

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/AM-RM/10/2022-23

Date-30.09.2022

BEFORE THE BENCH OF

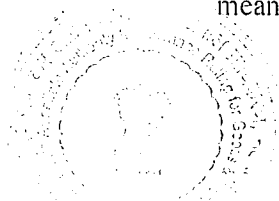
(1) Shri Ashok Kumar Mehta, MEMBER (Central Tax)

(2) Shri Rajeev Kumar Mital, MEMBER (State Tax)

Name and Address of the Appellant:	M/s. Mahavir Nagar Shiv Shrushti Co-op. Housing Society Limited, Plot No. Ph-1, RDP 12&13, CTC No. Ac-1/1, Link Road, Near Mahavir Nagar, Kandivali (West), Mumbai-400067
GSTIN Number:	27AAAAM8576E1ZD
Clause(s) of Section 97, under which the question(s) raised:	(d) admissibility of ITC of tax paid or deemed to have been paid;
Date of Personal Hearing:	28.07.2022
Present for the Appellant:	Shri C.B. Thakar, Advocate
Details of appeal:	Appeal No. MAH/GST-AAAR/12/2021-22 dated 16.12.2021 arising out of Advance Ruling GST-ARA-19/2021-22/B-94 dated 10.11.2021 issued by the Maharashtra Authority for Advance Ruling
Jurisdictional Officer:	Dy. Commissioner/Asstt. Commissioner of Central Tax, Division -II, Thane Commissionerate

(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.



2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “CGST Act” and “MGST Act”] by M/s. Mahavir Nagar Shiv Shrushti Co-op. Housing Society Limited, Plot No. Ph-1, RDP 12&13, CTC No. Ac-1/1, Link Road, Near Mahavir Nagar, Kandivali (West), Mumbai-400067 (“hereinafter referred to as “the Appellant”) against the Advance Ruling No. GST-ARA-19/2021-22/B-94 dated 10.11.2021, pronounced by the Maharashtra Authority for Advance Ruling (hereinafter referred to as “MAAR”).

BRIEF FACTS OF THE CASE

- 3.1 The Appellant is a co-operative housing society (hereinafter referred to as the “Appellant Society”) registered under the Maharashtra State Co-operative Societies Act. 1960.
- 3.2 The Appellant society has constructed a building on the plot allotted by MHADA. The Appellant Society in its Bye-Laws, amongst other thing, contains following objects:
- a) To manage, maintain and administer the property of the society;
 - b) To raise funds for achieving the objects of the society,
 - c) To undertake and provide for, on its own account or jointly with a co-operative institution, social, cultural or recreative activities.
- 3.3 Thus, the Appellant society is formed by its members who are the shareholders of the society, with the object of managing, maintaining and administering the property of the society.
- 3.4 For the purpose of achieving the above objects of the society, the Appellant society raises funds by collecting contributions from the members of the society. The said contributions are also called as charges in the bye laws of the Appellant Society.
- 3.5 The Appellant Society charges to its members includes property taxes, water charges, common electricity charges, contribution to repairs and maintenance funds, expenses on repairs and maintenance of the lifts of the society, including charges to running the lifts, contribution to sinking fund, service charges, car parking charges, interest on the defaulted charges, repayment of the installment of the loan and interest, non-occupancy charges, insurance charges, lease rent, non-agricultural tax, or any other charges.
- 3.6 The said charges are collected by the society on monthly or quarterly basis by issuing invoices.

- 3.7 The Appellant Society, after collecting the charges, uses the said funds for the specified purposes as enumerated in the bye laws. For example, the property taxes collected by the society from a particular member is paid to the Municipal Corporation. The water charges collected from the member is paid to the Municipal Corporation.
- 3.8 The Appellant Society does not carry out any other activity other than those mentioned in the bye laws of the society. This is evident from the Annual Report and Accounts of the Appellant Society. The copy of the latest Annual Report and Accounts for the F.Y. 2019-20 is enclosed herewith with the Appel Memorandum.
- 3.9 The Appellant Society has further appointed M/s. Unique Rehab Pvt. Ltd. (hereinafter referred to as the "contractor") as the contractor for carrying out major repairs, renovations and rehabilitation works for the society on 21.01.2021. The said contractor is charging service charges along with the GST for carrying out the works contract service. The Illustrative copy of the invoice as R A Bill No. 1 dated 15th March 2021 has been annexed with the Appeal Memorandum.
- 3.10 The Appellant Society, under the assumption of law that the activities of the society for its members amounts to supply, had obtained registration under GST.
- 3.11 The Appellant society had filed the impugned Advance Ruling Application dated 07.07.2021 for determining following three questions:
- a) *Whether the activities carried out by the applicant for its members qualify as "supply" under the definition of Section 7 of the CGST Act, 2017.*
 - b) *Whether the applicant is liable to obtain registration under the GST law?*
 - c) *If the activities of the applicant are treated as "supply" under the CGST Act, 2017 then whether the applicant is eligible to claim the ITC on input and inputs services for repairs, renovations & rehabilitation works carried out by the Applicant?*
- 3.12 The Appellant Society, thereafter, at the time of personal hearing withdrew the questions at (a) and (b). However, the Appellant had argued on the question at (c).
- 3.13 The MAAR, vide its order No. GST-ARA-19/2021-22/B-94 dated 10.11.2021, has determined the question of eligibility of ITC against the Appellant society and held that Appellant society is not eligible for ITC in view of the restrictions imposed under Section 17(5)(c) of the CGST Act, 2017.
- 3.14 Being aggrieved by the said order of the MAAR dated 10.11.2021, the Appellant has filed the present appeal on the following grounds which have been enumerated herein below:

GROUNDS OF APPEAL

4 The Appellant is providing works contract services to its members along with other services.

- 4.1 That the clause (e) of section 2(17) of the CGST Act, 2017 specifically provides that business shall include provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members.
- 4.2 That the MAAR has relied on the said clause in business definition and held that the Housing Society may be seen to be providing club and association service to its members but does not provide works contract service to its members; that the aforesaid observation of the MAAR is without appreciation of the correct position in law.
- 4.3 That the said Clause (e) in the business definition merely deems a club or an association to be doing business even when the facilities or services are provided to its members alone; that the said deeming clause deems the Appellant Society to be doing business *dehors* the Principal of Mutuality upheld by the Hon'ble Supreme Court in various cases.
- 4.4 The said deeming clause in the business definition has a history behind it from the erstwhile VAT and Service Tax laws. The same may be referred to at the time of hearing. However, it is submitted that simply because the said clause deems the activities of the Appellant as business, it in no way determines classification of service provided by the Appellant.
- 4.5 The Classification of the Service will be determined only as per the provisions of Levy and Collection contained in Section 9(1) of the CGST Act, 2017 reproduced below:

9. Levy and collection.— (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

- 4.6 The Central Government has notified the rate of tax on supply of services in Notification No. 11/2017 – C.T (R) dated 28.06.2017 and the Annexure thereto as amended from time to time. Further the classification of the supply of services will be done as per the Explanatory Notes to the Scheme of Classification of Services. In other words, the classification of the services and the applicability of the rate will be determined as per the

above notifications and not as per the clause (e) in the business definition. However, the MAAR has failed to appreciate the above position of law.

- 4.7 The above can be also explained by way of an example. If the Housing Society is providing any service to its members in addition to services covered by Chapter Heading 9995, the said supplies may be composite supply or mixed supply. The tax treatment of the composite supplies or mixed supplies shall be as per Section 8 of the CGST Act, 2017.
- 4.8 In the present case, along with the regular membership service, the Society is also providing the works contract service. The said works contract service is a separate line item in the invoice where GST is charged separately by the Appellant.
- 4.9 The Appellant Society is receiving works contract service and further supplying works contract service. The Appellant society and its members have agreed to provide the works contract service to its members. Thus, the entire basis of the impugned advance ruling order is bad in law and needs to be set aside.

5 **The Appellant shall be eligible to claim ITC on the input and input services received by the Appellant Society. The Appellant shall be eligible to claim the ITC of GST charged by M/s. Unique Rehab Pvt. Ltd.**

- 5.1 Once it is held that the Appellant is providing supplies to its members, then the Appellant society shall be eligible for the ITC on inputs and input services including the inputs services in the nature of works contract services.
- 5.2 According to section 2(62) of CGST Act, 2017 “input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—
- (a) the integrated goods and services tax charged on import of goods;
 - (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
 - (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
 - (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
 - (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,
- but does not include the tax paid under the composition levy;

