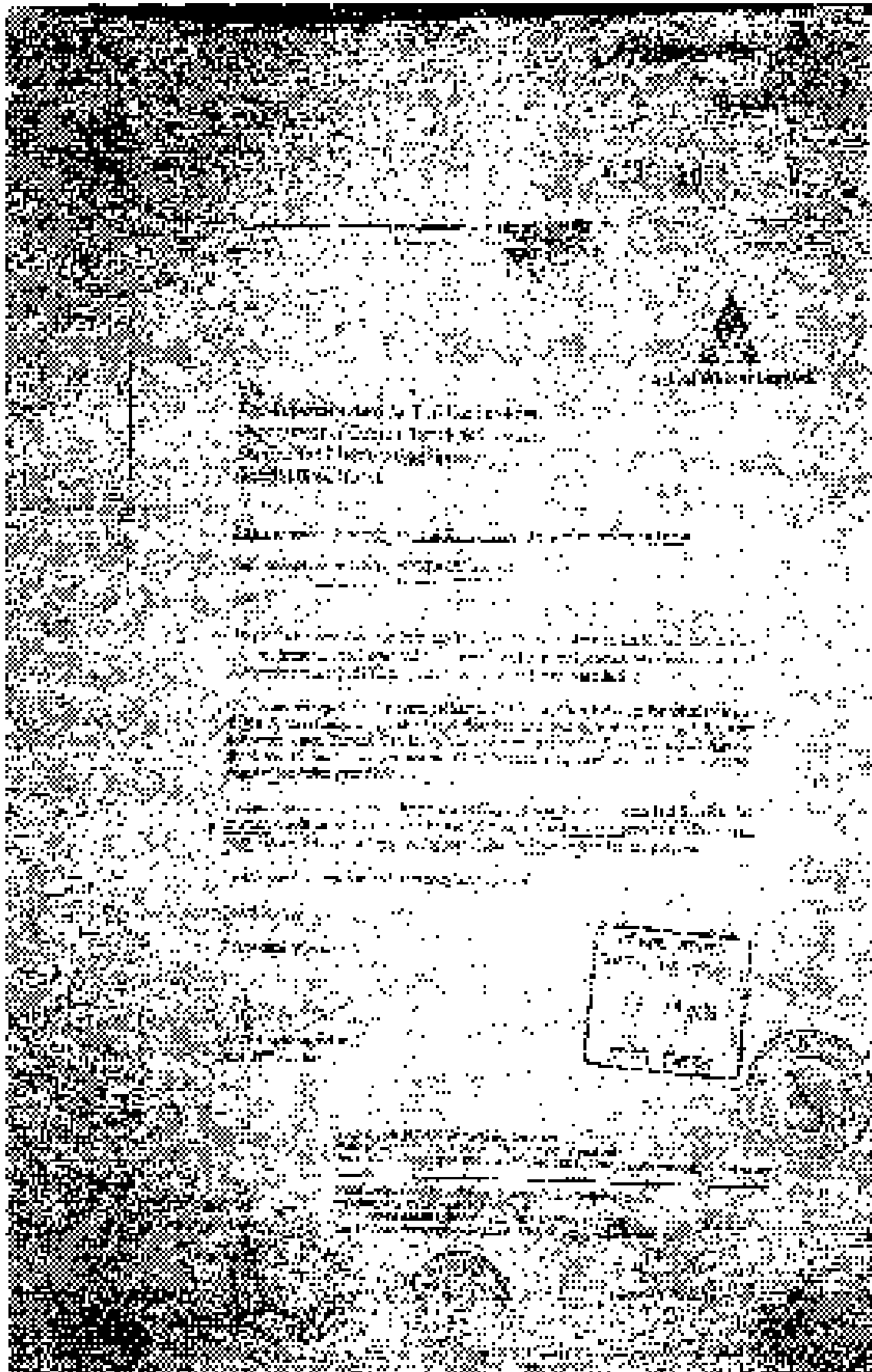
Commissioner (Appeals), Rajasth. CESTAT and other relevant records of the case. I find that the issue to be decided in the present appeal is whether the appellant is entitled to refund of service tax paid at Mundra for the service used for export of goods, under Notification No. 17/2009-ST, exported from their branch offices located at Indore, Ludhiana, Kurnool etc.

