

#### ःआयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔरकेन्द्रीय उत्पाद शुल्कःः O/O THE COMMISSIONER (APPEALS), GST &CENTRAL EXCISE

द्वितीय तल,जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan रेस कोर्स रिंग रोड / Race Course Ring Road



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DIN20221164SX000000B8DA

अपील / फाइलसंख्या/ Appeal /File No. V2/37/BVR/2022 मूल व्यादेश सं / O.I.O. No. 02/2022-23 दिनांक/Date 04-Jan-22

अपील आदेश संख्या(Order-In-Appeal No.):

### BHV-EXCUS-000-APP-088-2022

आदेश का दिनांक / Date of Order: 11.11.2022

जारी करने की तारीख / Date of issue:29.11.2022

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर,राजकोट / जामनगर / गांधीधाम। द्वारा उपरनिश्चित जारी मूल आदेश से सुजितः /

Arising out of above mentioned 010 issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham:

अपीलकर्ता&प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-

M/s. Rajeshreeben Rajeshkumar Jayswal, 55 Vshwakunj Society Ratanpar, SurendranagarGujarat

इस आदेश(अपील) से व्यक्ति कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकारण के समक्ष अपील दायर कर सकता है।/ Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

सीमा शुस्क केन्द्रीय उत्पाद शुल्क एव सवाकर अपीलीय न्यायाधिकरण के प्रांत अपील, केन्द्रीय उत्पाद शुल्क आधीनयम,1944 की घारा 35B के अतर्गत एव (A) वित्त अधिनियम, 1994 की घारा 86 के अंतर्गत निभ्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मृल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर॰ के॰ पुरेम, नई दिल्ली, को की जानी चाहिए।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिष्येद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय त्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८०० (६को की जानी चाहिए।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय च्त्याद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को बार प्रतिसों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ज्याज की माँग और लगाया गया जुमाना, रुपए 5 साख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिजस्टाए के नाम से किसी भी सार्वाजनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक द्वारा किया जाना चाहिए। संबंधित हाफ्ट का भगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑक्टर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules. 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.10,000/- where amount of dutydemand/interest/penalty/refund is lipto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of stay shall be accompanied by a fee of Rs. 500/-

अपीलीय न्यायाधिकरण के समझ अपील, बित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जब मांग न्याज की मांग और लगाया गया जुर्माना, रुपए 5 साख या उससे कम 5 लाख रुपए वा 50 लाख रुपए कि अधिक है तो कमश: 1,000/- रुपये, 5,000/- रुपये अध्वया 10,000/- रुपये का कम 50 लाख रुपए लंक अध्या 50 लाख रुपए से अधिक है तो कमश: 1,000/- रुपये, 5,000/- रुपये अध्वया 10,000/- रुपये का निर्धारित जमा सुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिकटार के नाम से किसी भी साविजन के के बेक द्वारा जारी रेखांकित बेक द्वारा किया जाना चाहिए। संबंधित श्राप्त के साथ 500/- रुपए का निर्धारित शुल्क जमां करना स्वीधत अपीलीय न्यायाधिकरण की शाखा से स्वार्थ के शाखा में रूपण का निर्धारित शुल्क जमां करना स्वीधत अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्ट ऑकर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमां करना लोगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be companied by a copy of the order appealed against (one of which shall be certified copy) and should be recompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Service tax & interest demanded & penalty levied is more than fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assarting Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

Bì

(i)

(ii)

मारत सरकार कोपूनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पूनरीक्षण आवेदन के प्रथमपूरंतुक के अंतर्गतबाद सचिव,
भारत सरकार, पुनरीक्षण आवेदन केकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्थ, नई दिल्ली-110001, को किया
जाना चाहिए।
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit,
Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to subsection (1) of Section-35B ibid: (C)

यदि माल के किसी नुक्सान के मामले में, जहां नुक्छान किसी माल को किसी कारखाने से भंडार गृह के पार्यमन के दौरान वा किसी अन्य कारखाने या फिर किसी एक भंडार मह से दूसरे अंडार नृह पार्यमन के दौरान, या किसी भंडार गृह में या भंडारण में मास के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुक्सान के मामले में!/ In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse (i)

भारत के बाहर किसी राष्ट्र या क्षेत्र को तियाँत कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुक्त के सुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को नियति की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India. (ii)

यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया भया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty. (iii)