- 5.3 According to section 2(63) of CGST Act, 2017 "input tax credit" means the credit of input tax;
- 5.4 Section 16 (1) provides that Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.
- 5.5 Thus, the Appellant Society shall be eligible to take the ITC of the GST charged by the contractor in view of the Section 16(1).
- 5.6 Though the services provided by contractor qualify as works contract, it will have no bearing on the eligibility of the ITC to the Appellant society.
- 5.7 Further, entry 6(a) in Schedule II to the CGST Act provides that Works Contract under Section 2(119) shall be treated as "supply of service".
- 5.8 The contract given for repairs, renovations and rehabilitation of the building which is an immovable property and thus, it may come under the definition of "Works Contract" and hence treated as works contract service. However, the Appellant Society shall be entitled to ITC in view of the Section 16(1). The denial of ITC can be only if there is blockage of credit under Section 17. In the present case there will be no blockage of credit of the reasons explained herein below.
- 5.9 **Restrictions of Input tax Credit:** Section 16(1) provides that every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business
- 5.10 However, Section 17(5) (c) and (d) provide as under:
"Notwithstanding anything contained in sub-section (1) of section 16 and sub section (1) of section 18, input tax credit shall not be available in respect of the following, namely:
- c. works contract services when supplied for construction of an immovable property (other than Plant and Machinery) except where it is an input service for further supply of Works contract service".*
- d. Goods or services or both received by a taxable person for construction of an immovable*

property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation- For the purposes of clauses (c) and (d), the expression "Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation to the said immovable property.

Explanation. For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.

- 5.11 Thus, from the above reading of the restrictions of ITC under Section 17(5), it is clear that no ITC shall be available of works contract service unless it is used for providing output works contract service. Further, the restriction does not apply to plant and machinery.
- 5.12 In the present case, the Appellant society when it receives the works contract service of repairs, renovations and rehabilitation, the Appellant society is further providing the said works contract services of repairs, renovations and rehabilitations to its members which is deemed to be supply. Thus, the Appellant Society shall be eligible to claim the ITC on the input works contract services as the same is used for providing the output works contract service. It is not in dispute that the Appellant society is discharging 18% on the outward supply of works contract services and further receiving the inward supply of works contract on payment of 18% GST. If the ITC is not granted to the Appellant that, it will not only amount to double taxation, it will also amount to levy of tax on tax. It is against the principle of VAT and GST. Further it is also resulting in taxing of the member's money twice as ultimately the housing society is nothing but contribution by the members.
- 5.13 The Appellant society has used the works contract services provided by the contractor to provide further works contract service. The Appellant society is the main contractor as far as the members is concerned and the contractor is the sub-contractor. The Appellant submits that it has stepped into the shoes of the main contractor for providing the said works contract services to its members. Especially, after the amendment brought about in the Finance Act, 2021. Appellant Society is deemed to be a distinct entity from its members and all the works contract service received by the Appellant Society is used for providing further works contract service to its members. Thus, the said restrictions of Section 17(5) shall not be

applicable in the present case.

- 5.14 Alternatively, without prejudice, the said repairs, renovations and rehabilitation for plant and machinery shall be entitled as ITC to the Appellant Society.
- 6 Alternatively, without prejudice the Appellant has submitted that in general, on a plain reading of section 17(5)(d) it is inferred by the authorities that, what is contemplated and provided for a particular situation where inputs are consumed in the construction of an immovable property, which is meant and intended to be sold as immovable property post issuance of completion certificate does not attract any levy of GST. Consequently, in such a situation, there is a break in the tax chain and therefore there is full justification of denial of input tax credit, as on the completion of the construction, no GST would at all be payable and therefore no set off of the input tax credit would be required or warranted or justified. The Appellant has submitted that the position in the present case is totally different, where the repairs and maintenance is collected from the members and GST is charged therein. In that event, the Tax Chain is not broken. The denial of input tax credit in such a situation would be completely arbitrary, unjust and oppressive, and would be directly opposed to the basic rationale of GST itself, which is to prevent the cascading effect of multi stage taxation. In this aspect there is a clear violation of article 14 of the Indian Constitution.

RESPONDENT'S SUBMISSIONS

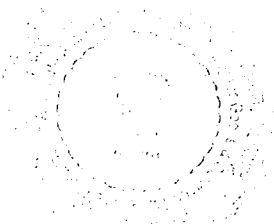
7. The Respondent, i.e., the jurisdictional officer in the present case, vide their letter dated 10.01.2022, have filed the written submissions in the subject Appeal, the extract of which is mentioned herein below:
- 7.1 That the works contract services is not a facility provided by a club or society;
- 7.2 That the issues decided by the AAR was not classification of their outward supplies but about the eligibility of ITC on particular inward supply;
- 7.3 That the restrictions laid down under section 17(5)(d) of the CGST Act, 2017 will clearly be applicable in the present case as was held by AAR; that the Respondent has also relied upon the MAAAR decision in the case of Las Palmas Co-op. HSL wherein the MAAAR had upheld the ruling passed by the MAAR wherein it was observed that the lifts when erected, installed, and commissioned in the building, become the integral part of the building, and hence, the same would be treated as an immovable property, and therefore, the ITC of the tax paid to the lift contractors would not be admissible to the society in terms of the provisions of section 17(5)(d) of the CGST Act, 2017.