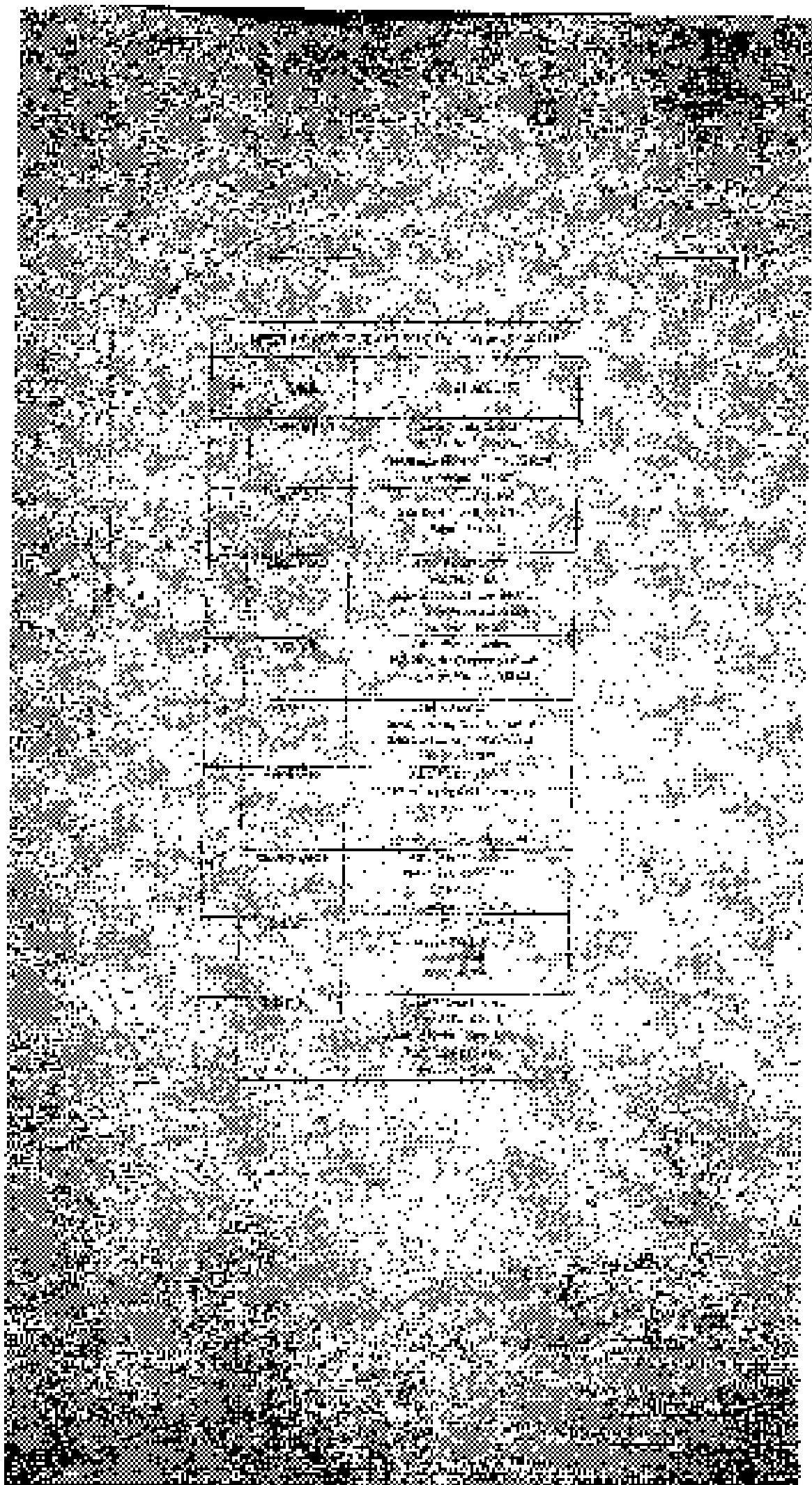
6. It is a fact that the appellant had filed refund claims of service tax paid on the specified services utilized by their branches towards export of the goods from January, 2009 to March, 2009 for refund of Rs. 15,28,563/-; from April, 2009 to September, 2009 for refund of Rs. 43,49,541/-; from October, 2009 to December, 2009 for refund of Rs. 35,35,001/-; from April, 2010 to September, 2010 for refund of Rs. 88,04,465/- and from October, 2010 to December, 2010 for refund of Rs. 98,81,080/- under Notification No. 17/2009-ST which granted refund of service tax paid on the services used to export the goods. The lower adjudicating authority rejected their refund claims, *inter alia*, holding that their branches, from where export had been made, were not registered with Ministry's division and hence did not fall under the jurisdiction of the lower adjudicating authority during the period under consideration.