सुनिश्चित उत्पाद के उत्पादन शुरू के भुगवान के लिए जो काटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो अपुक्त (अपील) के द्वारा वित्त अधिनियम (न॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीब अथवा समायाविधि पर वा बाद में पारित किए Credit of any duty allowed to be uselized sourced. (iv) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

उपरोक्त अवेदन की दो प्रतिवां प्रपन्न संक्ष्मा EA-8 में, जो की केन्द्रीय उत्पादन शुक्त (अपील)निवमावली 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के अपेश्व के 3 माह के अंतर्गत की जानी चाहिए। तपरोक्त आवेदन के साथ मूल आदेश के अपील अदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुक्त विधिनिवम, 1944 की धारा 35-EE के तहत निर्धारित शुक्त की अदावणी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account. (v)

पुनरीक्षण अवेदन के साथ निभ्निलिखित निर्मारित शुरूक की अदायगी की जानी चाहिए। जहाँ संलग्न एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुसतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000-/ का भुगतान किया जाए। The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac. (vi)

यदि इस आदेश में कई मूल खादेशों का समानेश है तो प्रत्येक मूस आदेश के लिए शुस्क का मुगरान, उपर्युक्त दंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए स्थास्थिति वपीलीय नगाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case if the order covers various umbers of order- in Original, see for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh see of Rs. 100/- for each. (D)

यथासंजोधित न्यायालय शुल्क बधिनिवम, 1975, के अनुसूजी-। के अनुसार मूल आदेश एवं स्थयन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended. (E)

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर जपीलीय न्यायाधिकरण (कार्य विधि) नियमातली, 1982 में वर्षित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान अकिषित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982. (F)

उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित स्थापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलायीं विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in. (G)



## :: अपील आदेश / ORDER-IN-APPEAL ::

- "Appellant") has filed Appeal No. V2/37/BVR/2022 against Order-in-Original No. 01/2022-23 dated 01.04.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division, Surendranagar (hereinafter referred to as 'adjudicating authority').
  - The facts of the case, in brief, are that the Income Tax Department 2. provided data/ details containing various persons i.e. Income Tax Assessee, who declared in their Income Tax Returns for financial year 2014-15 to have earned income by providing services classified under various service sectors. The Income Tax Department had also provided data of Form 26AS showing details of total amount paid/ credited under Section 194C, 194H, 194H & 194J of the Income Tax Act, 1961 in respect of various persons which depicts that such persons had earned income from providing services like contract, commission or brokerage, renting of movable/ immovable property, Technical or Professional service etc. The said data also contained details of the Appellant who had not obtained Service Tax Registration under the Finance Act, 1994 (hereinafter referred to as 'the Act'). The Superintendent, Central GST Division-Surendranagar issued letter dated 20.07.2020 to the Appellant calling for the information/ documents for the financial year 2014-15. Since no repty/ response was given by them, the Service Tax was determined on the basis of data/ details provided by the Income Tax department available on records.
  - 3. The above investigation culminated into Show Cause Notice dated 21.09.2020 proposing to demand Service Tax of Rs. 2,47,154/- including all cess under Section 73(1) of the erstwhile Finance Act, 1994 (hereinafter referred to as 'the Act') alongwith interest under Section 75 of the Act from the Appellant. It was also proposed to impose penalty under Section 77(1)(a), 77(2), 77 (1)(c) and Section 78 of the Act.
  - 4. The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who confirmed Service Tax demand of Rs. 2,47,154/- under Section 73(1) along with interest under Section 75 of the Act and imposed penalties of Rs. 10,000/- each under Section 77(2) and Section 77 (1)(c) of the Act. The penalty of Rs. 2,47,154/- was also imposed upon the Appellant under Section 78 of the Act with benefit of reduced penalty as perproviso to Section 78.
  - 5. Being aggrieved, the Appellant has preferred the present appeal on various grounds as stated below:

He is providing bus hiring contract carriage for transportation of

Ship

passengers in the name and style of Satyanam Travels. The customers hire his bus for specific purpose i.e. marriage etc. A contract carriage for transportation of passengers, excluding tourism, conducted tour, charter or hire is exempted from the levy of Service Tax vide Notification No. 25/2012-Service Tax dated 20.06.2012, entry Sr. No. 23.