PERSONAL HEARING

8. The personal hearing in the matter was conducted on 28.07.2022 in the virtual mode via Video Conferencing, which was attended by Shri C.B. Thakar, Advocate, on behalf of the Appellant, wherein the Appellant reiterated all their earlier submissions made before the Appellate Authority.
9. Shri Thakar, in the aforesaid personal hearing, contended that the Appellant are eligible to avail the ITC of the tax paid on the works contract services received by them in respect of the repair and renovation work of the society building in terms of the provisions of section 16(1) read with exception clause incorporated under clause (c) of section 17(5) of the CGST Act, 2017. He further drew the attention towards the ruling pronounced by the MAAR wherein the MAAR has classified the building repair and renovation services undertaken by them as club or association services being provided to the members, and not the works contract services, and accordingly, denied the ITC of the tax paid on the works contract services received by them in terms of the provisions of clause (c) of section 17(5) of the CGST Act, 2017. In this regard, he contended that no definition of the 'club' or 'association' services has been provided under the GST law. He further contended that since they are collecting and paying GST at the applicable rate of 18% on the amount charged from their members for the supply of the renovation and repair services of the society building, they are rightly eligible to claim the ITC of the tax paid on the input works contract services. Moreover, He also contended that they are acting as a provider of the works contract services for their members.
10. During the course of the aforesaid personal hearing, when the Hon'ble Bench enquired about the copy of the Agreement/ work order entered between the Appellant and the contractors, to know the exact nature of the works or transactions proposed to be undertaken by the contractor, he submitted that they would be filing the said work order before the Bench within a week's time to which the Bench had agreed.
11. Subsequently, the Appellant vide their letter dated 04.08.2022 filed the aforesaid agreement entered with the contractor.

DISCUSSIONS AND FINDINGS

12. We have carefully gone through the appeal memorandum encompassing the facts of the case and the grounds of the appeal along with all the additional submissions and oral submissions made by the Appellant during the course of the hearing. We have also examined the



impugned Advance Ruling passed by the MAAR, wherein it has been held that since the Appellant society is not providing any works contract services to its members, they are not eligible for availment of ITC in view of the restrictions imposed under Section 17(5)(c) of the CGST Act, 2017. The MAAR has based the aforesaid ruling on the provisions of the clause (e) of section 2(17) of the CGST Act, 2017, which provides for the meaning of the term "business" under CGST Act, 2017. Referring to the above said provision of section 2(17) (e), *ibid.*, the MAAR has opined that the Appellant is providing club or association services to its members, and not the works contract services as being contended by the Appellant.

13. On perusal of the above, the moot issues before us is as to whether the Appellant can be construed as providing works contract services to its members while undertaking the activities relating to major repairs, renovations and rehabilitation works for the society by entering into an agreement with a contractor, namely, M/s. Unique Rehab Pvt. Ltd., which carry out the said repair, renovation, and rehabilitation work of the society. In this regard, the main contention of the Appellant is that since they are receiving services in the nature of works contract from their appointed contractor, and rendering the same without altering its characteristics to the members, therefore, their activities in this regard will also be construed as works contract services. Further, they contended that since they are providing works contract services to their members and charging GST at the prescribed rate of 18% thereon, accordingly, they are eligible for ITC of the tax paid on the works contract services being received from their contractor in term of the provisions of section 16 read with the exclusion clause provided under section 17(5)(c) of the CGST Act, 2017.
14. As regards the aforesaid moot issue and the contention made by the Appellant in this regard, we would first like to examine the general activities/functions entrusted upon a Co-operative Housing Society. In this regard, the Appellant have submitted that their main objectives and duties as per the Bye-laws of the society are as under:
 - (i) To manage, maintain and administer the property of the society;
 - (ii) To raise funds for achieving the objects of the society;
 - (iii) To undertake and provide for, on its own account or jointly with a co-operative institution, social, cultural, or recreational activities;
15. The Appellant further submitted that for the purpose of achieving the above objects of the society, the Appellant society raises funds by collecting contributions from the members of

the society. The said contributions are also called as “charges” in the bye laws of the Appellant Society. They further submitted that the charges to the society members includes property taxes, water charges, common electricity charges, contribution to repairs and maintenance funds, expenses on repairs and maintenance of the lifts of the society, including charges to running the lifts, contribution to sinking fund, service charges, car parking charges, interest on the defaulted charges, repayment of the installment of the loan and interest, non-occupancy charges, insurance charges, lease rent, non-agricultural tax, or any other charges.