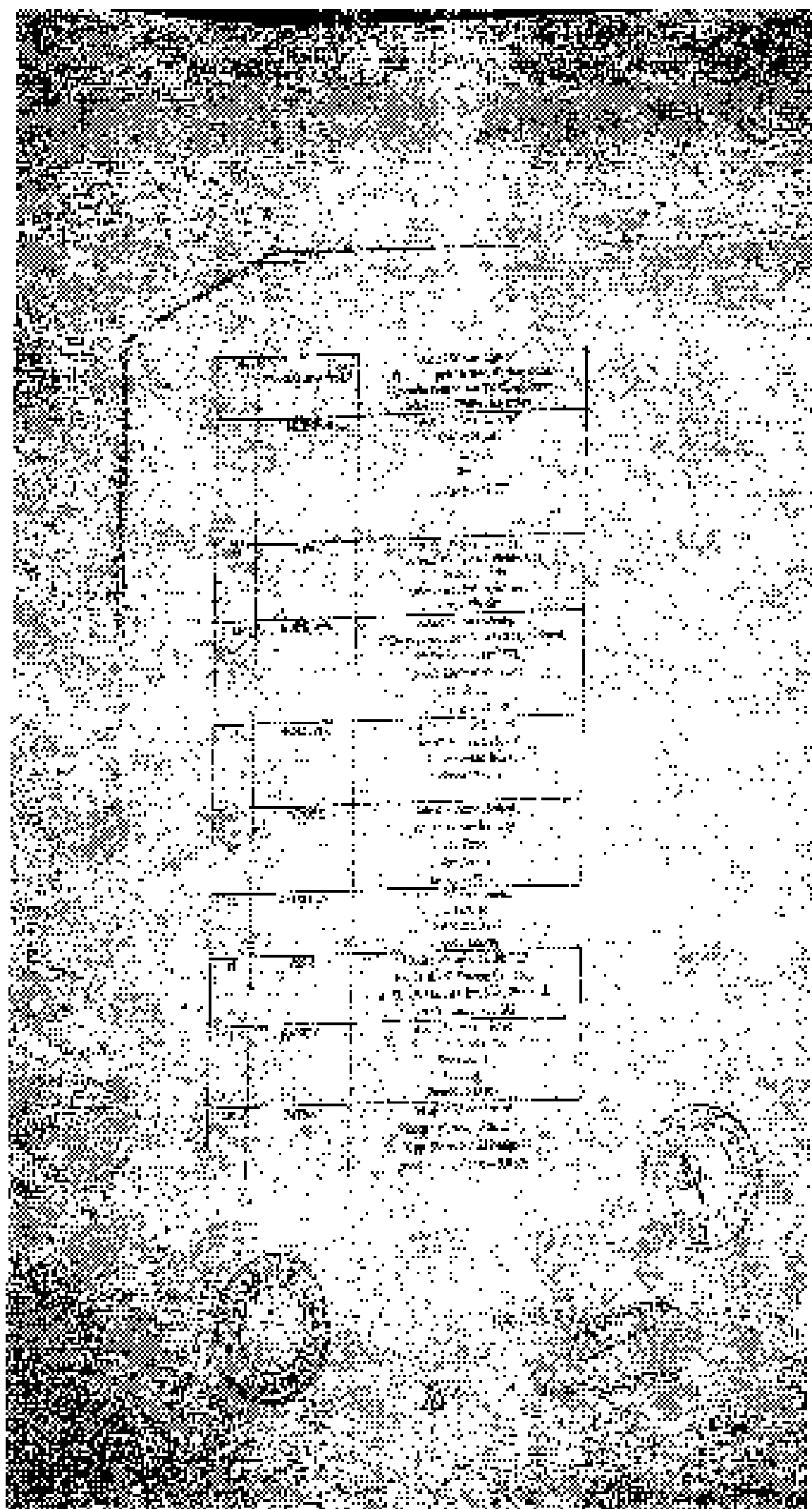
7. I find that the appellant has contended that the department had accepted central registration for Mundra for all their branches w.e.f. 28.01.2005 and had allowed central billing and accounting to be made at Mundra since 2005 and also for raising central invoice on GTA for all their branches and also to pay service tax on GTA at Mundra only for all their branches since 2005; that the department issued online centralized registration certificate to them on 07.03.2012 with all their branches, which was applied by them online on 13.03.2012; that since they were already operating on central billing and payment of service tax on GTA for all their branches at Mundra only since 2005 off line, online registration in 2012 can be made basis to deny their refund of service tax paid by them on the services utilized for export of goods under Notification No. 17/2009-ST dated 07.07.2009.