- (ii) As per Section 66D(o) service of transportation of passengers, with or without accompanied belongings, by a stage carriage is not a service. He is providing letting out the bus owned by him on rental basis to the customers which falls under negative list of services under Section 66D(o) of the Act.
- (iii) The demand is time barred.
- (iv) The impugned order is bad in law without considering the Notification No. 26/2012 Sr. No. 11 allowing 90% abatement of total receipt.
- 6. Personal hearing in the matter was held on 21.10.2022. Shri P. D. Raval, Advocate appeared for personal hearing in respect of 4 appeals nos. 34, 35, 36 & 37/BVR/2022 filed by M/s. Rajeshkumar Chunilal Jayswal (Satyanam Travels). He reiterated the submissions made in the appeals. He submitted that the appellant is merely providing buses on rent for occasions such as marriages etc. Their activity is exempted from Service Tax under the mega exemption referred by them. He, therefore, requested to drop the proceedings by setting aside the Order-In-Original and allowing consequential relief.
- 7. I have carefully gone through the case records, Show Cause Notice, impugned order and appeal memorandum filed by the Appellant. The issue to be decided in the case on hand is that whether the Appellant is liable to pay service tax on activity carried out by them or not.
- 8. I find that the Appellant is providing bus hiring contract carriage for transportation of passengers in the name and style of Satyanam Travels. After introduction of negative list regime with effect from 01.07.2022 as contained in Section 66D of the Act, all the services are taxable except those mentioned in negative list or mentioned in mega exemption Notification No. 25/2012.
- 9. It is the contention of the Appellant that their services are covered under the negative list which is re-produced below:

#### "SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely:-

- (o) service of transportation of passengers, with or without accompanied belongings, by—
- (i) a stage carriage
- (ii) railways in a class other than-
- (A) first class; or
- (B) an air-conditioned coach;



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- (iii) metro, monorail or tramway,
- (iv) inland waterways;
- (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
- (vi) metered cabs or auto rickshaws"

Stage carriage means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.

On going through the wordings applied, it is clear that the services carried out by the Appellant is not covered under transportation of passengers by a stage carriage since on verification of PERMIT issued by the R.T.O., Surendranagar, the same is a 'contract carriage permit' and not stage carriage permit. Therefore, the contention of the Appellant is not correct and I discard the same.

- 10. The Adjudicating Authority held that the services provided by the Appellant is of "Tour Operator" and hence, services provided does not falls under mega exemption Notification 25/2012-Service Tax (entry no. 23). The contention of the Appellant is that their services are exempted by way of Notification No. 25/2012-Service Tax dated 20.06.2012 at entry serial number 23. For sake of reference, the same is re-produced below:
  - "23. Transport of passengers, with or without accompanied belongings, by -
  - (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
  - (b) non-air conditioned contract carriage other than radio taxi, for the transportation of passengers, excluding tourism, conducted tour, charter or hire;"

As per Section 2(7)of the Motor Vehicle Act, 1988 the "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum—

- (a) on a time basis, whether or not with reference to any route or distance; or
- (b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes—
- (i) a maxicab; and
- (ii) a motorcab notwithstanding the separate fares are charged for its passengers;

The bus owned by the Appellant is registered as a contract carriage with the regional road transport office, Surendranagar. A contract carriage means a motor vehicle which carries passengers for hire or reward and is engaged under a contract whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum (a) on a time basis,

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whether or not with reference to any route or distance; or (b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey. Here, the Appellant supplied his bus on a time basis with reference to any rout or distance for purpose of marriage etc. Therefore, the Appellant is falling under the ambit of Sr. No. 23(b) of the Notification 25/2012-Service Tax dated 20.06.2012 and the service rendered by him is exempted from purview of Service Tax.

- 11. In view of discussions and finding, I set aside the impugned order and allow the appeal filed by the Appellant.
- 12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
- 12. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested

Superintendent Çentral GST (Appeals) (शिव प्रताप सिंह)/(Shiv Pratap Singh), आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

गार्ड फाइल।

Rajkot

M/s. Rajeshreeben Rajeshkumar

Jayswal, 55, Vishwakunj Society,

Ratanpar, Surendranagar.

सेवा में,

मे. राजेश्रीबेन राजेशकुमार जायसवाल, 55, विश्वकुंज सोसायटी, रतनपर, सुरेन्द्रनगर।

# प्रतिलिपि :-

Τo,

- मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेत्।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेत्।
- 3) अपर/सयुंक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, सुरेन्द्रनगर मण्डल को आवश्यक कार्यवाही हेतु।