16. Thus, from the foregoing, it is apparent that the Appellant society has been formed with an objective to facilitate or benefit their members by way of undertaking the aforesaid activities, thereby, providing services to their members against certain considerations called charges in terms of their Bye-laws. Accordingly, they have been levying 18% GST on the taxable components of the charges collected by them from their members. The same is evident from the invoices submitted by them along with the subject appeal memorandum. Here, although the Appellant have not mentioned, on their invoices, the SAC (Service Accounting Code) of the services being provided by them to their members, it is worthwhile to mention that all the said underlying services provided by the Appellant-society will be covered under the heading 9995 enumerated at Sl. No. 33 of the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 having the description “**services of membership organization**”, as all the underlying services including the services related to building repair and renovation for which the Appellant society is charging, from their members, a contribution towards the building repair fund are being supplied in the capacity of the co-operative society only, which is nothing but a membership organization. Our view in this regard is also substantiated by the set of objectives and duties of the Society as prescribed under their Bye-laws, which has been reproduced in para 14 above, which clearly states that the society’s core function is to manage, maintain and administer the society property for which it raises the required fund by charging to its members. They further submitted that they do not undertake any other activities apart from the activities envisaged under the said Bye-laws. Thus, we do not agree with their contention wherein they are arguing that they are providing works contract services to their members while undertaking the task of repair, renovation, and rehabilitation of the society as the said services of repair, renovation, and rehabilitation of the society building would be covered under the aforesaid functions entrusted upon the Appellant society in terms of the society’s Bye-law.



17. Moreover, the Appellant's contention of providing the works contract services to their members is not acceptable on another ground that society provides many services, such as security services, cleaning services, repair and maintenance services, etc., for which they recover the cost from their members under the head "maintenance charges". and the Appellant society are not claiming to be provider of the aforesaid services and charging for the said services under different heads. To elaborate further, it is observed that they are not claiming that they are providing security services or cleaning services, or repair and maintenance services, and the like. Further, they are not recovering the cost of such services under the separate heads specified for such services. Thus, it is clearly evident that they are trying to take this stand of providing works contract services to their members solely to avail ITC of the tax paid to the contractor on the works contract services, which were otherwise not available to them under the restrictions imposed under section 17(5)(c) of the CGST Act, 2017, which reads as under:

"Section 17. Apportionment of credit and blocked credits:

(1).....

(2).....

.....

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:

(a).....

(b).....

(c) Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

18. The aforesaid provision says that ITC would be available on tax paid on works contract services when such services are the input services for further supply of works contract service. Appellant does not fulfill the conditions laid down above. It has to be understood that the exception carved out to provide ITC in the case of tax paid on works contract is for those who in turn provide works contract service. For e.g., when a principal gets a contract of work executed from a sub-contractor and provides the same to the employer. In such a case, the principal becomes eligible for ITC even though the contract results in immovable property. However, the instant situation is far from it. Here, the Appellant society is an organization which has been formed with the sole objective to manage, maintain and

administer the society property as envisaged under the Bye-law and to provide services as enumerated under the said Bye-law. The society itself is not works contract service provider, nor it is in the business of providing works contract services. The works contract services received by society, from appointed contractor, are for the common benefit of the members. Hence, the Society's contention that they are providing works contract services to their members, and hence, eligible for the ITC of the tax paid to their appointed contractor can't be agreed to. Accordingly, they are not eligible for the ITC of tax paid to their contractors in terms of the limitations provided under section 17(5)(c) of the CGST Act, 2017.

19. Thus, in view of the above discussions and findings, we pass the following order:

ORDER

20. We do not find any reason to interfere with the Advance Ruling passed by the MAAR vide Order No. GST-ARA-19/2021-22/B-94 dated 10.11.2021 wherein it has been held that the Appellant-society is not eligible to avail ITC of the tax paid on the works contract services received from their appointed contractor in terms of the limitations provided under section 17(5)(c) of the CGST Act, 2017, as they cannot be said to be providing works contract services to their members.



(RAJEEV KUMAR MITAL)
MEMBER



(ASHOK KUMAR MEHTA)
MEMBER



Copy to the:

1. Appellant;
2. AAR, Maharashtra;
3. Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone;
4. Commissioner of State Tax, Maharashtra;
5. Commissioner, CGST, Thane Commissionerate;
6. Dy. Commissioner/Asstt. Commissioner of Central Tax, Division -II, Thane Commissionerate