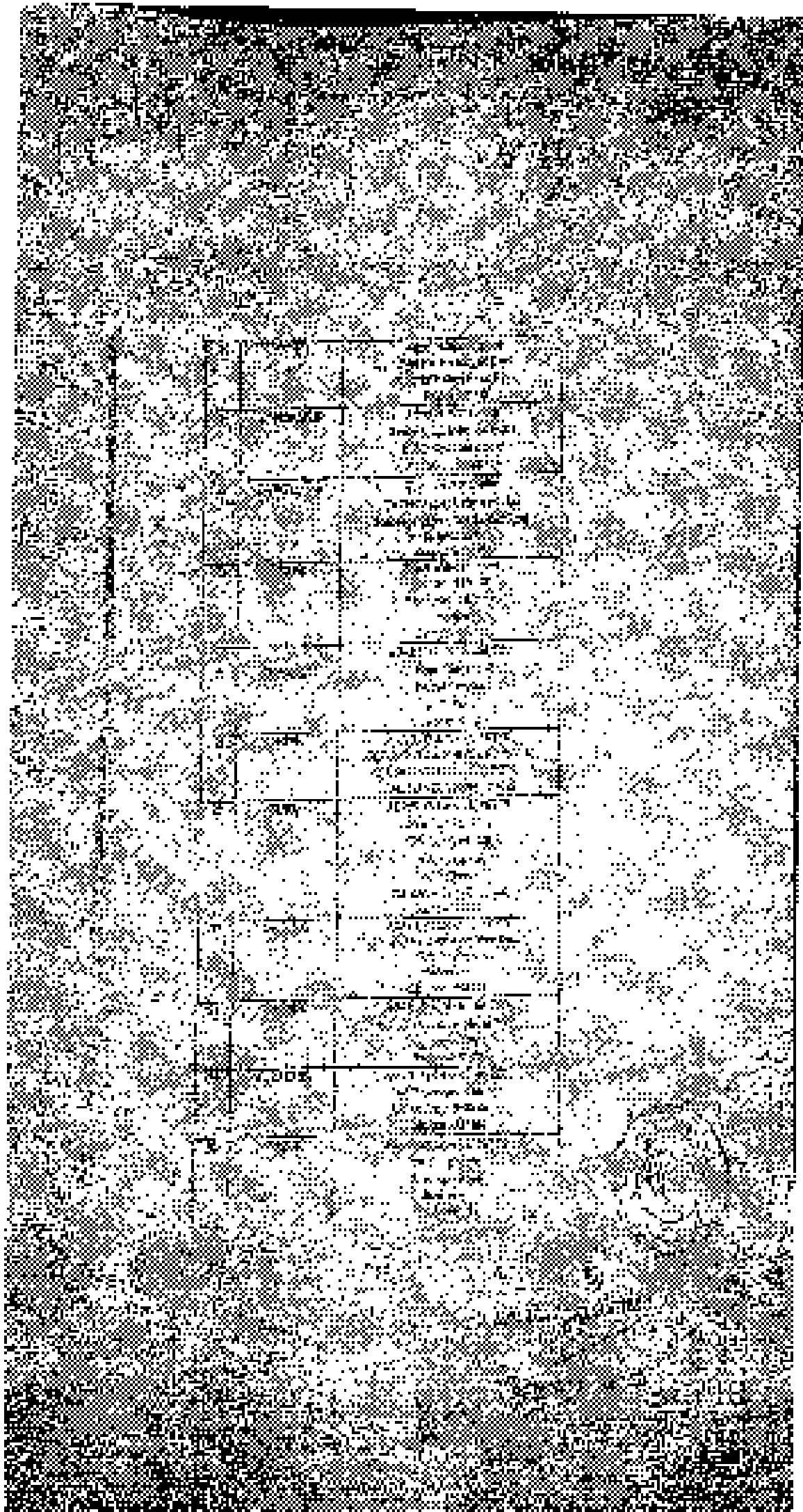
7.1 I find that the Impugned refund claims cover period from January, 2009 to December, 2010 as detailed at Para 6 involving refund of Rs. 2,79,95,080/-. Notification No. 17/2009-ST required the

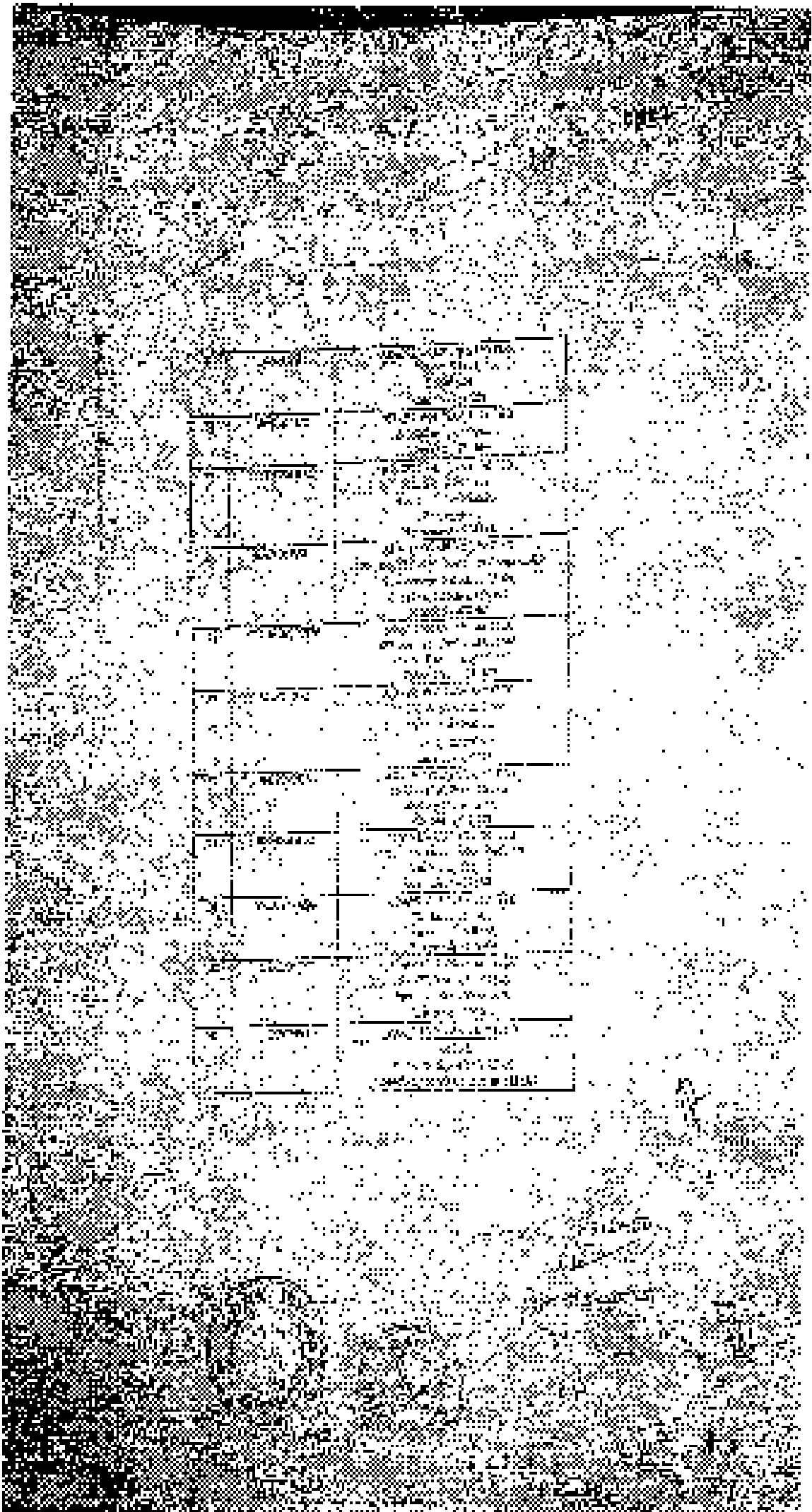
appellants to have been registered at Mundra for all their branches for which they claimed refund for Kutch, Jalore, Ludhiana etc. and they have produced documents evidencing that they were registered at Mundra for all these branches since 2005 as is evident from their letter dated 27.01.2005, acknowledged by Range Superintendent on 28.01.2005, scanned copy is reproduced below:

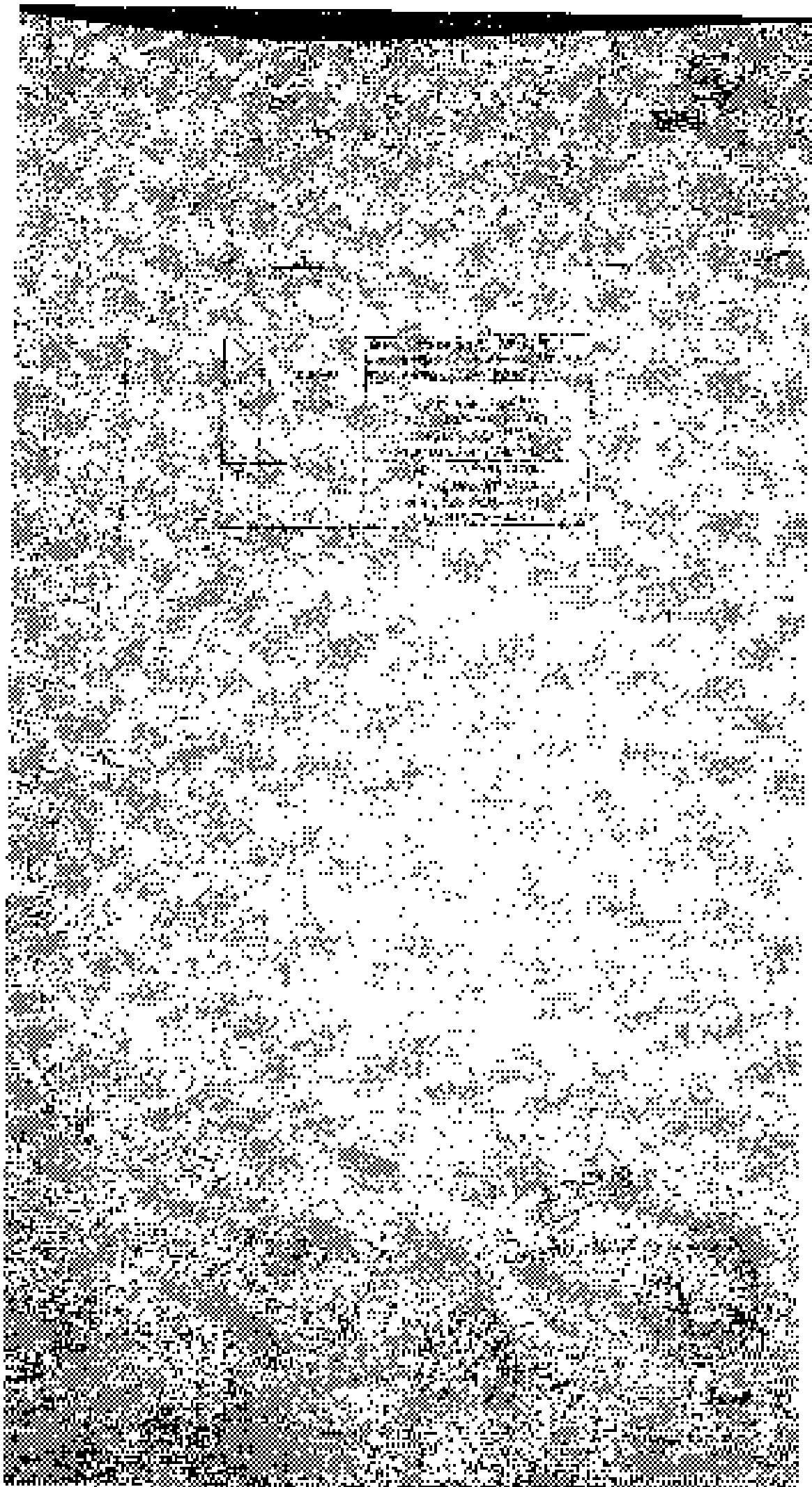




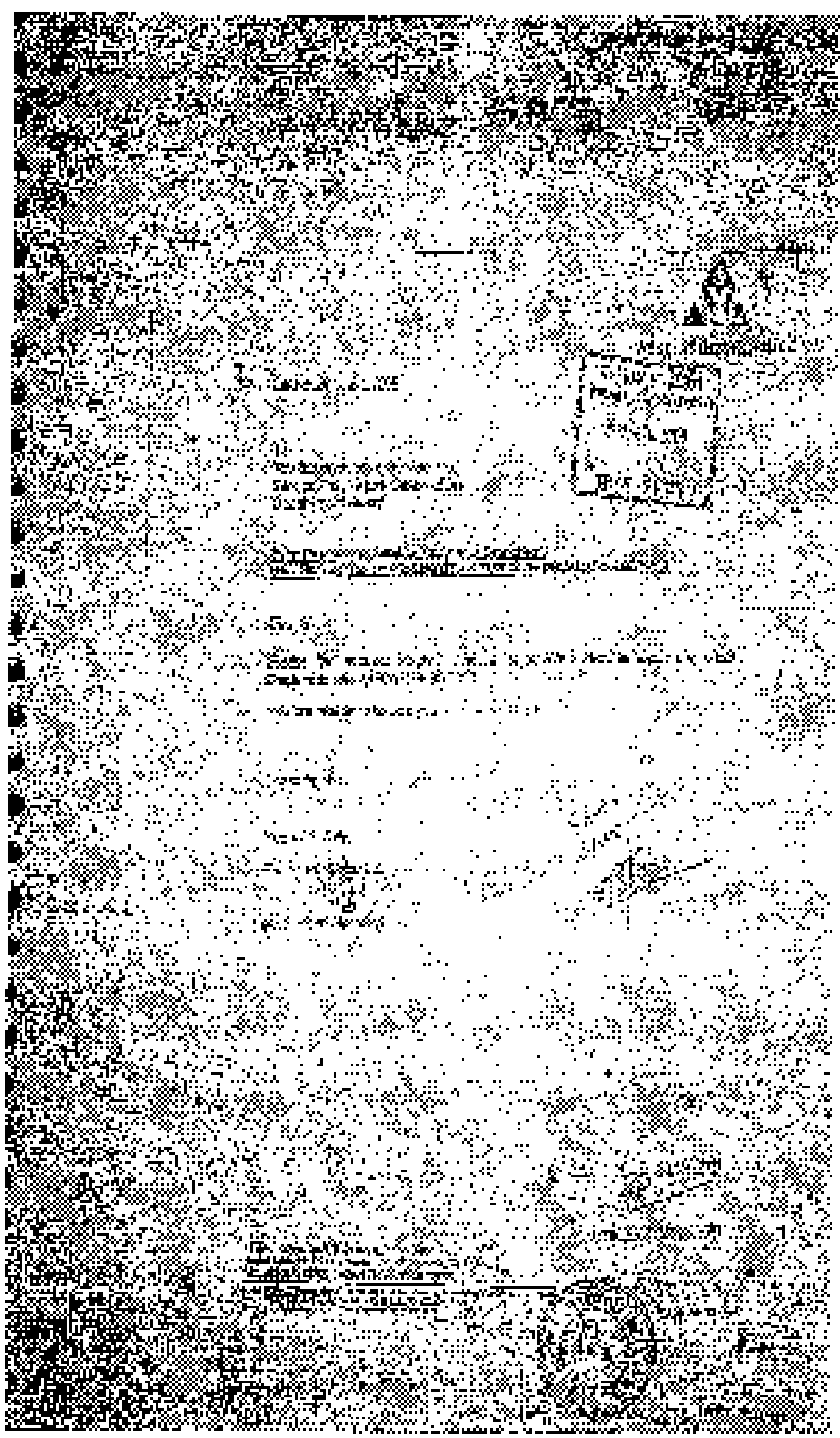




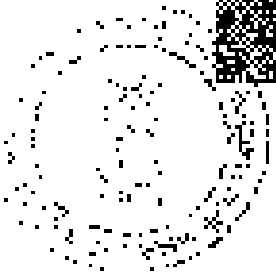




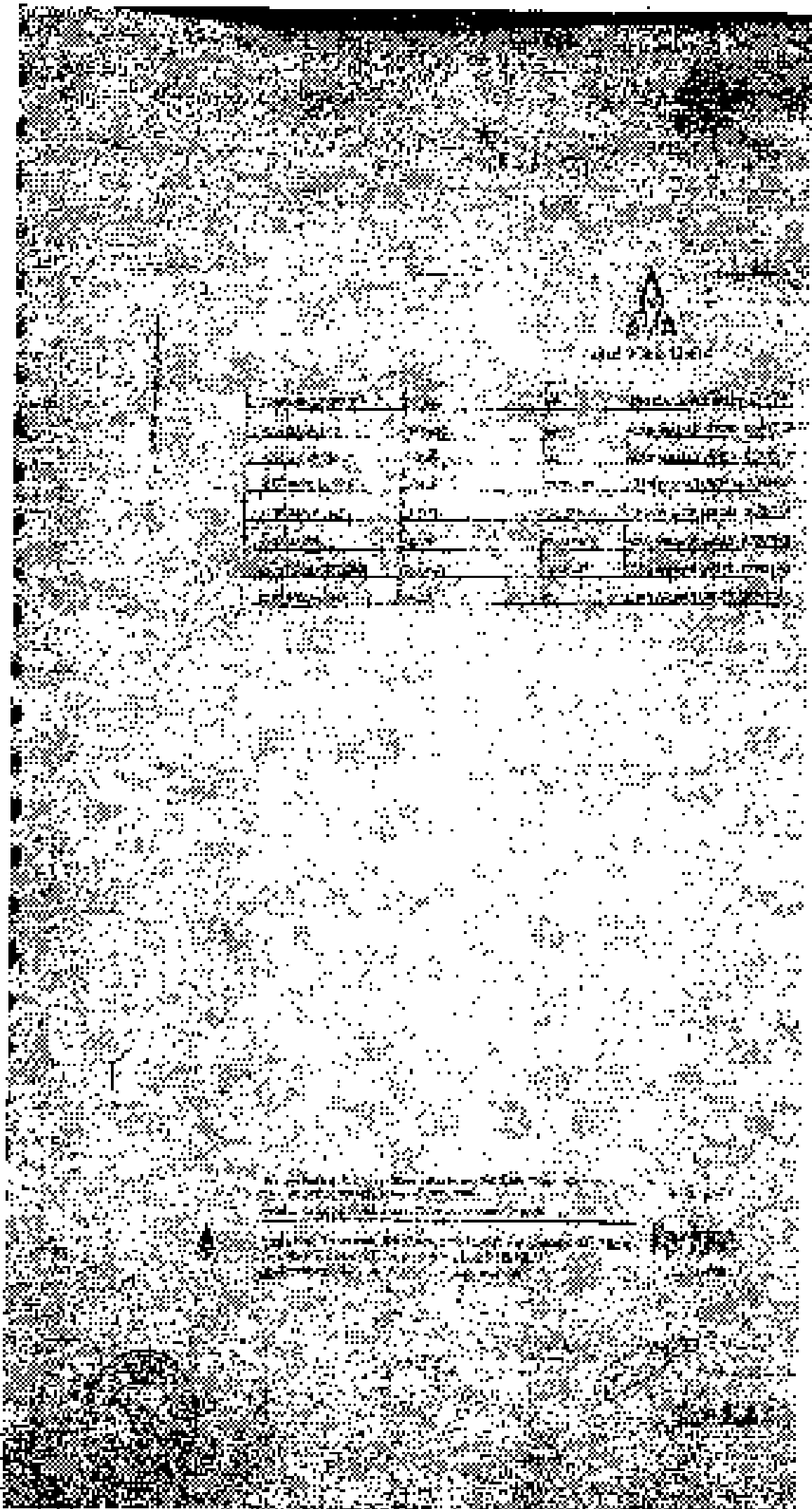
72 The appellant has been submitting revised Branching 1st from time to time, as is evident from their letter dated 09.07.2008, scanned copy as produced below:



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DATE	DESCRIPTION	AMOUNT	BALANCE
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1951-01-15	Deposit	50.00	150.00
1951-02-01	Withdrawal	20.00	130.00
1951-02-15	Deposit	30.00	160.00
1951-03-01	Withdrawal	10.00	150.00
1951-03-15	Deposit	40.00	190.00
1951-04-01	Withdrawal	15.00	175.00
1951-04-15	Deposit	25.00	200.00
1951-05-01	Withdrawal	30.00	170.00
1951-05-15	Deposit	15.00	185.00
1951-06-01	Withdrawal	25.00	160.00
1951-06-15	Deposit	35.00	195.00
1951-07-01	Withdrawal	10.00	185.00
1951-07-15	Deposit	45.00	230.00
1951-08-01	Withdrawal	20.00	210.00
1951-08-15	Deposit	30.00	240.00
1951-09-01	Withdrawal	15.00	225.00
1951-09-15	Deposit	20.00	245.00
1951-10-01	Withdrawal	30.00	215.00
1951-10-15	Deposit	40.00	255.00
1951-11-01	Withdrawal	10.00	245.00
1951-11-15	Deposit	25.00	270.00
1951-12-01	Withdrawal	15.00	255.00
1951-12-15	Deposit	35.00	290.00
1952-01-01	Closing Balance		290.00



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1. The first section of the document contains a list of names and their corresponding addresses. The names are listed in the first column, and the addresses are listed in the second column. The list is organized in a table format with two columns and approximately 10 rows.


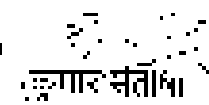
2. The second section of the document contains a list of names and their corresponding addresses. The names are listed in the first column, and the addresses are listed in the second column. The list is organized in a table format with two columns and approximately 10 rows.

7.3 I also find that these documents were submitted during adjudication as so but for reasons not stated the adjudicating authority preferred not to look into these vital documents. When online registration under ACES started in the department in 2009-10, the appellant applied for online registration on 13.03.2010, however, department took about 2 years to grant their online centralized registration, for which, the space land can't be faulted with. Hence, in my considered view, there is no justification whatsoever to reject refund claims for the period from January, 2000 onwards including from March, 2015 onwards involving refund of Rs. 2,73,25,080/- when the export of goods, the services utilized for export of the goods and payment of service tax on these services are not in dispute. There is no justification at all in the impugned order for rejecting these refund claims only on the ground that Mundra Division has no jurisdiction over all their branches located all over India when Mundra Division has allowed payment of service tax for all their branches by the appellant at Mundra only. In other words, the appellant has paid service tax for the services used in the export of goods from their branches in India and they sought refund at Mundra for that service tax paid by them at Mundra only.

7.4 Since refund is substantial benefit and use of the said services by the appellant in export of goods and payment of service tax by the appellant at Mundra on these services for all their branches are not under dispute, I have no option but to hold that the refund is admissible to the appellant.

8. In view of above, I set aside the impugned order and allow this appeal.

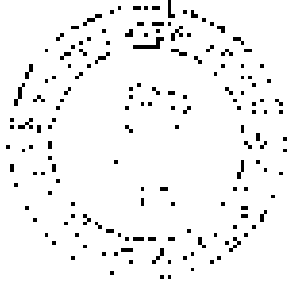
- 9. अपीलकर्ता द्वारा दर्ज की गई अपील का विचार उपरोक्त शर्तों के विरुद्ध जता है।
- 9. The appeal filed by the appellant is hereby disposed of in above terms.



 अधीक्षक (आय) मुद्रा विभाग, गुजरात
 अधीक्षक (आय) मुद्रा विभाग, गुजरात

By Regd. Post AD,
 P.O.

M/s. Adan Wilmar Ltd., Village
 Dhruv, Taluka: Mundra, District
 Kutch, Pin Code - 370 421

श्री. अदील बेगमर ली.
 प्लॉट - 34 वाडुवा नहरा,
 जिला - व.ख. पिनकोड - 370 421



Copies:

- 1) The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information please.
- 2) The Commissioner, CGST & Central Excise, Kutch Commissionerate, Gandhidham for necessary action.
- 3) The Assistant Commissioner, CGST & Central Excise, Dabhoi-Mundra for further necessary action.
- 4) Guard file.

